

February 7, 2025

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

Re: Consultation Paper 81-737 – Retail Investor Access to Long-Term Assets

FAIR Canada is pleased to provide comments in response to the above-referenced Proposal.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.¹

A. Introduction

Conceptually, this Proposal raises fundamental questions about the appropriate balance between the OSC's investor protection mandate and its role in facilitating capital formation, particularly for private market ventures.²

The Proposal introduces the concept of an Ontario Long-Term Asset Fund (OLTF), a new form of investment fund. OLTFs would provide all Ontario-based retail investors, irrespective of their income level, financial sophistication, or net assets, a vehicle to access private market ventures. The Proposal contemplates novel and complex investment fund features to protect retail investors from the unique and significant risks posed by private market ventures' lack of transparency, liquidity, or objective pricing mechanisms. Despite

¹ Visit www.faircanada.ca for more information.

² The Proposal defines long-term assets as illiquid assets that cannot be readily disposed of, may be difficult to value, and generally have longer investment time horizons than other assets. These assets include venture capital, private debt and equity, infrastructure, and natural resource projects. For this submission, we refer to these as "private market ventures."

these features, however, we are not convinced they will work in practice and are concerned the Proposal will cause more harm than good to investors.

While some retail investors are undoubtedly seeking additional opportunities to generate higher returns, evidence suggests that Ontarians' demand for this product type would be low. We also question why it is necessary to create a new, highly complex investment product that many mutual fund dealing representatives and their clients, as well as do-it-yourself investors, will struggle to understand, let alone assess whether it is suitable for them or their clients.

After careful consideration, we are highly skeptical of the potential benefits to retail investors or that the proposed OLTf structure would effectively mitigate the significant and unique risks associated with investing in illiquid investment funds.

While the Proposal is touted as an attempt to “democratize” the private markets, it can also be viewed as an attempt to facilitate the ability of private market ventures to raise capital from the public. From this perspective, we question why the OSC would facilitate private market ventures' ability to raise capital from everyday Ontarians while avoiding the transparency required by their public company competitors. In the longer-term, this Proposal will bolster private markets at the expense of our public markets. We question why the OSC would create a regulatory framework that would, in effect, permit private market ventures to circumvent the long-standing securities regulatory consensus that enterprises wishing to access capital from the public must:

- Become reporting issuers, and
- Provide investors full, true, and plain disclosure about their business, operations, and affairs.

This is unfair to companies that have become reporting issuers and incur the costs of complying with public market rules, such as those regarding disclosure, governance, and financial reporting.

While capital formation is an important consideration for both public and private market ventures, we question whether making it easier for private companies to raise money from the public in this way serves the long-term interests of Ontario's capital markets. Rather than create a new and complex framework for a questionable new investment fund product, the OSC's limited regulatory resources would be better spent strengthening Ontario's public capital markets.

B. Assessing Investor Appetite for OLTFs

The reasons for moving ahead with the Proposal are not particularly compelling. For example, the Proposal assumes there is, or will be, a demand from the mass retail market or “Main Street” investors to invest in OLTFs.

Based on existing evidence in Canada and other jurisdictions, we suspect retail investor demand will be low and will not justify the regulatory costs and resources required to implement the Proposal. These costs include implementing OSC oversight programs to protect retail investors from unfair and improper practices in how OLTFs are valued or how conflicts of interest between the various parties involved in OLTFs are identified, managed, and disclosed.

Most Main Street investors in Canada do not have much money to lock up for lengthy time periods in highly risky private market ventures. According to Statistics Canada, as of the third quarter of 2024, the average Canadian household had \$26,144 in disposable income.³ Based on a saving rate of 7.10%, this translates to an annual savings rate of \$1,856.⁴

Also, according to Statistics Canada,⁵ in 2023, Canadian households had saved the following amounts on average, not including private pensions and non-financial assets like real estate:

- Under age 35: \$74,500 in non-pension financial assets⁶ and \$68,600 in their registered accounts (e.g., RRSPs, RRIFs or LIRAs).
- Ages 35 to 44: \$87,500 in non-pension financial assets and \$99,400 in their registered accounts.
- Ages 45 to 54: \$172,000 in non-pension financial assets and \$186,900 in their registered accounts
- Ages 55 to 64: \$250,200 in non-pension financial assets and \$304,000 in their registered accounts.

