

November 29, 2024

The Secretary
Ontario Securities Commission
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ONTARIO SECURITIES COMMISSION– Statement of Priorities Request for Comments Regarding Statement of Priorities for Fiscal Year 2025-2026

Kenmar Associates appreciate the opportunity to comment on the proposed OSC 2025-26 Statement of Priorities.

Kenmar is an Ontario-based privately-funded organization focused on investor education via articles hosted at www.canadianfundwatch.com. Kenmar also publishes *the Fund OBSERVER* on a monthly basis discussing consumer protection issues primarily for retail investors. Kenmar is actively engaged with regulatory affairs and participates in Public consultations. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, harmed consumers in filing investor complaints and restitution claims.

Executive Summary

The recent past has been disappointing. In its 2021 OSC audit the Auditor General of Ontario found that the OSC *"has not effectively used its accumulated Designated Fund ... for the benefit of the investor community as much as permitted within the existing securities laws in Ontario."* The OSC leadership and Board should use the current consultation to address the AGO critique and seize the incredible opportunity to support Main Street.

The minimum time for consultations has been reduced from 90 to 60 days, mutual fund salespersons in Ontario can now use the title *Financial Advisor*, OBSI is still far from having a binding mandate and the TCP initiative has faltered. The initiative to address Big bank product shelf cuts has fizzled. The very public EMD loss calculation battle makes us wonder what note, if any, is being taken of the interests of the investor after such a protracted delay. In March, the CBC reported wide spread high pressure sales of mutual funds at bank branches.

Senior executives have departed, including the leader of the Office of the Investor and the Director of enforcement. According to a G&M report at the time of Mr. Kehoe's departure, the headcount of the OSC enforcement division was roughly 175, but the current headcount is roughly 140, a 20% reduction in staff. The Seniors Strategy appears to have been sidelined.

On the positive side, we commend the OSC decision to provide 6 year Funding to FAIR Canada. This funding will provide organizational stability to its work to protect investors. Funding such organizations should be a priority given Canada's lack of a

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robust consumer protection network to counter powerful corporate interests. Other creative uses of the Designated fund would be welcome.

In addition, in November the OSC/CSA made substantive changes to the Initial Proposals for CD documents to enhance the Proposed Access Model from a retail investor perspective.

We are struck by both the number of 2025-26 priorities and how many of them could consume resources from core investor protection. Several initiatives have been ongoing for years, adding to an ever-increasing backlog of "to do" work. It appears to us that the expanded OSC mandate (e.g. to foster capital formation) has caused a number of core investor protection issues to be edged out by priorities in other mandates.

We were disappointed not to see a clear priority objective to improve senior and vulnerable investor protection. For us, this should be a TOP priority given the frequency of harm to seniors and the life-altering impact of the harm. [The revised priority statement should include focussed actions to protect the elderly](#). The Seniors Strategy should be updated and concrete steps taken to better protect retirees, the elderly and vulnerable clients.

As in prior year commentaries, we are again concerned that many of the identified priorities are not associated with concrete actions, specific milestones/ completion dates or clear outcomes/metrics. The absence of objective targets makes it virtually impossible to gauge progress or hold the Commission accountable. The sage management adage that " *What gets measured, gets done*" applies here.

The OSC has made a commitment to "*Develop performance measurement frameworks with relevant KPIs to track progress against strategic goals and outcomes.*" Measurable performance indicators are a key enabler to tracking progress. This should now be implemented and the results published.

We appreciate that the OSC continues to scan the horizon, work on diversity, green finance, indigenous relationships, climate change, innovation etc, BUT the overarching mandate must be investor protection.

All of this activity is occurring while the OSC undergoes major executive and cultural change, applies the fostering capital formation mandate, offloads registration tasks to CIRO, introduces significant ESG related reforms, the CFR regime is incurring significant bumps, investor complaints mount, cyber threats prevail and new IT systems are being deployed (e.g. SEDAR). We are concerned that as staff and resources are spread across these many initiatives, the OSC will not be able to adequately attend to its primary mandate I- protection of investors- at a time when they face a significant number of headwinds as well articulated in the Consultation paper.

