



Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

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RE: Ontario Securities Commission Notice 11-777 – Statement of Priorities

FAIR Canada is pleased to offer comments on Ontario Securities Commission's ("OSC") Notice 11-777 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2018 ("Statement of Priorities" or the "2018 Draft Priorities") published on March 23, 2017.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for 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. FAIR Canada is pleased to see that the OSC's core mandate, investor protection, is emphasized throughout the 2018 Draft Priorities. Many of the initiatives the OSC offers to prioritize will have a positive impact on investors and help to improve investor protection in Ontario. The OSC, unlike other commissions across Canada, is required to deliver its Statement of Priorities to the Minister of Finance annually, after giving interested parties the opportunity to make submissions. FAIR Canada is appreciative of this opportunity, and hopes that it can provide a valuable investor perspective as the OSC sets its priorities for the upcoming year.
- 1.2. FAIR Canada believes there are a number of issues that need to be addressed and added into the 2018 Draft Priorities related to investor protection. FAIR Canada's comments on these issues are divided into two main categories: comments on the structure of the 2018 Draft Priorities, and comments on substantive issues.
- 1.3. With respect to the structure of the 2018 Draft Priorities, FAIR Canada believes that the document has not articulated specific goals and corresponding steps for the upcoming year. The language contained in the 2018 Draft Priorities lacks specificity, and is overly broad and vague. Very little detail has been provided about actual timelines needed to take necessary steps related to specific priorities. There is also a general lack of information about previous priorities. FAIR Canada hopes that in the future, the OSC will either publish the Report on Statement of Priorities for the previous fiscal year at the same time as the Draft Statement of Priorities, or make it clear in the Draft Statement of Priorities what previous priorities have been completed or are not being carried forward.

- 1.4. There are three key substantive areas that FAIR Canada addresses with respect to the 2018 Draft Priorities: a) Best interest standard and conflicted compensation structures; b) The role of the Ombudservice for Banking and Investments (OBSI); and c) Transition to the Capital Markets Regulatory Authority (CMRA). FAIR Canada also briefly addresses other areas of interest to FAIR Canada related to the 2018 Draft Priorities.
- 1.5. **Best Interest and Conflicted Compensation:** FAIR Canada applauds the decision of the OSC to continue working on articulating a regulatory best interest standard – however FAIR Canada notes that the OSC has moved at a very slow pace regarding a best interest standard. FAIR Canada fears that the OSC’s action item of conducting a regulatory impact analysis for a best interest standard will lead to further delays, when a timely regulatory response is required to protect investors
- 1.6. Any discussion of a best interest standard cannot occur without addressing conflicted compensation structures, particularly embedded commissions. FAIR Canada would like to stress that it is essential for the OSC to take a comprehensive approach regarding best interest and embedded commissions, and avoid working in silos. Other conflicted compensation structures require sufficient attention from the OSC as well. In particular, FAIR Canada would like to see the OSC address the harms caused by affiliated dealer flows of proprietary mutual funds.
- 1.7. **The Role of OBSI:** FAIR Canada is pleased that the OSC is committed to formulating a response to the independent evaluator’s review of OBSI. FAIR Canada is strongly of the view that our G20 obligations require giving Canadian consumers access to a dispute resolution process that will actually deliver a resolution to each dispute, as is the case in other leading jurisdictions. In the short-term, FAIR Canada would like to see regulators, specifically the OSC, take enforcement action against firms that deliberately subvert OBSI’s process and intentionally fail to deal with client complaints in good faith.
- 1.8. **Transition to CMRA:** FAIR Canada believes that there is a lot more to the transition than the 2018 Draft Priorities has identified. FAIR Canada has concluded that the CMRA, as currently designed, is not in the interests of investors. The CMRA governance structure lacks critical initiatives that the OSC has recently established such as an investor advisory panel and investor office. It also lacks retail investor representation on the Board of Directors or the contemplated Regulatory Policy Forum.
- 1.9. With respect to substance, the proposed provincial *Capital Markets Act* contains no statutory best interest duty, no proposal on embedded commissions and lacks a whistleblower program with financial incentives. FAIR Canada believes the governance structure and substantive law proposed under the CMRA must be reformed and become more investor-focused. If this cannot occur, FAIR Canada recommends that the OSC withdraw from the CMRA in order to maintain its investor focus.
- 1.10. **Other Areas:** FAIR Canada also offers brief comments, below, on a number of other issues which include: behavioural economics; the establishment of a Seniors Expert Advisory Committee; the OSC whistleblower program; general enforcement matters; fintech and the OSC’s LaunchPad initiative; fixed income reform; and syndicated mortgages.

2. Comments on Structure of Statement of Priorities Document

a. Lacks Specificity

- 2.1. This year’s Draft Priorities, like other recent Draft Priorities, has not clearly articulated *specific* goals and corresponding steps for the year that will be undertaken. The language contained in the 2018

Draft Priorities lacks specificity, and is overly broad and vague. Furthermore, very little detail has been provided about actual timelines needed to take necessary steps related to specific priorities. The OSC should set timelines for the actions it will take in order to move the priorities forward, including implementation, as investors require timely responses to the problems that have been identified.