In addition, we know that the median retail investor has about \$125,000 invested.⁷ Many also struggle to save enough for retirement—24% of pre-retirees assess their financial

³ [Disposable income by income quintile, average dollars per household, third quarter of 2024 relative to third quarter of 2023](#) (Statistics Canada: January 30, 2025).

⁴ [Canada Households Saving Rate](#) (YCharts Inc.: November 29, 2024).

⁵ [Assets and debts held by economic family type, by age group, Canada, provinces and selected census metropolitan areas, Survey of Financial Security](#) (Statistics Canada: October 29, 2024)

⁶ Non-pension financial assets include:

- Deposits in Financial institutions
- Mutual Funds, investment funds and income trusts
- Stocks
- Bonds
- TFSA
- RESPs and other financial assets

⁷ [FAIR Canada Investor Survey](#) (FAIR Canada: December 2022), at 16.

situation as poor, and 37% do not have any investments.⁸ This data suggests that Ontarians' lack of secure retirement savings ought to be a higher policy priority than creating a new, highly risky, speculative product in which they can invest.

In support of moving forward with this initiative, the Proposal cites, among others, the Mackenzie Northleaf Private Credit Interval Fund⁹ and U.S. interval funds as precedents for OLTFs. However, both suggest a lack of interest and demand on the part of most retail investors:

- Although the MacKenzie Northleaf Senior Private Credit Fund manages about \$1.2 billion, the Mackenzie Northleaf Private Credit Interval Fund has only invested around \$42 million in it after two years of operations.¹⁰
- Even though U.S. interval funds have been around since 1993, they only managed US\$77 billion in assets, compared to US\$25.52 trillion in U.S.-registered mutual funds as of 2023.¹¹

From our perspective, the potentially low demand for this product does not justify the increased risks to investors or the increased costs of implementing an effective OSC supervisory and enforcement program to protect investors from “unfair, improper or fraudulent practices” when OLTFs are mis-sold or mispriced.

We believe that more research should be done to determine whether Ontarians genuinely want OLTFs and whether there are better, more viable options to help Ontarians save for their retirement. Further research should include an evidence-based cost-benefit analysis.

C. Are the Assumptions Valid?

We are concerned that the proposal may be based on unfounded assumptions. Apart from assuming a large number of retail investors are demanding this type of product, the Proposal also assumes that:

- Retail investors will benefit from an “illiquidity premium” when investing in OLTFs.
- Retail investors currently lack adequate access to private market ventures.

⁸ [Profiles of Retirement](#) (OSC: January 10, 2024), at 18 and 27.

⁹ This investment fund product is currently available to retail investors through an exemptive relief order issued by the OSC. The exemptive relief order terminates upon the coming into force of securities legislation that addresses a substantially similar fund structure in Canadian jurisdictions, or five years from the date of the decisions (January 24, 2022).

¹⁰ [Mackenzie Northleaf Private Credit Interval Fund](#) (Mackenzie Investments: 2025).

¹¹ [The Closed-End Fund Market, 2023](#) (Investment Company Institute: May 2024); [Total net assets of US-registered mutual funds worldwide from 1998 to 2023](#) (Statista Research Department: June 18, 2024).

Illiquidity Premium and Private Market Returns

The Proposal touts the “illiquidity premium” as a key benefit of investing in private market ventures.

Conceptually, it makes sense that if investors cannot sell or redeem their investments in private market ventures for extended time periods, they should receive a “premium” as compensation. For example, in private credit loans, lenders are generally compensated with higher yields because of the lack of liquidity. There is also the notion that if investors invest in a private company that is reasonably comparable to a public company, they will benefit from higher potential returns when it goes public.

Unfortunately, while the “illiquidity premium” is the subject of many commentaries, it is not consistently supported by empirical evidence, and it does not always provide the expected higher returns.¹²

It is also questionable whether private equity delivers higher net returns than public markets. This misperception may partly result from how rates of return are commonly calculated in private markets, which can create a false perception of superior performance compared to public markets.¹³ Second, there is evidence that, as regards private equity funds, private equity investments have produced roughly similar returns to small-cap public market indices.¹⁴

We are concerned that the Proposal gives too much credence to a “fear of missing out” argument that retail investors need greater access to private market ventures so they do not miss out on allegedly higher returns. We believe the costs to retail investors will outweigh the potential benefits since OLTFs and their private market venture investments may not reliably deliver higher returns.

Given the Proposal’s reliance on the so-called “illiquidity premium,” we recommend the OSC investigate whether such a premium exists in Ontario’s private markets before proceeding further.

Access to Private Market Ventures

We also question the OSC’s premise that retail investors’ current access to private market ventures (or Long-Term Assets as defined in the Proposal) is inadequate and needs to be increased.

¹² [Questioning the Illiquidity Premium](#) (Fiduciary Wealth Partners: January 14, 2023).

¹³ [The Tyranny of IRR: A Reality Check on Private Market Returns](#) (CFA Institute: November 8, 2024).

¹⁴ [An Inconvenient Fact: Private Equity Returns & The Billionaire Factory](#) (SSRN: June 15, 2020, revised July 15, 2020), at 8-12 (Inconvenient Fact); [Re-thinking Private Equity Risk and Reward for LP Allocations](#) (INSEAD), at 4 (Re-thinking).

1. Inadequate Access

The Proposal notes that retail investors mainly invest in private market ventures through public companies that own, hold, and/ or operate those assets and businesses. This investment can be both direct and indirect. Retail investors can directly purchase the securities of such public companies. Alternatively, they can indirectly invest in such public companies through investment funds (mainly mutual funds and ETFs).

The OSC asserts that retail investors “may be unwilling or unable to invest in Long-Term Assets” by investing in “public companies that own a variety of Long-Term Assets, including natural resource projects, infrastructure projects, real estate, mortgages, and pools of these assets.”¹⁵ However, the OSC provides no supporting evidence.

Brookfield Corporation, listed on the TSX, is a prominent example of a public company investing in private market ventures. Onex Corporation, also listed on the TSX, is another prominent example. In addition, seven of the top ten constituents of the S&P/ TSX Composite Index are public companies that own what the OSC defines as Long-Term Assets—for example, mortgages by the banks, infrastructure, energy and natural resources, real estate or private equity by others.¹⁶ Every retail investor in Ontario who owns units of a mutual fund or ETF that tracks this index effectively invests in public companies that own Long-Term Assets.

Retail investors with higher net worth can, and often do, access private markets through the “accredited investor” exemption.¹⁷ This exemption is specifically tailored to protect Ontarians by limiting access to highly risky private market ventures to those in a better position to withstand the potential losses and understand the nature of the additional risk they assume.

The Proposal would circumvent this approach by interposing a new complex investment fund product between the private market venture and the retail investor. As stated, we are not convinced that current levels of access to private market ventures for retail investors are inadequate and need to be expanded. Furthermore, the Proposal does not present a convincing case for reversing the Canadian policy consensus that access to non-transparent, illiquid, high-risk private capital markets should be limited to those who can better understand the risks and can afford to lose their investment.¹⁸ Most Main Street Ontarians cannot.

¹⁵ [Proposal](#), at 3.

¹⁶ [S&P/ TSX Composite Index](#) (TSX Inc.: February 6, 2025).

¹⁷ [OSC Exempt Market Dashboard](#) (OSC: December 10, 2024, updated December 13, 2024). From 2018 to 2023, the most commonly used exemption by far was the “accredited investor” exemption.

¹⁸ For the reasons outlined under the heading “D. Weighing the Heightened Risks” below, we are skeptical that the proposed OLTF will adequately mitigate the risks of private market ventures for unsophisticated retail investors who lack the loss-bearing capacity of individual “accredited investors.”

2. Increasing Access

The Proposal asks how to “increase retail investor interest in specific types of Long-Term Assets?”¹⁹ In our view, this is the wrong question. Instead, the OSC should ask how it can strengthen public markets and make going public more attractive (without undermining investor protections). The best way to promote retail investors' interest in private market ventures would be to increase the options they have to invest in private market ventures, directly or indirectly, through public market securities. This would provide significant advantages in terms of liquidity and transparency over OLTFs.

The Proposal also notes that it is aligned with the Government of Ontario's efforts to consider “innovative ways to finance transportation, housing, energy, and municipal services, including through the ‘crowding in’ of private sector” capital.²⁰ From our perspective, there are other ways to achieve this objective than by creating a complex new regulatory framework. For example, the government could privatize Ontario infrastructure projects by selling them to corporations, which could finance the purchase of those assets through prospectus offerings.

Compared to OLTFs, those corporations would be garden-variety reporting issuers—there would be no need for the OSC to implement, oversee, and enforce new regulations. As listed issuers, their securities would be available to all investors on public markets and permissible investments for the mutual funds and ETFs most retail investors purchase.

D. Weighing the Heightened Risks

The Proposal asks whether the appropriate threshold issues have been identified and sets out how the OSC intends to address them. Two critically important investor-protection considerations are missing from our point of view: information asymmetries and adverse selection. The Proposal also fails to consider governance risks related to conflicts of interest and governance of the Collective Investment Vehicle (CIV) as much as it should.

Our comments are organized under the following subheadings:

- Information Asymmetries
- Adverse Selection
- Redemption Restrictions and Illiquidity
- Valuation of Private Market Ventures
- Monitoring, Compliance and Governance
- Distribution to Investors
- Nature and Role of Cornerstone Investors

¹⁹ [Proposal](#), at 6.

²⁰ [Proposal](#), at 5.

Information Asymmetries

The Proposal contemplates that OLTFs would be limited to investing in CIVs that hold private market ventures and have at least one Cornerstone Investor.

The Proposal does not describe CIVs in much detail. However, given that OLTFs are meant to hold illiquid investments, they appear analogous to private investment funds or other private investment vehicles. In other words, OLTFs and Cornerstone Investors will face the same challenges vis-à-vis a CIV and its managers as private fund investors face vis-à-vis a private fund manager.

A recent report by the CFA Institute Research & Policy Center highlights several key governance issues in private funds, including information asymmetries.²¹ While the Proposal acknowledges that information asymmetries pose risks (without discussing them), it is critical to understand how investing in private markets amplifies these risks.

The CFA Report suggests these risks are substantial. The CFA's research found that private fund investors, including large and sophisticated institutions, express surprisingly low rates of belief that they receive adequate disclosure to monitor their private fund investments or those managing them. Specifically, only:

- 59% believed they received sufficient disclosure from the private fund manager to monitor their investments.
- 36% believed they received sufficient disclosure to monitor fees and expenses.
- 40% believed they received sufficient disclosure to monitor the private equity manager's operations.²²

The Proposal may compound this issue by assuming that all investment fund managers (IFMs) and portfolio managers (PMs) have adequate knowledge and experience with private markets or the same ability to protect the interests of OLTFs and their retail investors. It may also wrongly assume that an OLTF's IFM and PM, or the CIV's Cornerstone Investor, will fully understand the CIV's business and fee structure. There is no basis for assuming this will be the case.

By acknowledging but not discussing these risks, we are concerned that the Proposal may discount concerns regarding information asymmetries. If these issues are not fully remedied in the context of OLTFs, it will have significant investor protection implications for Ontarian investors.

²¹ [Private Markets: Governance Issues Rise to the Fore](#) (CFA Institute Research & Policy Center: June 2024) ("CFA Report"). The CFA Report also discusses private funds' conflicts of interest and valuation challenges.

²² [CFA Report](#), at 52.

The Proposal also asks whether certain types of Long-Term Assets should be excluded. At a minimum, OLTFs should be limited to investing in Canadian private market ventures only. In our view, due diligence and monitoring private market ventures will be complicated enough for OLTF IFMs and PMs without introducing the complexity of managing risks related to foreign exchange, foreign laws and regulations, or jurisdictions that do not possess an independent judiciary and robust rule of law.

Adverse Selection

The Proposal also introduces adverse selection risks for retail investors: the risk that OLTFs' only investment options will be the CIVs that more sophisticated private market investors have passed over.

Private equity funds' performance can vary widely, and top funds are typically oversubscribed. The best opportunities do not lack investors.²³ Our concern is that the better CIVs will not need funds from the OLTFs, thereby limiting the OLTFs' pool of investment opportunities to the less desirable CIVs.

Given the asymmetric information challenges that OLTF IFMs and PMs will face, it may be difficult for them to identify or distinguish the better options among the CIVs that are still available. We are concerned that the Proposal underestimates the risks that OLTFs will be left to invest in sub-par or underperforming CIVs, exposing their retail investors to the least desirable private market venture opportunities. The result would be that any "illiquidity premium" (assuming it even exists) available to retail investors would be even less attainable.

Redemption Restrictions and Illiquidity

The Proposal underestimates the mass market's capacity to bear liquidity restrictions. Main Street investors are potentially more harmed if they cannot liquidate their investments when they need money to manage their household finances. In contrast, accredited retail investors and large institutional investors have a significantly greater ability to lock their capital in for longer periods of time and to withstand short-term shocks.

We expect that OLTF redemption restrictions will be unpopular with or even create financial hardship for many Ontarians. From the COVID-19 pandemic, we learned that it is difficult to predict when investors may need to cash in some of their investments to stay afloat.

Despite the additional disclosure, we are concerned that the mass market will not truly understand and appreciate how OLTF redemption restrictions could seriously impact them until it is too late.

²³ [CFA Report](#), at 61.

The proposal to automatically wind up OLTFs in certain situations will further exacerbate the risks for retail investors. An automatic wind-up would trigger a sale of the OLTF's investments in CIVs, which would likely be sold at a heavy discount given the forced nature and timing of the sale. This would significantly impact the OLTF's net asset value (NAV) and result in heavy losses for retail investors.

Given our comments above under the heading "C. Are the Assumptions Valid? – Illiquidity Premium and Private Market Returns," we are skeptical of the alleged benefits of retail investors investing in private market ventures through an illiquid investment vehicle. We question how popular an OLTF with more redemption restrictions (or no redemption rights) would be with most retail investors.

Valuation of Private Market Ventures

We agree that, for OLTFs, "valuation will be challenging in most cases."²⁴ Given these challenges, retail investors will be exposed to significantly higher risks than most other investment funds that invest in public companies and/or mirror public market indices. The OSC should not underestimate these valuation risks.

Valuing illiquid assets in private markets presents significant challenges. These valuations are often discretionary and based on internal models and methodologies that are not standardized or consistently applied.²⁵ Moreover, internal rate of return (IRR) values can be manipulated through subscription financing or remain artificially high due to the private equity manager's earlier successes.²⁶

This may result in NAV calculations by OLTFs that are confusing or misleading to OLTF investors. Retail investors may not appreciate how an OLTF's NAV is qualitatively different from the NAV of investment funds that primarily invest in public companies and base their NAV calculations on transparent public market prices.

Requiring independent valuations of OLTFs by independent valuers accountable to OLTFs' boards of directors seems sensible. However, we doubt that the OSC's proposal, even with the involvement of experienced IFMs or Cornerstone Investors, will impact valuations in the way the OSC desires.

²⁴ [Proposal](#), at 10. Valuations will be challenging, because values will have to be calculated for each private market venture held by a CIV, for each CIV (based on its share of the private market venture(s) it holds), and for the OLTF (based on its shares of the CIV(s) in which it invests). For this submission, when we refer to valuing OLTFs, we refer to the complex and multi-layered task of valuing the CIVs and private market ventures in which OLTFs directly and indirectly invest to calculate the OLTF's net asset value.

²⁵ [CFA Report](#), at 36-7.

²⁶ [CFA Report](#), at 37; [Inconvenient Fact](#), at 4.

