

INVESTOR ADVISORY PANEL

December 20, 2024

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

Re: OSC Notice 11-799 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year 2025-2026

The Investor Advisory Panel (the “Panel”) welcomes this opportunity to comment on the Ontario Securities Commission’s (“OSC”) draft Statement of Priorities for the fiscal year ending March 31, 2026 (“SoP”). The Panel is an initiative of the OSC to ensure investor concerns and voices are represented in the OSC’s policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

General Comments

The OSC’s Mandate

The OSC’s mandate has expanded over the years. The Panel recognizes the OSC’s obligation to develop and pursue priorities in furtherance of all components of its mandate. At the same time, the Panel believes that investor protection is a fundamental principle of securities regulation, and as such should be considered in all aspects of the OSC’s work and should not be eclipsed by its focus on other parts of its mandate. For example, when taking steps to foster capital formation, the OSC should consider whether any new initiative could lead to new or heightened regulatory risks for investors, and ensure the initiative includes measures to protect against such risks. Taking a holistic view of all initiatives through an investor protection lens may also help to avoid unintended consequences, while ensuring that different investor segments are receiving the benefit of investor protection. In addition, the Panel notes that capital formation is not the same as capital raising, and would encourage the OSC to take note of this as it pursues this aspect of its mandate.

One element of the OSC’s mandate is to foster fair, efficient and competitive capital markets and confidence in the capital markets. In the Panel’s view, the SoP could be enhanced by priorities focusing on this aspect of the OSC’s mandate, especially fostering competition. The SoP acknowledges that “limited competition can have an adverse effect on service offerings in certain distribution channels”,¹ yet is largely silent on steps that can be taken to enhance competition where it is lacking or limited. For example, the Panel has shared concerns about the restricted product shelves available to investors.² Fostering competition will enhance confidence and help meet investor expectations. We believe that

¹ OSC Statement of Priorities for the Fiscal Year 2025-2026 (“SOP”), p. 11.

² IAP Comments on Statement of Priorities for Financial Year to End March 31, 2025, p. 3.

increased competition would benefit retail investors, but this component of the OSC's mandate must be balanced with the need for investor protection. We note that one of the operational objectives of the United Kingdom's Financial Conduct Authority ("FCA") is to promote effective competition in the interests of consumers, not simply competition for its own sake.³ The FCA must carry out its functions in a way that promotes effective competition, so long as doing so is compatible with its consumer protection and integrity objectives.⁴ We would suggest that the OSC consider seeking a similar change to its mandate.

The Panel is of the view that the SoP should include additional focus on the OSC's mandate to contribute to the stability of the financial system and reduction of systemic risks. The Panel recognizes and commends the OSC for the work it does in support of this critical area. We believe that it would be helpful to see the steps the OSC is taking to identify and mitigate perceived systemic risks, and how the OSC is achieving this component of its mandate. Investor awareness of the OSC's consideration of systemic issues will enhance confidence in both the regulator and the capital markets.

The Panel supports the OSC's efforts to better allocate resources across the regulatory ecosystem, and specifically the re-alignment of certain functions between the OSC and the Canadian Investment Regulatory Organization ("CIRO").⁵ The Panel believes that effective delegation of certain functions to CIRO will allow the OSC greater efficiency and efficacy in developing policies and priorities in furtherance of its mandate.

Measurability of Priorities

The Panel believes that, where possible, the SoP would benefit from greater specificity. Currently, many of the priorities in the SoP are stated in general terms, and do not include information about timelines for specific elements of the priority, or key performance indicators. Including more specific information, such as annual actions and timelines, in the SoP would allow the OSC and its stakeholders to assess whether a priority has been achieved, or has advanced the goals set out in the Strategic Plan.

In our comments on last year's draft SoP, the Panel commended the OSC on including fewer priorities than in previous years. However, the number of priorities remains significant. While it may be difficult to pare down the number of priorities, ranking them in order of importance would be helpful for stakeholders and would assist them in tracking the progress made by the OSC in achieving its priorities.

Investor Expectations

The SoP states that the OSC will apply a "tailored approach to address the concerns of investor segments", recognizing that "different segments of the investor community have their own needs and preferences that present unique risks, challenges and opportunities."⁶ We commend the OSC on doing so and encourage it to continue to bring an enhanced investor protection lens to this year's SoP, so that

³ FCA, Our Approach to Competition, s. 1.1.

⁴ FCA, Our Approach to Competition, s. 1.1.

⁵ SOP, p. 12 (Goal 3, Priority 1).

⁶ SOP, p. 5.

it can continue to strive to address the concerns of all investors. However, it is unclear what investor segments the SoP is prioritizing, what their specific concerns are, and how those concerns will be met.

The Panel is concerned that ongoing developments in the capital markets, such as the rise in DIY investors, ease of access to trading on order-execution-only (“OEO”) platforms, gamification of investing, and increased investor reliance on ‘influencers’, have led to a rise in investment decisions being made without sufficient information or appropriate risk disclosure, and investors pursuing investment strategies that exceed their risk tolerance or profile. For example, DIY investors can trade in options using leverage, without properly understanding the implications of doing so. The Panel suggests that the SoP should prioritize protection of this segment of investors.⁷

The SoP states that “stakeholder expectations of regulators are heightening”.⁸ However, it is not clear which stakeholders this refers to, or the nature of their expectations. The expectations of stakeholders may differ depending on their role in the capital markets. Additional clarity on these matters should be provided, together with additional information on how the OSC plans to meet these increased expectations, with the understanding that meeting stakeholder expectations should not come at the expense of investor protection.

Finally, the SoP indicates that the OSC will continue to “focus on the information investors receive about their investment products, the sales practices to which they are subject and their ability to make informed life-cycle decisions about competing products and services.”⁹ This is critical, and the OSC should prioritize this work in respect of vulnerable and unsophisticated investors (such as those who are not accredited investors). For example, the Panel supports the efforts underway to provide advice to DIY investors using OEO firms.¹⁰ However, in light of the increasing interest in non-prospectus products, like separately managed products and private financing channels,¹¹ and the other concerns listed above, the Panel recommends that any priorities or initiatives that will expand investment opportunities for retail investors be understood in light of the OSC’s investor protection mandate, so that the expansion of investment opportunities does not increase the risks faced by the small retail investor. The OSC must continue to balance innovation in the capital markets and the other pillars of the OSC’s mandate.

Comments on Specific Priorities

Goal 1, Priority 3: Approach to Emerging Trends (Artificial Intelligence)

The Panel supports the OSC’s commitment to responding quickly to emerging trends. With respect to artificial intelligence (“AI”), we note that additional research is likely required to determine how AI is being used and for what purposes. We understand that AI has the potential to be useful, but we also

⁷ This issue, together with suggestions for how to address the concerns, have been addressed in prior submissions by the IAP, including the following: [Comment Letter re Proposed Amendments to National Instrument 81-102](#), April 17, 2024; [Comment Letter re draft Statement of Priorities for Fiscal Year 2024-2025](#), p. 3-4; [Comment Letter re draft Statement of Priorities for Fiscal Year ending March 31, 2024](#).

⁸ SOP, p. 6.

⁹ SOP, p. 5-6.

¹⁰ SOP, p. 11 (Goal 2, Priority 6).

¹¹ SOP, p. 6.

understand that there may be limitations around its use, including issues involving the governance of AI and potentially fraudulent applications of AI tools. The Panel looks forward to gaining a better appreciation of the work the OSC is doing on this subject and how it will protect investors as AI becomes more prevalent in the capital markets. Further clarity would be beneficial on what AI systems or practices are currently being adopted in the capital markets, and for what purpose, as well as whether the OSC is considering measures to better govern the use of AI to protect investors.

Goal 2, Priority 1: Finalizing the Regulatory Framework for an Independent Dispute Resolution Service

The Panel has long supported binding authority for the Ombudsman for Banking Services and Investments (“OBSI”).¹² A fair, efficient and accessible dispute resolution service is an essential element of an investor protection framework. We are concerned about the length of time that introducing this important measure is taking. The IAP has been recommending that OBSI be granted binding authority since 2012.¹³ Accordingly, we urge the OSC to do all that it can to ensure that OBSI has binding authority as soon as possible in 2025.

Goal 2, Priority 4: Assessing Investor-Facing Processes for Alignment with Behavioural Science

The Panel is supportive of an ongoing assessment of the OSC’s investor-facing processes, and the use of behavioural science in doing so. The Panel believes that assessing areas where investors interact with the OSC, with improvement where warranted, is of critical importance to build confidence in the regulator and the capital markets. We also believe that behavioural science can be an effective tool in these processes, as demonstrated by behavioural science research into issues such as investor disclosure.

Goal 2, Priority 5: Client Focused Reforms and Related Issues

The Panel supports the OSC’s continued focus on the services and choices available to investors. However, the SoP should include as a priority a review of the impact of the Client Focused Reforms (“CFRs”) on retail investors, specifically in respect of products for which investors receive less disclosure than individual funds. The Panel is also concerned that the CFRs may have had unintended consequences, such as a limited product shelf,¹⁴ which may ultimately reduce interest and investment in the advisory channel. As this is an ongoing concern for the Panel,¹⁵ we are considering conducting further research into the issue.

¹² [IAP Comments on Statement of Priorities for Financial Year to End March 31, 2025](#), p. 5; [IAP Comments on Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service](#), February 28, 2024; [IAP Comments on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints](#), January 31, 2022.

¹³ [IAP Comment Letter, OSC Notice 11-766 Statement of Priorities for Financial Year to End March 31, 2013](#), May 29, 2012, p. 11, footnote 55.

¹⁴ Reporting at the time the CFRs were introduced indicated that some banks reduced their offerings in response: <https://www.theglobeandmail.com/business/article-banks-halt-sales-of-third-party-mutual-funds-to-prepare-for-rule/>.

¹⁵ [IAP Comments on Statement of Priorities for Financial Year to End March 31, 2025](#), p. 3.

The Panel also has concerns about other consequences of the CFRs that impact the best interests of investors, such as the difference in approaches taken by different industry participants under principles-based regulation and limited guidance. In our view, there is a need for ongoing and timely guidance and clarification on certain elements of the CFRs, including the purpose behind assessing Know-Your-Product (“KYP”), and the range of reasonably available alternatives. The Panel believes that investors benefit when industry is provided with actionable, timely guidance, such as the additional guidance released in 2023 following review of registrants’ conflicts of interest practices.¹⁶

The Panel has concerns around the over-reliance on wholesaler-provided information to meet the KYP requirements. Though retail clients may not understand the difference between advisor-generated KYP documentation and documentation generated by a wholesaler, the nature of the two are quite different, with the latter introducing clear conflicts of interest. We encourage the OSC to continue monitoring this area of the advice workflow. Additionally, we encourage the OSC to be critical of advisors’ KYP workflows, to ensure that the work around a proper KYP process is not limited to what is presented to clients (which is typically quite simplistic), but rather includes an analysis of structure, features, risks, initial and ongoing costs and the impact of those costs, as stipulated by the rules and reinforced by guidance.

We also acknowledge that further work is ongoing with respect to titling issues, but are concerned that retail investors are exposed to increased risk due to these issues and misleading communications. Specifically, the Panel continues to be concerned with bank branch-level employees, who operate under a principal distributor model, using the term “advisor” in their title. We support the OSC’s recognition of this issue in the SoP.

Goal 3, Priority 1: Enhanced Information Sharing

As stated in our [comments on last year’s draft SoP](#), and our [comment letter to the Canadian Public Accountability Board](#) (“CPAB”), on its proposed rule changes, the Panel continues to support enhanced information sharing with the CPAB. Issues arising from audits should be promptly addressed, for the benefit of both reporting issuers and investors. In our view, increased transparency and information will improve the ability of investors and other stakeholders to make investment decisions.

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

As noted in the SoP, the OSC’s ability to effectively address misconduct underpins many key areas of its work.¹⁷ In addition to our comments on the specific priorities to advance this goal, set out below, the Panel suggests that, with the recent appointment of a new Executive Vice President of the Enforcement Division, there may be an opportunity for an overall review and assessment of the current structure and function of this branch of the OSC. We believe that enhancing the resources, budget and staff available to the Enforcement Division could improve the OSC’s ability to achieve Goal 4 of the Strategic Plan. While the Panel recognizes that certain Enforcement matters require significant time to progress, we are

¹⁶ [Joint CSA/CIRO Staff Notice 31-363 Client Focused Reforms: Review of Registrants’ Conflicts of Interest Practices and Additional Guidance](#), August 3, 2023.

¹⁷ SOP, p. 14.

concerned that many matters do not proceed beyond the assessment stage, or proceed over long periods. Similarly, the slow pace of matters pursued as a result of the Whistleblower Program may be a deterrent for investors coming forward under the program, if they have the assistance of counsel who may advise them of the time it may take for a matter to move forward. Devoting more resources to these critical areas will serve both to build confidence in the capital markets and meet the expectations of investors.

Goal 4, Priority 1: Continued Focus on High-Impact Cases

The Panel is concerned that focusing enforcement activities primarily on high-impact cases will negatively affect investors' perception of and trust in the regulator. While the Panel strongly supports the OSC's current enforcement efforts, in our view, enforcement should not be limited to high-impact cases to the detriment of investors who are affected by "lower-impact", but nonetheless wrongful, conduct.