Our Commentary on selected priorities

Goal 1 Quickly Deliver Effective Regulatory Actions in Anticipation of Emerging Trends

A quicker reaction to emerging trends is certainly warranted. . According to the AOG report, the OSC takes, on average, 2.9 years to develop a new CSA rule, policy or amendment, more than a year longer than for Ontario-only rules (1.7 years). There is clearly an opportunity for improvement.

Continue to implement an OSC-wide cross-disciplinary approach to emerging trends, as we have done with our work on artificial intelligence.

Business as usual.

Continue our strategy and approach to AI with a view to respond quickly to the deployment of AI systems

This is very critical as AI is a revolutionary phenomenon. New skills and talent will need to be recruited. In late September, the Office of the Superintendent of Financial Institutions (OSFI) and the Financial Consumer Agency of Canada (FCAC) jointly released a [report](#) describing the evolving risk landscape related to the use by federally regulated financial institutions (FRFI) of artificial intelligence (AI) and suggesting best practices for responsible AI adoption (Report).

AI is an opportunity and a threat. In light of this, we would support the creation of a standing stakeholder committee to address the unique challenges that AI will present to the financial services industry.

Continue to focus on crypto asset trading platforms (CTPs)

A very valid priority. The OSC has been very active here and should continue herding in the platforms.

Goal 2 Enhance the Experience of Individual Investors

Continue to advance opportunities for investors to obtain redress, including Implementing a new, statutory disgorgement framework

We support the disgorgement initiative and have provided recommendations on how to make it more effective, easier and cheaper for investors to use. The Dealer's share of the associated disgorgement event must also be paid when a Rep has been sanctioned. This is critical. We expect the initiative to be in place in fiscal 2025-26. For this initiative to be impactful, the OSC will have to dramatically increase enforcement and significantly improve its approach to collection of Disgorgement Orders and fines. The Consultation Paper does not provide a plan or metrics to improve collection rates.

Finalizing a regulatory framework for an independent dispute resolution service, expected to be the Ombudsman for Banking Services and Investments, to make binding compensation decisions

We cannot imagine *finalization* of the framework during the timeframe given that a CSA news release dated Nov.7 stated "As work continues on introducing binding authority, the CSA plans to issue a further publication for comment *in the second half of 2025* that includes the CSA's proposed approach to oversight." This stretched cycle time is just one more example of industry influence over regulators.

Granting OBSI binding authority is a straightforward, win-win solution to strengthen trust in Canada's financial system. Currently, harmed investors face a system where even independently validated compensation claims can be ignored or underpaid. This undermines confidence in the industry and discourages market participation. Binding authority ensures fairness: Firms would be accountable for validated claims, while consumers gain confidence their grievances will be addressed. The monetary impact is negligible-OBSI's average annual compensation recommendations of \$1.7 million pale in comparison to the industry's billions in profits.

This reform also benefits the industry by reducing costly litigation and enhancing its reputation for ethical conduct. With a predictable, independent dispute resolution process, Firms can focus on building long-term relationships with clients instead of managing public backlash from unresolved complaints. By supporting binding authority, governments are not just protecting consumers-they are strengthening the financial system as a whole. It's an essential step to ensure fairness, build trust, and promote a more robust financial ecosystem for everyone.

Until the binding mandate is achieved, the OBSI should publish not only cases of outright refusals, but also low settlements in the form of quarterly and annual chart posted to its website as recommended by the 2021 Independent Review.

Deepen our understanding of individual investor challenges and opportunities

Business as usual.

Strengthen our mechanisms to evaluate the effectiveness of our educational and outreach programs

Business as usual.

Continue to assess current OSC investor-facing processes for alignment with behavioural science

Business as usual

Continue to focus on the quality of service obtained by investors and the choices available to them, as well as the proficiency of advisors and conflicts of interest, including those related to the firm's product shelves

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This is a repeat of last year. Continuing to focus does not improve client outcomes so is not **really an action**. In a November 2021 letter Ontario Finance Minister Bethlenfalvy asked the OSC to undertake a review and report back by the end of February 2022 with recommendations. The Report has not been made public. **The Ontario Govt. should release the OSC report prepared in response to this issue.**

The aspirational intentions of the OSC's CFR initiative could be undermined by the elimination of choice (and **competition**). Several of Canada's largest banks have halted sales of third-party investment products from their financial planning arms on the basis that new regulatory rules require advisors to have deeper knowledge (KYP) of the funds they recommend to clients. The negativity of this practice is amplified by tied selling. e.g granting a mortgage.

At a minimum, we have recommended that such Dealers fully disclose the limitations and risks associated with restricted shelves, be constrained in their marketing language (e.g. can only provide *restricted* advice) and its Reps be required to use the title "dealer representative" (and be prohibited from using the FSRA FA title in Ontario). No doubt the secret OSC research Report is loaded with more good ideas. We encourage the OSC to provide additional industry guidance on acceptable approaches to comply with CFR KYP obligations and the requirement to demonstrate that a reasonable range of alternative products were considered as part of the suitability determinations.

Continue to work with CIRO to clarify the ability of order execution only firms to provide non-tailored advice to meet the needs of Do-It-Yourself investors

Repeat of last year but glad to see it is still on the list. The OSC believe that the present limitations on *advice* being provided by OEO firms may be preventing some information from being provided to DIY investors who are increasingly seeking advice from unregistered channels. Young investors are turning to online resources such as AI chatbots, social media influencers, investor-focussed bloggers, investment apps such as Wealthsimple and traditional media like BNN/ G&M to help manage their modest portfolios.

We recommend that the discount brokers be given more leeway to empower DIY investors to manage their portfolios. Discount brokers have a tremendous opportunity to democratize *advice* if regulators pave the way. Of course, any *advice* provided would not be personalized but the generic tools and calculators provided would enable better retail investor decisions.

Discount brokers have been a saviour for Canadians locked out of the full- service brokerage channel with its high minimum account sizes, high fees and conflicts-of-interest. The access to research ,low cost ETF's , real time information, numerous calculators , model portfolios , abundant self -help tools , Alerts, educational materials , account information including performance measurement and seemingly endless innovation have permitted DIY investors and those of modest income to

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better manage their investments. If a discount broker client is about to engage in high-risk investing and is at risk of significant loss, an ALERT should pop up before the trade is executed.

As AI and increasingly creative financial planning Aps become available, more Canadians than ever will be able to avoid high-fee alternatives with increasing confidence. The OSC has an important regulatory and public interest role to ensure that vested interests do not prevent technology from blossoming to the detriment of Main Street Ontarians. The outdated "Order Execution Only" label will need to be re-imagined so that discount broker clients can increase their capability to control their own financial destiny.

The support of discount brokers to provide non-tailored advice may dilute the value of established advice channels unless these channels increase their value proposition beyond investment advice to include financial planning, tax optimization and retirement plans.

We recommend that the OSC and CIRO further investigate and prioritize regulatory issues relating to the gamification and use of potentially harmful behavioural techniques in the discount broker Channel, which in our view presents a particular risk of harm for young/less-experienced retail investors. We suggest the OSC review U.S. Securities and Exchange Commission recently implemented rules aimed at regulating trading platforms that utilize predictive analytics and gamification features to stimulate trading activity.

In addition, we encourage the OSC /CIRO to ensure discount brokers improve uptime and enhance cybersecurity/privacy processes.

Assess results of our consultation to consider whether and how we will develop the long term asset fund regime in Ontario

We were surprised to see the OSC identify the "opportunity" of a complex, illiquid fund as a 2025-26 priority. We question the need for and the timing of such a risky fund when Ontarians are struggling and the economy is challenged.

Consumer debt in Canada rose to a record \$2.5 trillion in the third quarter, up 4.1 % from the year before, according to reports from two credit reporting agencies.

Private, illiquid asset funds can possibly play a role in a diversified portfolio portfolio for the right investor, depending on a range of factors. Retail investors must consider their time horizon, cash flow needs, risk profile, correlated risks, its impact on asset rebalancing, the attractiveness of the fund, the specific risks of the asset class, investment fund fees, advisor fees and their ability to live with illiquidity, possibly for an extended period of time. And then size their portfolio allocation appropriately to match their KYC objectives. Investors in such a fund should have an emergency fund in the event of a redemption freeze.

Given the state of financial literacy and competency and relatively low financial resilience among Ontario retail fund investors, we believe only the smallest, if any,

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allocation should be made to such funds in the event the OSC approve sale of these complex funds to Main Street. Only Dealers that are Participating Firms in OBSI should be permitted to sell such a fund. Thankfully, no other province in Canada is promoting such funds at this time. That is good news because non-Ontarians will not be able to be approached by mutual fund salespersons because it would not be an approved security in those provinces. [Kenmar strongly recommend that the approval of this type of fund await the results of comparable risky funds launched in the UK and US or restrict sale to more affluent, savvy investors.](#)

Goal 3 Dynamically Right-Size Regulation Informed by Changing Needs, Risks, and Practices in Ontario and Globally

Advance access models for corporate finance and investment fund issuers

Easy access to disclosures is key to investor protection. We have provided commentary on how best to ensure that disclosures are actually delivered to investors. In general, we do not support access equals delivery models especially for retail investment funds. Those who are unable or unwilling to accept electronic delivery should have the right to receive paper delivery without cost. The processes to request delivery (which could include a direct link to the document) should be intuitive and easy for retail investor adoption. Kenmar do not support the availability of an access model for certain types of continuous disclosure documents, such as proxy-related materials and takeover and issuer bid circulars. We do not support change to an access model for time-sensitive documents requiring participation from shareholders.

Continue to develop a revised climate-related disclosure rule for reporting issuers other than investment funds

This priority really is now business as usual as the “action” plan suggests. Kenmar do support continued, ongoing development on this important disclosure issue.

Publish a CSA policy consultation supported by trading research to discuss areas unique to ETF trading and their unit creation process

The publication of a CSA policy study on ETFs is a task that is to be done when the study is ready - the timing of the publication is dependent on other CSA jurisdictions. The study is an important step in better regulating ETF's, some of which are truly innovative and novel. We have submitted unsolicited input to the OSC/CSA.

Goal 4 Implement a Tougher and more Visible Response to Capital Markets Misconduct

While the OSC plans to be tougher on enforcement, it will be constrained by a low level of monetary sanctions capability, reduced headcount, a recent Court decision letting sanctioned persons off the hook from paying fines if they declare bankruptcy and a new EVP of enforcement. To increase priority credibility we suggest the OSC

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seek an increase in monetary fines and work with the BCSC in calling for an amendment to the Federal Bankruptcy and Insolvency Act. If this is done, credible deterrence may be achieved.

Review and continue to optimize technology and seek to strengthen OSC enforcement powers working with governments and law enforcement authorities.

We recommend that the OSC sanction limits be increased to a level where **deterrence will be credible**. Given the huge scale of many of the registrants, a \$1 million fine is unlikely to be impactful or change behaviour. [The Ontario Capital Markets Task Force to modernize securities regulation recommended increasing administrative penalties from \$1 million to \$5 million and fines for quasi-criminal offences from \$5 million to \$10 million among several other actions to strengthen OSC enforcement capability.]

We also suggest the OSC adopt some of the Ontario Capital Markets Task Force's recommendations to bolster the OSC's collections powers such as its recommendation to limit access to Ontario drivers' licences and licence plates if an individual or Company fails to pay fines as ordered by the OSC or Courts.

Given the huge success of the SEC whistleblower program, it seems to be most appropriate that the OSC should review its program to include best practices and lessons learned. A robust whistleblower program will enhance market integrity. **We recommend that the OSC benchmark the SEC Program and expand the OSC program accordingly.** The Designated fund can be used to support the initiative as and if necessary.

We urge that OSC enforcement focus on root causes in order to prevent recurrence more effectively. Most root causes are systemic in nature.

A good reference here would be IOSCO ***Credible Deterrence In The Enforcement Of Securities Regulation***
https://www.iosco.org/library/annual_conferences/pdf/40/Credible%20Deterrence%20Report.pdf

Goal 5 Foster Conditions for Capital Formation and Innovation in both Public and Private Markets

This goal seems more appropriate for an economic development office than for a regulator focused on investor protection. What we hope the OSC will actually do is make rules and take actions that will make investors in Ontario's economy comfortable that they can count on no- nonsense regulation of markets.

Kenmar urge the OSC to ensure that any initiatives to foster capital formation and innovation are undertaken with an investor protection lens and are reflected in concrete action items and planned outcomes. We are of the firm opinion that

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effective investor protection will ultimately serve the best interests of Ontario capital markets.

Kenmar encourage the OSC to create metrics that can demonstrate how the Office of Economic Growth and Innovation numerous initiatives have led to achieving its stated goals. We believe that doing so would promote transparency and accountability. [Accordingly, we recommend the OSC create and publish success criteria for the Innovation Office.](#)

Assess results of our consultation to consider whether and how we will develop the long term asset fund regime in Ontario to facilitate retail investors gaining exposure to longer term, less liquid assets.

We are constructively critical of the priority rating, timing, need and value of this activity. The OSC has valiantly tried to make this risky, complex illiquid fund a fit with retail investors but there are still many open issues. [We recommend deferral until we see UK and US results.](#) Our Comment letter in response to an ongoing consultation will explain our concerns in more detail.

Propose amendments to prohibit short sellers from covering short positions with new stock issued in connection with a public offering or private placement.

We fully support passage of such amendments.

Goal 6 Strengthen OSC's Position as a Trusted and Influential Voice in Canadian Capital Markets

This goal involves the OSC being vocal in making its voice heard and its ideas considered on a broader stage .It intends to influence IOSCO policies and seek intervenor status in appropriate cases. We do not see this goal as constructive or worthy of consideration. Kenmar recommend it be amended. We'd like to see the OSC interact with leading regulators, benchmark best practices around the world and tailor them for Canadian application. There are securities regulators in other countries that are years ahead of Canada's fragmented regulatory system. That would help attract business investment to Ontario.

The cloud of the Dec. 2021 OAG report still hangs over the OSC. The report concluded that efforts to enhance investor protection in Ontario were undermined by a combination of government interference, industry lobbying and regulatory dissonance. Kenmar recommend the OSC rebuild trust with investors by demonstrated actions. The actions will speak for themselves.

Investor Priorities NOT proposed by the OSC

In the paragraphs that follow we relate long standing issues we recommend the OSC should consider for inclusion in the 2025-26 SOP.

Redress -Improve Dealer Complaint handling

Investor redress was highlighted as a priority in the OSC strategic plan. The best way to do this is by improving the Dealer complaint handling process. The wealth management services industry complaint handling process is complex, adversarial and puts an unsophisticated investor against a Firm's highly sophisticated complaint handling team. As one would expect, the process is less than fair and retail investors receive far less in compensation (or no compensation) than they should. For most complainants, the cost of civil litigation is simply out of reach. OBSI's Q3 2024 statistics show that investment cases opened increased 23% quarter over quarter and 35% year over year. Needless to say, there is a serious issue here.

The securities industry complaint handling system is antiquated, to the detriment of ordinary Canadians, especially seniors. Dealer complaint handling needs to be modernized whether or not OBSI obtains a binding mandate. The OSC 2025-26 priorities should finally address this long standing threat to investor protection.

Kenmar expect the OSC to provide more detail and much higher level explanation of core principles and standards that they expect of the industry as regards complaint handling. See for example, **ASIC RG 271 Internal Dispute Resolution** (57 pages). <https://download.asic.gov.au/media/5720607/rq271-published-30-july-2020.pdf> The AMF have demonstrated leadership in this regard and examination of their fine work is in order.

Accelerate introduction of robust senior investor protection initiatives

This was mentioned last year but no tangible results are apparent. Kenmar and others have previously provided the OSC with concrete suggestions on how to improve senior investor protection. We expected some of these ideas to appear in the SOP. In any event, we take this opportunity to inspire the OSC to make senior investor protection a **TOP** 2025-26 OSC priority.

Canada's and Ontario's aging population makes protecting seniors a priority for the OSC. The data tells us that Ontarians are living longer than ever, and older Ontarians make up a growing portion of Ontario's population: the Ontario government has projected that one in four Ontarians will be aged 65 or older by 2041. **According to the 2023 OBSI annual report 48% of investment complainants are over age 60 and 33% of all complainants are retired.**

Some of the seniors' issues we're concerned about include better advisor training to detect diminished capacity , validation of objectives for retirees , more frequent updates of KYC as regards time horizon and risk profile, need for income to support expenditures , beneficiary designation, POA nomination ,TCP selection and application of temporary holds ,Off book recommendations, personal financial dealings, account type selection, recommendations suitable for de-accumulating accounts and conflicts of interest such as advisor being named as executor for client estates are on our watch list.