First, IFMs, Cornerstone Investors, and OLTF boards of directors and their valuers will depend heavily on CIVs' managers for valuation data and calculations. This matters because one survey of the investment industry, including private fund investors and managers, found:

- A majority (60%) of Canadian participants believed valuations are an important issue for private fund investors, and the accuracy and fairness of information investors receive should be improved.
- A substantial minority (37%) believed there were substantial problems (potentially including market failures) with private market valuation reporting practices.
- A plurality (47%) believed some valuation practices, while not significantly problematic, could be improved.²⁷

Second, IFMs, Cornerstone Investors, and OLTF boards of directors may lack the leverage to require the CIV to disclose its valuation methodologies and controls. In one survey, 48% of private fund investors agreed that because of information asymmetries or "fear of missing out," private fund managers have almost all of the bargaining power, even vis-à-vis large and sophisticated institutional investors.²⁸

Third, asset valuations are only as good as the methodology used and the data to which the valuator has access. For example, if the valuator of commercial property held by a CIV only sees data on how much rent per square foot tenants pay, but not the value of incentives provided by the landlord that effectively reduce tenants' rent, the private market ventures held by the CIV (and the CIV itself) may appear to have greater value than they do.

Fourth, less frequent valuations of OLTFs may artificially smooth the values of OLTFs and create the impression of less volatility compared to public markets.²⁹ This artificial smoothing can mask the true risk and performance of the investments, potentially misleading investors about the stability and value of their holdings.

To overcome these risks, the OSC should consider prescribing a standard valuation methodology for each class of private market venture, including disclosure standards to ensure transparency for all CIV investors.

Monitoring, Compliance and Governance

Our concerns regarding this aspect of the Proposal focus on two issues:

- Conflicts of Interest

²⁷ [CFA Report](#), at 47-8.

²⁸ [CFA Report](#), at 49.

²⁹ [CFA Report](#), at 37-8; [Re-thinking](#), at 7.

- CIV Governance

1. Conflicts of Interest

Given the risks that OLTFS would pose to investors, we do not believe an independent review committee with enhanced powers would be adequate. We agree that, in theory, having an independent board of directors and one or more fully independent board committees overseeing an OLTFS's audit and external auditor, IFM, PM, and risk could help mitigate some of the risks related to conflicts of interest.

However, preferential side agreements could result in conflicts of interest that are not disclosed to an OLTFS's IFM, PM or board of directors. For example, there is no reason to assume that the interests of Cornerstone Investors will always align with the OLTFS investors. In private markets, the largest and savviest investors often benefit from privileged and unequal terms in their favour. Cornerstone Investors (and other non-OLTFS investors) may negotiate preferential deals that effectively reduce fees and expenses for them by a substantial amount.³⁰

These preferential deals are not automatically disclosed to other investors. If not disclosed to OLTFSs, this raises the following questions:

- How will an OLTFS's board of directors manage such conflicts of interest if it is not aware of them?
- How could an OLTFS certify that its prospectus provides "full, plain and true" disclosure if such preferential agreements exist but are not disclosed in the prospectus?

The Proposal fails to address the potential for unequal treatment of different investors within a CIV. In our view, this is a significant oversight. To protect retail investors and ensure they are not exposed to undue risks, we recommend that the OSC require that:

- Any private CIV side agreements regarding investments be disclosed to the OLTFS and its managers, or
- OLTFSs be prohibited from investing in CIVs that enter into such side agreements with other investors.

Conflicts of interest among CIV investors could also occur if Cornerstone Investors (and other CIV investors) are not prohibited from monetizing their interest in the CIV other than as an investor. While any registered adviser, investment dealer, mutual fund dealer or exempt market dealer could qualify as a Cornerstone Investor, the Proposal does not

³⁰ [CFA Report](#), at 30-1.

expressly restrict them from monetizing their investments in CIVs in ways that provide preferential benefits. For example:

- An exempt market dealer (EMD) that contributes 10% of the CIV's capital as a Cornerstone Investor and enters into a side agreement with the CIV to earn back some of its invested capital.
- An EMD that acts as the Cornerstone Investor and also earns fees and commissions from the CIV for getting its clients to also invest in the CIV or arranging for OLTFs to invest in the CIV.

