



Canadian Foundation *for*
Advancement *of* Investor Rights

January 14, 2011

Allan Krystie
Senior Administrator, Investor Advisory Panel
Ontario Securities Commission
20 Queen Street West
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Toronto, ON M5H 3S8
Sent via email to: iap@osc.gov.on.ca

RE: Investor Advisory Panel ("IAP") Seeks Input

FAIR Canada is pleased to offer comments on the Ontario Securities Commission's Investor Advisory Panel's request for comment on various initiatives that the Panel is considering.

FAIR Canada is a national, non-profit organization that advocates for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Point of Sale

- 1.1. We agree that the point of sale initiative is a key CSA project with an investor protection focus. FAIR Canada encourages the IAP to work with the CSA to move this initiative forward as expeditiously as possible, particularly given the length of time this initiative has been underway to date.
- 1.2. FAIR Canada has submitted two comment letters to the CSA regarding the point of sale initiative. See the document provided on our website at the link below for our most recent submission, dated October 17, 2009.

<http://faircanada.ca/current-issues/submissions/>

- 1.3. Among the recommendations that we have included in our previous submissions are the following:
 - 1.3.1. FAIR Canada recommends that the mutual fund's simplified prospectus be provided to investors either at the point of sale or with the trade confirmation. While the Fund Facts ("FF") document provides useful information in a simplified format, the simplified prospectus provides information that is vital to

investors, particularly to retail investors. Eliminating the simplified prospectus runs counter to fundamental principles of securities regulation. If the simplified prospectus is too complex for many retail investors, we believe that the solution is to reform the simplified prospectus so that it explains all relevant information in a simplified, plain English fashion.

- 1.3.2. As information on fees and expenses is critically important for investors to understand, FAIR Canada recommends that data with respect to fees and expenses be presented in both percentage format and 'dollars and cents'.
- 1.3.3. We recommend that mutual funds be required to disclose, in the risk disclosure section of the FF document, the worst 12-month return for the fund. We also recommend that the CSA require mutual funds with significant exposure to currency fluctuations to state their hedging policy.
- 1.3.4. FAIR Canada continues to recommend that the CSA formulate a proposal for public comment to require performance comparisons to appropriate index benchmarks in the FF document.
- 1.4. FAIR Canada continues to support the CSA's goal of providing investors with clear, meaningful and simplified information before or at the time the investor makes his/her decision to invest in a mutual fund or segregated fund. We recommend that the IAP consider whether the point of sale initiative as currently proposed will advance the interests of retail investors or whether it will simply facilitate the sale of investment products to investors who do not truly understand the risks and their responsibilities. Many investors will continue to rely on their financial advisor to provide advice in their best interests, even though there is currently no obligation for financial advisors to provide advice in their client's best interests.
- 1.5. Provided that the IAP considers that the point of sale initiative is in the best interests of investors, the IAP may also wish to consider recommending that the OSC move on a more timely basis to require delivery of the FF document at the point of sale.

2. Enforcement

- 2.1. FAIR Canada recognizes the concerns expressed by the IAP about Canada's record in prosecuting and deterring financial market crimes and other misconduct. The public perception of Canadian white collar crime enforcement can often be as important as actual prosecution, for deterrence purposes and for Canadians' sense of regulatory effectiveness.
- 2.2. To improve Canada's enforcement record, FAIR Canada believes that an expert group organized under the federal Department of Justice would be the most effective way to target investment fraud in Canada. Instead of the current Integrated Market Enforcement Team ("IMET"), which is police-led (by the RCMP), Canada needs a national agency led by the Department of Justice, with significant resources from the Attorneys Generals' offices, and senior securities experts. This team would be dedicated to protecting investors and

fostering confidence in Canadian capital markets. The US Financial Fraud Enforcement Task Force and its recently announced Operation Broken Trust are prime examples of what regulators can achieve when inter-governmental agencies coordinate their efforts backed by strong political will and leadership.