With immigration at record highs, many new Canadian investors may be exposed to rogue /incompetent/negligent advisors and/or ineffective supervision. Seniors (and immigrants) are disproportionately targeted because of their vulnerability. **A targeted review of what steps Dealers are taking to protect seniors and vulnerable clients would be the baseline for improvement.**

Three key sources: *CSA Staff Notice 31-354 Suggested Practices for Engaging with Older or Vulnerable Clients* https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190621_31-354_suggested-practices-for-engaging-with-older-or-vulnerable-clients.pdf in addition to the now dated 2018 *OSC Seniors Strategy*. We also firmly believe OBSI's research *Seniors Report* https://www.obsi.ca/media/1ongvjpr/seniors-report_final_en.pdf would be a very useful input to the OSC in implementing enhanced protections for vulnerable investors. Included in the report are several case studies, illustrating the issues most complained about by seniors, including cases of seniors who have complained about investing in high risk investments with unexpected fees, found themselves holding investments they can't sell and run into trouble with the estate planning in time of crisis, fallen victim to fraud and have experienced problems with joint accounts and Powers of Attorney.

Reviews of senior investor protection programs in examinations, enforcement actions and collaboration with other regulators, as well as research and education initiatives should be an integral part of the OSC integrated Seniors investor protection action program. Consideration should also be given to the establishment of a Seniors Hot Line similar to FINRA's successful approach.

Fulsome engagement with CARP, Canage, Office of the Public Guardian and Trustee (Ontario), academia and consumer groups/individuals is most appropriate in defining senior investor protection strategies, priorities and action plans. Input from SEAC and the IAP would support increased priority on senior investor protection.

Retirees/ seniors are harmed by bad advice that can be life-altering due to the limited time to recover losses and emotional anguish leading to physical and mental health issues. **We urge the OSC to make senior investor protection a discrete priority for 2025-26.**

Systemic issues need OSC/CSA attention

Resolving the same type of complaints day after day, year after year is, as Einstein would say, insanity. If OBSI is encouraged to address systemic issues, its value-add and effectiveness would dramatically increase. Poorly designed forms would be corrected, software glitches would be fixed, deficient rules and policies would be amended, compliance/ enforcement would be more focussed, disclosure documents clarified and complaint handling processes would be improved. What's not to like?

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Improving the “system” is totally congruent with, and supportive of CFR. The lack of an effective systemic issues protocol is a very important negative, since if systemic issues are not addressed, the “system” will not improve.

Besides resolving individual complaints, the implied role of OBSI is to formulate and promote standards of best practise, of complaint resolution leading to positive change, of identifying how organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future., to feed back information and relevant systemic advice and of feeding the outcome of systemic findings into best practises. The absence of a meaningful role with respect to systemic issues narrows the scope and effectiveness of OBSI. The OSC/CSA can correct that.

Systemic issue **resolution** remains the role of regulators. That being said, once informed of a systemic issue, there must be an obligation of the regulator to act and report publicly on its actions to deal with the systemic issue(s) or explain why it chose not to act.

Accordingly, Kenmar support that the OSC/CSA adopt the 2021 Independent Review Recommendations:

A. OBSI should work with the JRC to review and improve the systemic issue reporting system, including by:

- 1. Amending the definition of systemic issue to include complaints raised by a single complainant;**
- 2. Requiring OBSI to report repeated systemic issues year-after-year, even if the same issue was identified in prior years; and**
- 3. Ensuring more robust communication between the JRC and OBSI once a systemic issue has been identified by OBSI.**

B OBSI should set out in its Annual Report the number of potential systemic issues it has identified in the previous year, both in respect of securities and banking complaints, and provide a generic description of the type of issue identified. OBSI should work with the JRC or the CSA Designate to issue a report to the public on what steps have been taken with respect to the potential systemic issues identified by OBSI.

If properly addressed, the binding mandate and enhanced systemic issue protocol could involve (a) Dealers compensating victims of financial harm that did not complain to the Dealer or OBSI, which is a very positive investor protection outcome AND (b) the elimination of the root causes of problems leading to complaints.