Moreover, conflicts of interest among parties within the proposed OLTF structure could arise in the context of OLTF valuations.³¹ For example:

- **CIVs vs. their investors** - CIVs will prefer valuation methodologies that create the appearance of greater values and less volatility than potentially other better-managed CIVs.
- **The OLTF's IFM and PM vs. the OLTF's board of directors** - higher and less volatile valuations make IFM and PM asset allocation decisions appear positive, potentially undermining the board's ability to hold IFMs and PMs accountable.

We also have concerns about conflicts of interest related to OLTFs' IFMs' compensation. For example, will the IFM continue to receive management fees and other compensation in situations where the OLTF suspends redemptions? To minimize conflicts of interest, we recommend that the OSC prohibit this.

2. CIV Governance

The Proposal includes specific governance requirements for OLTFs, namely:

- enhanced disclosure requirements,
- independent valuations of private market ventures,
- independent boards of directors,
- Cornerstone Investors, and
- regular reporting.

However, the Proposal is silent regarding the critically important issue of CIV governance.

An underlying assumption in the Proposal is that a Cornerstone Investor will ensure that the CIV and its underlying assets are properly managed. However, based on the experience of many private fund investors, including large and sophisticated institutions, it appears that many Cornerstone Investors will not receive the information they need to monitor their investments or those who manage them on the Cornerstone Investors' behalf.³²

³¹ See note 24 above.

³² See note 22 above.

We therefore recommend that if the OSC proceeds with a rule, it includes requirements regarding CIVs' management, governance, and disclosure to investors, including OLTFS. Specifically, we recommend that the OSC:

- Require CIVs to disclose preferential agreements with other investors and prohibit them from prioritizing the interests of other investors over those of OLTFS.
- Impose strict governance standards to promote consistent, reliable, and transparent valuations of CIVs and reporting to CIVs' investors.

Distribution to Investors

We believe the OSC has underestimated the risk that the industry will sell OLTFS to Ontarian investors for whom OLTFS are unsuitable.

First, there is concerning evidence that the Client Focused Reforms have not had the impact the OSC expected or desired:

- The results of the Canadian Securities Administrators' (CSA) and Canadian Investment Regulatory Organization's (CIRO) joint review of registered firms' conflicts of interest practices were deeply concerning: 66% had inadequate policies and procedures, 53% had missing or incomplete disclosure regarding material conflicts of interest, and 34% failed to identify at least one material conflict of interest.³³
- The OSC and CIRO have announced a coordinated review of sales practices within bank branches following "a public report of potential investor harm due to alleged high-pressure sales practices for mutual funds at some Canadian banks."³⁴

Further, we suspect other issues may emerge when the results of the CSA's and CIRO's joint investigation of registrants' compliance with their KYP, KYC, and suitability obligations are published.³⁵ In our view, these concerns about how products are sold to Ontarians must be addressed before the OSC creates a framework that permits the industry to sell a new, highly complex, risky investment fund to the mass market.

Second, we are skeptical that the average advisor (often a mutual fund salesperson) would fully understand the OLTFS product or be able to assess its suitability for their clients, given the substantially different characteristics and risks of OLTFS compared to other investment funds available to retail investors.

³³ [Joint CSA/ CIRO Staff Notice 31-363 – Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance](#) (OSC: August 3, 2023), at 6487.

³⁴ [Regulators announce coordinated review into bank branch sales practices](#) (OSC: November 26, 2024).

³⁵ [CIRO Compliance Report for 2025: Helping Dealers with Compliance](#) (CIRO: January 31, 2025), section 3.1. CIRO expects the report to be published in the first half of 2025.

Third, unless the OSC bans trailing commissions and other problematic compensation practices (such as advisor chargebacks) for OLTFs, financial advisors may have a financial incentive to sell OLTFs to clients for whom they are not suitable.

As such, to the extent the OSC does insist on proceeding with a rule, OLTFs should only be available through an adviser who must act in their client's best interests. We would also support limits on how much investors can invest in OLTFs based on the investor's total investible assets. The adviser would be in the best position to determine the limit, but a limit of around 5-10% may be a reasonable place to start.

Nature and Role of Cornerstone Investors

We have concerns about who, according to the OSC's proposal, could be Cornerstone Investors and the role the OSC envisions them playing regarding OLTFs.