3. Fiduciary Standards for Financial Service Professionals

- 3.1. FAIR Canada strongly supports a strengthening of the duty owed by individuals and firms that provide investment advice to clients. See our recent submission to the CSA regarding registration requirements on our website at <http://faircanada.ca/current-issues/submissions/> (letter dated September 30, 2010).
- 3.2. FAIR Canada is of the view that the suitability requirements currently in place in Canada are insufficient to adequately protect individual investors. Ensuring that a trade is suitable does not necessarily mean that it is in the best interests of the client, particularly since there are frequent misalignments of interests between registrants and their clients. These may occur for a number of reasons. First, under the existing framework, registrants are often compensated and incentivized to sell products that may be “suitable” for a client, but not necessarily in the client’s best interests. Second, there is no specific requirement that a client’s best interests be put first in the provision of investment advice.
- 3.3. Additionally, it is problematic that the meaning of suitability is often unclear to investors, and the term “suitability” often does not carry the same meaning for investors as it does for industry participants. Retail investors need a clear explanation and guidance from regulators about the meaning of suitability.
- 3.4. As a result, we believe that the client-advisor regulatory framework should be shifted to one where registered firms and individuals that provide investment advice are required, when providing that advice, to put their client’s best interests first. Obligations arising out of the relationship between clients and advisors should be built around a duty to act in the best interests of the client.
- 3.5. Although FAIR Canada does not believe that a full “fiduciary” duty is necessary, given the legal implications that could follow, a “fiduciary-like” duty would be in the best interests of investors. FAIR Canada believes that such a change is key to remedying the imbalance and misalignment of interests in current registrant-client relationships.

4. Credit Rating Agencies

- 4.1. While FAIR Canada believes that the CSA’s proposed rule regarding designated rating agencies is a step in the right direction, we wonder if much will change in practice given that credit rating agencies continue to be paid by issuers/sellers of securities.
- 4.2. We suggest that two fundamental changes need to occur in order to ensure that investors are protected with respect to securities that have been rated by a credit rating agency: (1) the interests of credit rating agencies need to be aligned with buyers of securities, and

(2) there must be civil and penal consequences for credit rating agencies and senior management that breach regulatory requirements.

5. Initiatives in Other Countries

- 5.1. We agree with the IAP about the importance of examining developments in other jurisdictions to evaluate other approaches to investor-related issues. We recommend that particular attention be paid to initiatives aimed at correcting informational asymmetries between advisors and investors, including those aimed at curbing embedded sales commissions.
- 5.2. For example, under the Retail Distribution Review underway in the United Kingdom, proposals have been put forth to ban embedded product provider commissions effective from the end of 2012 and to strengthen licensing requirements for financial advisors.
- 5.3. In Australia, the government has proposed reforms which could introduce a statutory fiduciary duty for financial advisors and ban certain fees. The package also includes a prospective ban on conflicted remuneration structures including commissions and volume-based payments.
- 5.4. In the U.S., the Securities and Exchange Commission (the “SEC”) has proposed a series of regulatory changes to limit the amount of trailer fees paid and encourage price competition among brokers. The SEC is also undertaking a study focused on whether a uniform, statutory fiduciary duty should be introduced for both broker-dealers and investment advisors.
- 5.5. FAIR Canada commends these jurisdictions for taking action to address certain investor protection issues that arise largely due to the current business models adopted by much of the financial services industry. We would encourage the IAP to examine these developments and make recommendations to the OSC about its investor-focused policy initiatives and priorities.

6. Other Proposed Priorities for the Investor Advisory Panel to Consider

SCOGA Report on the OSC

- 6.1. FAIR Canada has urged the OSC to seriously consider the Standing Committee on Government Agencies’ (“SCOGA”) Report and to state its progress on each of the recommendations made in the Report. In particular, we recommend that the OSC publicly describe how it is responding to the recommendation that it reassess the way in which it exercises its public interest jurisdiction, with a view to improving the Commission’s effectiveness and accountability. The IAP may wish to review the Report and ensure that the OSC publicly describes how it has addressed, or will be addressing, all of the recommendations outlined in the Report.

6.1. *Investor Representation*

- 6.2. FAIR Canada is encouraged by the establishment of the OSC's Investor Advisory **Panel**. The mandate and work to date of the IAP are moving in the right direction, and we look forward to reviewing the OSC's implementation of the IAP's investor-focused recommendations.
- 6.3. We would be even more optimistic about the prospective impact of the IAP if its mandate were broadened, to allow it to proactively identify investor issues independent of specific requests from the OSC. We recommend that the OSC seriously consider broadening the mandate of the IAP to give it more credibility with retail investors.
- 6.4. FAIR Canada *continues to recommend* that the OSC appoint Commissioners with backgrounds and experience dealing with retail investor issues. The IAP may wish to take a position on the appointment of one or more Commissioners who can bring a better understanding of the retail investor perspective to the OSC's governing body.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Ermanno Pascutto at 416-572-2282/ ermanno.pascutto@faircanada.ca or Ilana Singer at 416-572-2215/ ilana.singer@faircanada.ca.

Sincerely,



FAIR Canada (Canadian Foundation for Advancement of Investor Rights)