Evaluate risk profiling practices

The biggest cause for complaints is unsuitability and the primary cause of that is defective risk profiling. We are concerned that the enhanced risk profiling required by CFR is not in place for most registrants. From our observations, internationally

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recognized, independent research on risk profiling of client's KYC profiles (commissioned by the OSC IAP, funded by the OSC in 2015) has not led to changes in Firm business practices. Re **Current Practices for Risk Profiling in Canada And Review of Global Best Practices**

https://www.osc.gov.on.ca/documents/en/Investors/iap_20151112_risk-profiling-report.pdf The study found that most of the questionnaires (83.3%) in use by the industry are not fit for purpose. Fifty five percent had no mechanism to recognize risk-averse clients that should remain only in cash.

Kenmar recommend that the OSC provide guidance/questionnaires on how Firms should assess risk profiles and how to use that assessment determination in suitability determinations. This would help support uniform application of CFR requirements across Firms. Ref *FG 11-05 Assessing suitability: Establishing the risk a customer is willing and able to take.*

<https://www.fca.org.uk/publication/finalised-guidance/fsa-fg11-05.pdf>

Track TCR implementation

We encourage the OSC to closely monitor, and intervene if necessary, to ensure the already ultra-generous implementation date is met. The TCR Enhancements are expected to come into force on January 1, 2026. Both securities registrants and insurers will be required to deliver the first annual reports that incorporate the TCR Enhancements for the year ending December 31, 2026. TCR is a powerful adjunct to CFR so smooth implementation is critical.

Use the Designated fund to protect investors

The Designated fund should dramatically expand its use of cash to support investor protection. We note that the OSC has provided an \$11 M award to FAIR Canada so it can develop a long-term plan to counter the massive lobbying power and influence of the Canadian financial services industry. Other ideas include increased investor research and providing financial support for more Investor Protection Clinics in Ontario. **Commit another significant cash deployment in the fiscal year.** That would have a major positive impact on investor protection as investor advocacy would be more robust and sustainable.

Reduce Regulatory arbitrage

We recommend that the OSC prioritize steps to reduce regulatory arbitrage with the insurance industry. For one, we'd like to see the Ontario government have the FSRA formally work with the FSRA to adopt insurance industry conduct rules equivalent to CFR in Ontario. In the area of registration/enforcement, it would be useful to develop a protocol and processes to enable registrants banned in the securities sector to also be banned in the insurance sector. Insurance agents with outstanding unpaid OSC or CIRO fines/disgorgement orders should have their licenses revoked until the fine is paid in full. Kenmar believe such basic initiatives would be very effective in protecting Ontario financial consumers and improve collections.

We refer you to this article <https://www.advisor.ca/news/industry-news/hidden-in-plain-sight-how-banned-iiroc-and-mfda-advisors-can-still-sell-insurance/>

Create a registrant category for Adviser

The scope and accountability of advice provided by dealing registrations is poorly defined as is the wider dimensions of personalised advice generally. Kenmar recommend that the OSC/CIRO create a new category of registrant that would better define the obligations of personalized financial advice similar to advisers covered by the U.S. Advisers Act. An integral component of the registration would be an overarching Best interests conduct standard. The acceptance of embedded commissions would be banned. We believe this will provide a cadre of professional advisers that Ontario financial advice consumers can trust. It would be a significant move towards professionalism of financial advice and away from the prevailing "Caveat Emptor "state of affairs and transition to fulsome financial advice.

Summation

When everything is a priority, nothing is a priority. Projects are not priorities when they are listed without specific timelines, milestones, definitive actions and clear success metrics. Investors deserve real action, concrete results and accountability.

The OSC, by attempting to achieve an appropriate balance in supporting novel businesses and fostering innovation and competitive capital markets while promoting investor protection, seems to be a dichotomy as the balance always seems to favour the industry.

We would appreciate more detail on how the OSC will actually ensure that investor protection is prioritized when faced with competing and/or opposing priorities .For example, we expect that this means that the OSC will routinely solicit and respect input from the Investor Office ,IAP and SEAC or be prepared to explain why it chose an alternate course.

We sincerely hope our forthright critique of the proposed priorities will inspire the Commission to increase focus on investor protection. Ontarians have never needed a strong, effective OSC more than they do now.

Permission is granted for public posting of this letter.

If there are any questions regarding this Comment letter, we would be most pleased to meet with the OSC executive and Board.

Respectfully,

Ken Kivenko President
Kenmar Associates