First, the Proposal sets the bar far too low regarding who could be a Cornerstone Investor. The OSC proposes to allow any "permitted client," as defined in National Instrument 31-103, to be a Cornerstone Investor. That means that, in addition to pension funds and large financial institutions, a Cornerstone Investor could be:

- Any registered adviser, investment dealer, mutual fund dealer or exempt market dealer.
- Any person or company acting on behalf of a managed account.
- An individual with net realizable assets of \$5 million or more.
- A person or company, other than an individual or investment fund, which distributes its own securities to other parties that fall within the "permitted client" definition.

Using the "permitted client" definition to determine who could act as a Cornerstone Investor sets an inappropriately low standard. Given the key role Cornerstone Investors are intended to play in the proposed framework, we believe only large and sophisticated institutional investors—for example, large pension funds and financial institutions—should be permitted to act as Cornerstone Investors.

Second, we believe the OSC should require Cornerstone Investors to contribute at least 50% of the capital invested in each CIV. The ability to do due diligence and negotiate with private asset managers (such as CIV managers) depends on market influence, which comes from the size of one's investment. As noted above, Cornerstone Investors may still face challenges in playing the role the OSC envisions.³⁶ However, requiring them to invest more capital should help increase their influence vis-à-vis CIVs and provide them with leverage to negotiate and obtain disclosure.

³⁶ See notes 22 and 28 above.

Finally, even if the OSC adopts the suggestions above, we are concerned that Cornerstone Investors' involvement in the CIVs alongside which OLTFS invest will mislead OLTFS investors about who is looking out for them. The OSC's proposal is based on the notion that investing alongside Cornerstone Investors should comfort OLTFS investors. However, suggesting that OLTFS are safe to invest in because they invest alongside Cornerstone Investors creates a sales pitch that could be deceptive unless the OSC prescribes:

- Some requirements that Cornerstone Investors look out for the OLTFS and their investors, or
- Mandatory, plain-language disclosure that Cornerstone Investors have no obligations towards OLTFS and OLTFS investors, and their investments in CIVs in which OLTFS invest should not be interpreted as endorsing the merits of those investments (this disclosure would have to be tested with real investors and delivered before sale).

E. Conclusion

In summary, we do not support the Proposal. We question whether:

- Enough retail investors will be interested in OLTFS to justify the costs of creating, implementing, overseeing, and enforcing a regulatory framework for OLTFS.
- Retail investors are as likely to benefit from an "illiquidity premium" and higher returns as the Proposal presumes.
- Current restrictions on retail investors investing in private market ventures are problematic.
- A new, risky, illiquid fund is the solution (assuming a problem exists).

We believe the OSC has underestimated the risks that would result from further opening private markets to retail investors in terms of:

- Information asymmetries
- Adverse selection
- Redemption restrictions and illiquidity
- Valuation of private market ventures
- Monitoring, compliance, and governance, particularly regarding conflicts of interest and CIV governance
- Distribution to investors
- Nature and role of Cornerstone Investors

Regarding finding innovative ways to facilitate capital raising in Ontario, we do not necessarily oppose the Government of Ontario's desire to "crowd in" retail investor capital

to help finance needed infrastructure. However, we believe the government and the OSC have other and better tools to do so, so there is no need to undermine the distinction between public and private capital markets.

We also believe the OSC's proposal could accelerate the shrinking of Ontario's public capital markets relative to its private capital markets. Rather than contemplating innovative new investment fund products that could further accelerate this trend, looking at how Ontario's public capital markets could be strengthened would better serve the public interest. After all, public markets provide the transparency, liquidity, and accountability that retail investors want and need.

Given the relative growth of private markets, it may also be time for the OSC to consider whether private issuers should be subject to some level of transparency reporting. This could provide a greater line of sight into that market and make it easier to spot emerging systemic risks that could impact Ontario's financial markets and economy.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for investors. We intend to post our submission on the FAIR Canada website and have no concerns with the OSC publishing it on its website. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca, or Bruce McPherson, Policy Counsel, at bruce.mcpherson@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for the Advancement of Investor Rights