In our view, confidence in the capital markets requires that financial crimes across the spectrum should be vigorously prosecuted. This will enhance the OSC's reputation as an effective enforcer and help reduce the case assessment backlog, but it will require sufficient resources in order to do so.

A number of recent surveys suggest that some investors do not trust the fairness of the capital markets.¹⁸ The Panel is concerned that neglecting prosecution of smaller matters will further erode confidence in the capital markets among small retail investors.

As noted above, we believe that the Enforcement Division would benefit from additional resources, including an enhanced budget and staff, to improve Enforcement's ability to efficiently and effectively address its growing caseload. The Panel believes that this issue, and Goal 4 more generally, has significant importance for investor protection, and should be prioritized accordingly.

Goal 4, Priority 2: New and Enhanced Enforcement Partnerships

The Panel supports this priority and acknowledges its importance. In particular, the Panel suggests that the OSC continue to work closely with the Ministry of the Attorney General to ensure the criminal prosecution of serious securities fraud. The OSC could also consider seconding staff to the Ministry with

¹⁸[CIRO 2024 Investor Survey, Final Report](#), May 2024, p. 8, 86-95; [BC Securities Commission, DIY Investing National Survey Report](#), April 2024, p. 50-54; [FAIR Canada, Understanding DIY Account Holders](#), October 2024, p. 64. See also [OSC Investor Office, Investors vs. Savers – Attitudes Towards Investing](#), September 2022, p. 31-39.

a view to gaining criminal prosecutions expertise within the OSC, with the ultimate goal of being able to carry out its own prosecutions of serious securities fraud.

Goal 4, Priority 3: Strengthen OSC Enforcement Powers

The Panel recognizes the importance of the OSC's enforcement powers and has consistently recommended that steps be taken to enhance them.¹⁹ This extends to the Commission's collections efforts, which are the final stage in the enforcement process. While the Panel recognizes the significant challenges that the OSC has in collecting from respondents - particularly as regards non-registrants - the Panel hopes that the action items under this specific priority will include working with the government to implement the outstanding recommendations by the Capital Markets Modernization Task Force²⁰ and the Ontario Auditor General.²¹ Implementing these recommendations would assist the OSC in its collections efforts, and help to achieve the goal stated in the Strategic Plan of increasing the rate of collections.²² The recommendations included for the OSC to be provided with:

- enhanced freeze powers;
- the power to seize assets transferred below market value;
- the power to seek joint and several liability for third parties and family members who receive a benefit from below-market-value transfers from a respondent;
- the power to limit access to driver's licenses and license plates for failure to pay amounts ordered by the OSC or the courts; and
- the power to register a lien for the amount owing under a disgorgement order over the property of the persons named in the OSC's order.

In the Panel's view, these legislative amendments will serve for the betterment of investors and, ultimately, the capital markets.

Finally, strengthening the OSC Whistleblower Program, and adopting best-in-class tools from the Securities and Exchange Commission's whistleblower program, will help the OSC quickly find, and effectively target, financial misconduct. Recent research by the Royal United Services Institute²³ finds that whistleblower programs are most effective when "run by an empowered and well-resourced regulator".²⁴

Again, thank you for the opportunity to comment on the SoP. We would be pleased to clarify or elaborate on our comments should the need arise.

¹⁹ See for example [IAP Comments on Proposed Rules and Companion Policies 11-502/11-503, October 9, 2024](#); [IAP Comments on Statement of Priorities for Financial Year to End March 31, 2025](#).

²⁰ [Capital Markets Modernization Taskforce – Final Report \(2021\)](#) at 88-90, 96-97.

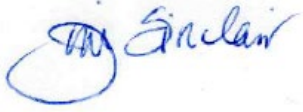
²¹ Office of the Auditor General of Ontario, [Value for Money Audit: Ontario Securities Commission \(2021\)](#), Recommendations 8, 11.

²² [OSC Strategic Plan, 2024-2030](#), p. 28.

²³ Eliza Lockhart, [The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime](#), Serious Organised Crime & Anti-Corruption Evidence Research Programme Research Paper 31, December 2024 ("SOC ACE Whistleblower Research").

²⁴ SOC ACE Whistleblower Research, p. 44.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Sinclair". The signature is written in a cursive style with a large, circular flourish at the beginning.

James Sinclair
Acting Chair, Investor Advisory Panel