

June 2, 2014

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RE: Ontario Securities Commission Notice 11-769 – Statement of Priorities

FAIR Canada is pleased to offer comments on Ontario Securities Commission (“OSC”) Notice 11-769 – Statement of Priorities for the year to end March 31, 2015 (the “2015 Draft Priorities”), published on April 3, 2014.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Executive Summary

- 1.1. Through this consultation, the OSC provides an important opportunity for stakeholder engagement. We acknowledge and appreciate the OSC’s transparency in this regard, and urge other securities regulators to similarly consult publically on their priorities.
- 1.2. FAIR Canada recognizes the OSC for its commitment to investor protection, seen in its selection of committed and knowledgeable members for its Investor Advisory Panel, its creation of the OSC Office of the Investor, its provision of funding to FAIR Canada and its leadership on numerous investor-focused regulatory initiatives.
- 1.3. However, FAIR Canada is concerned that the OSC’s 2015 Draft Priorities focus more on capital formation and regulatory burden than investor protection. FAIR Canada is concerned about what we perceive to be a shift in focus from investor protection to other concerns that are not at the core of the OSC’s mandate.
- 1.4. In our view, the 2015 Draft Priorities inadequately outline the challenges faced by Canadian investors in the current environment. Context regarding asymmetries in the market for “advice” and the influence of conflicts of interest is very important in summarizing the environment in which the OSC operates. The importance of fostering

Canadian investors' confidence in Canadian capital markets should also inform the OSC's priorities.

- 1.5. More than ever, Canadians bear a significant amount of responsibility for securing their financial well-being in retirement. High fees, poor investment recommendations, use of leverage, and risky securities have the potential to negatively, and significantly, affect outcomes for investors. Canadian investors have been demonstrated to have low levels of financial literacy, a lack of awareness of powerful conflicts of interest, and place a high level of trust in representatives (even if they are distrustful of financial firms). As a result, it is incumbent on regulators to prioritize initiatives that focus on protecting investors from the effect of these factors on their savings.
- 1.6. Education and disclosure are not sufficient regulatory responses to the foregoing issues, and a real commitment to implementing reform that will improve investor protection as well as outcomes is necessary. Investor outreach is laudable, but real action that actually improves fairness for investors is far more important.
- 1.7. In our view, the investor protection priorities included in the 2015 Draft Priorities are relatively weak. The priorities do not convey a commitment to action to improve outcomes for retail investors. Canadian investors require a real commitment to action, not just further research, consideration or review of these important priorities.
- 1.8. FAIR Canada is troubled by the lack of progress on the best interest standard project, which is a critical investor protection initiative. FAIR Canada urges the OSC to push this initiative forward, and to propose a framework for introducing a statutory best interest standard in 2014-2015.
- 1.9. We encourage the OSC to ensure that the mutual fund fees project is completed within the timeframe allotted and to react to the results in a timely manner with proposals to address the issues identified.
- 1.10. FAIR Canada is concerned about the lack of data and analysis to inform new prospectus exemptions, serious compliance issues with the existing exemptions, and a need for resources to ensure compliance and appropriate enforcement action in respect of exempt market securities. We caution the OSC from moving ahead too quickly in introducing new exemptions, and recommend policy be made on the basis of solid information and analysis.
- 1.11. We support the OSC's commitment to enforcement in cases involving fraudulent activity that harms investors. We encourage the OSC and other members of the CSA to prioritize the collection of better information about investors' experience with investment fraud in the interest of better informing policy and enforcement efforts.
- 1.12. There is a real need for a single, comprehensive tool that would allow investors to check the securities regulatory background of a potential advisor or investment firm. FAIR

Canada calls for a user-friendly, one-stop tool where investors can access registration, disciplinary and background information (including proficiency and SRO membership) regarding advisers, dealers and their respective registered persons.

- 1.13. We note, however, that expansion of the exempt market does, and will continue to, detract from a clear message to investors to check registration to protect against fraud (among other things). We caution the OSC to be aware of these contradictory messages that are being sent to investors and stress the need for regulators to consider whether these messages can be reconciled.
- 1.14. FAIR Canada believes that Canadian securities regulators must address issues that have arisen as a result of weaknesses inherent in the “name-and-shame” system of dispute resolution for investment complaints. We recommend that regulators take immediate and strict enforcement action against dealers who deliberately subvert OBSI, sending an unmistakable message that such conduct breaches the good faith requirement of securities law and will not be tolerated.
- 1.15. FAIR Canada encourages the OSC to add investor compensation initiatives to its 2015 priorities. If section 128 applications are not a useful mechanism for investor compensation, we urge the OSC to examine why they are not and identify other means by which the OSC could assist investors in obtaining compensation.
- 1.16. FAIR Canada also makes other comments regarding the need for more updated information in draft priority documents, risk classification methodology, summary disclosure for ETFs, the priority entitled ‘Reduce Regulatory Burden’, and our prior years’ comments that have not been addressed.

2. Summary of Recommendations to the OSC

- 2.1. Emphasize (and prioritize) investor challenges in setting out the context for priorities.
- 2.2. Commit to real action on important investor-protection priorities.
- 2.3. Include a proposed action to complete a framework for introducing a statutory best interest standard in 2014-2015.
- 2.4. Ensure that the research on mutual fund fees is completed in a timely manner and ensure that appropriate regulatory steps (i.e. propose a ban on embedded commissions) are taken as a result of the research findings.
- 2.5. Do not introduce new prospectus exemptions for retail investors absent a thorough analysis of the implications (both positive and negative) on capital-raising and investor protection.

- 2.6. Do not expand the prospectus exemptions available to retail investors until a minimum level of compliance can be assured.
- 2.7. Commit to ensuring adequate oversight of the exempt market and compliance and enforcement resources to deal with anticipated increased compliance deficiencies and other breaches of securities law expected to result from any additional prospectus exemptions.
- 2.8. Collect better data regarding investors' experience with investment fraud and publicize same, including publishing annual information regarding the number of investment fraud complaints the OSC receives including the number received from seniors.
- 2.9. Improve the registration check system for retail investors.
- 2.10. Prioritize the improvement of the investor dispute resolution system, to ensure that the system provides a meaningful service for retail investors.
- 2.11. Prioritize investor compensation in 2014-2015, whether through section 128 orders or through a review of other means by which the OSC could assist investors in obtaining compensation.
- 2.12. Consider providing status updates for initiatives carried-over from prior years to allow for more informed stakeholder comments on draft priorities.

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 Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Lindsay Speed at 416-214-3442 (lindsay.speed@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights