

OSC Investor Advisory Panel
c/o Ursula Menke, Chair
Email: iap@osc.gov.on.ca

December 21, 2015

Cooperative Capital Markets Regulatory System
Email: comment@ccmr-ocrmc.ca

Cc: Monica Kowal
Acting Chair & Vice-Chair
Ontario Securities Commission
20 Queen Street West
Toronto, ON M5H 3S8

Re: Comments on “Capital Markets Act: A Revised Consultation Draft”

On behalf of the Ontario Securities Commission’s Investor Advisory Panel - an independent committee tasked with soliciting and representing the views of investors on policy, rule-making, and other initiatives - we would like to provide you with our comments and feedback on work done to date and areas that we feel could be improved. The Panel urges the participating jurisdictions to work to ensure that the revised Capital Markets Act reflects the needs of retail investors and helps to foster a system that puts them first.

Specific recommendations:

IIROC and MFDA Oversight

The Panel would like to better understand how a common regulator would approach oversight of self-regulatory organizations in Canada. This is particularly important given the large number of significant regulatory process related findings uncovered in the OSC’s most recent Investment Industry Regulatory Organization of Canada (IIROC) Review Report. To that end, we would request a copy of the proposed recognition orders for both the Mutual Fund Dealers Association and IIROC for review and comment.

Investor Advisory Panel

The proposed Capital Markets Act appears to have no clear mechanism for investor input. We urge the inclusion of an Investor Advisory Panel to ensure that the voice and perspective to retail investors is embedded in the new common regulator. We also encourage greater inclusion of retail investor input at all levels of decision- and rule-making within the new regulatory body, including the establishment of an Investor Office created in the same manner as the OSC’s. Ongoing investor input at

the most senior levels is needed to foster healthy capital markets -- policy that is skewed to industry interests alone will weaken the system rather than strengthen it.

To that end, as the participating jurisdictions develop the legislation to implement the proposed new regime, the Panel strongly urges regulators to include investor input at the most senior levels. This appears to be missing at present. The investor voice should be a fundamental presence at the table as the new regime is implemented. This will be essential to a regulatory regime that is truly able to protect investors. It is also an important matter of governance.

Complaints

The Panel notes that the proposed new Tribunal will be given the power to order restitution but will not deal with investor complaints. As the draft legislation states, the independent Tribunal will “adjudicate enforcement and other administrative proceedings.” However, it does not specify who deals with investor complaints and in what manner. This needs to be clarified and outlined in a revised version of the Act. Investors must have access to a complaints process within the new regulator. Complaints and redress are key components of investor protection -- the G20 High Level Principles of Financial Consumer Protection are very clear in this regard, stating explicitly that investors must have “access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient.” This must be reflected in the new regime.

Introduce a best interest standard

We also expect the participating jurisdictions to consider the OSC’s stated priority - to *“Advance regulatory reforms that put the interests of investors first” as a priority issue. We also recognize the commitment to developing and evaluating regulatory provisions to create a best interest duty and to completing an analysis of approaches for doing so.*

A best interest standard would immediately require advisors to be the true agents of their clients, putting clients’ interests first. As such, it should be embedded in the new regime. The broken state of advisor-client advice is made plain in new research commissioned by the CSA into mutual fund fees. The paper’s key finding is: *that mutual funds with trailer fees perform worse than other funds and, at the same time, attract higher inflows of cash from investors even when they perform badly.* A best interest standard should be included in the new cooperative regime. If it is not included, we believe that the OSC should be prepared to act independently to protect Ontario investors by introducing it in this province.