- 2.2. The 2018 Draft Priorities do not make clear how the OSC will fulfill its mandate – specifically, what essential steps are required to strengthen investor protection and confidence in the capital markets. The lack of specificity and sufficient detail in the 2018 Draft Priorities are also problematic from an accountability perspective, as the investing public will not be able to properly assess through the achievement of specific priorities whether there has been real progress in increasing investor protections. This is of vital importance, since the Statement of Priorities is the key means of accountability from the OSC to the investing public it serves.

b. Previous Priorities

- 2.3. There is also a general lack of information about previous priorities. For example, the 2018 Draft Priorities states that “four priorities were not carried forward, as the remaining work is minimal or is now part of our daily operations.”¹ While we appreciate that the Statement of Priorities is a forward-looking document, it would be helpful to know, within the confines of this document, what work has been completed on these priorities that have made the remaining work “minimal” or part of the OSC’s “daily operations”.
- 2.4. We value the publication of the Report on Statement of Priorities for previous fiscal years, which provides some of this information. However, there has not yet been publication of a similar report for 2016-2017. FAIR Canada hopes that in the future, the OSC will either publish the Statement of Priorities in a timely fashion – specifically at the same time as the Draft Statement of Priorities – or make it clear in the Draft Statement of Priorities what previous priorities are complete, or are not being carried forward. It is difficult to comment appropriately on new priorities, when little is known about the status of previous priorities.

3. Comments on Substantive Issues

- 3.1. This section of FAIR Canada’s comment addresses three areas of importance for retail investors:
 - a) Best interest standard and conflicted compensation structures;
 - b) Role of OBSI (Ombudsman for Banking Services and Investments); and
 - c) Transition to the CMRA (Capital Markets Regulatory Authority).

Each of these areas will be discussed in turn, before briefly addressing some other areas of note for FAIR Canada related to the 2018 Draft Priorities.

¹ Ontario Securities Commission, Notice 11-777 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2018 at 1. [2018 “Draft Priorities”]

a. Best Interest Standard and Conflicted Compensation Structures

Best Interest

- 3.2. As FAIR Canada has previously noted at length, it is essential that a best interest standard for dealers and their registrants be implemented. Investment advisors have tremendous influence over investors under the backdrop of conflicted compensation structures. Meanwhile, investors are increasingly being forced to navigate complex financial markets in order to save for retirement and achieve other financial goals. A best interest standard must be implemented soon in order to protect investors and their savings, and ensure advice is objective and proficient.
- 3.3. FAIR Canada applauds the decision of the OSC (along with New Brunswick's Financial and Consumer Services Commission) to continue working on articulating a regulatory best interest standard. While we are disappointed that other Canadian jurisdictions have decided not to work on achieving a best interest standard, we believe that this unfortunate situation provides an opportunity for the OSC and the New Brunswick Financial and Consumer Services Commission to act quickly on its own to implement such a standard.

Timing of Best Interest Standard

- 3.4. FAIR Canada notes that the OSC has moved at a very slow pace regarding a best interest standard. The CSA published a consultation in October 2012 that explored the appropriateness of introducing a statutory best interest duty, with the comment period ending in February 2013. The 2013-2014 OSC Statement of Priorities stated that it would continue exploring the merits of a best interest standard. FAIR Canada would like to point out that this coming fall, it will have been *five* years since the 2012 consultation on best interest, with no indication that a regulatory best interest standard is imminent. Every year that a best interest standard is not implemented is another year that retail investors are not sufficiently protected, and that precious savings are compromised. This undermines the OSC's mandate of protecting investors and puts the integrity of the capital markets in doubt.
- 3.5. FAIR Canada sincerely hoped that the 2018 Draft Priorities would include steps for implementing a regulatory best interest standard. Instead, the 2018 Draft Priorities has stated that the OSC intends to "publish regulatory reforms to define a best interest standard and improve the advisor/client relationship".² This includes obtaining "input to inform regulator proposals from stakeholders" and publishing proposals for "regulatory provisions to create a best interest standard."³ Again, we are concerned about timing on this issue, as well as the repetitive nature of these steps – particularly since two significant consultations with stakeholders have already taken place.

Regulatory Impact Analysis for Best Interest Standard

- 3.6. FAIR Canada questions the appropriateness of conducting a regulatory impact analysis and is concerned that such a regulatory impact analysis may stall the implementation of a best interest standard when a timely regulatory response is required to protect investors. Section 2.1 of the *Securities Act* states: "Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the

² *Ibid* at 5.

³ *Ibid* at 5.

regulatory objectives sought to be realized.”

- 3.7. FAIR Canada wishes to note the following with respect to a regulatory impact analysis, especially one that uses a cost-benefit analysis:
1. The benefits of a regulatory impact analysis are often difficult to quantify and data is scarce.
 2. Costs are currently being borne by the investing public through inaction.
 3. Given the problems with the status quo, any regulatory impact assessment should be done expeditiously and without delaying the project.
 4. According to the OECD, “it may be appropriate to proceed with regulation even though the costs appear to be greater than the benefits – this may occur if most benefits are gained by the target group.”⁴ We note that much of the intended benefit of the proposal will accrue to less-sophisticated, vulnerable consumers – i.e. the investing public - while the costs will primarily affect members of the investment industry (although some of these costs may be passed on to consumers). Therefore, even *if* costs appeared to be greater than the benefits (which we do not believe to be the case with a regulatory best interest standard, and certainly do not concede), the distribution of the costs and benefits of the proposal must be given consideration
 5. The financial services industry will innovate to remain profitable and competitive, while retail investors will benefit from receiving advice that is provided at a higher standard.
 6. If a regulatory impact analysis is undertaken, it should assess the validity and weight to be given to industry reports, as these often do not include reliable claims based on rigorous, fact-based quantifications and assessments. As it stands, investor-focused initiatives that would be of real benefit to investors often elicit delay tactics by some members of industry to hinder progress, since these initiatives can affect their profitability.
- 3.8. FAIR Canada would also like to note that regulatory impact assessments are inconsistently applied. For example, the exempt market reforms proceeded without any regulatory impact assessment on the implications of these reforms for capital raising, investor protection and investor outcomes. However, despite proposals related to a best interest standard having been studied at length, recommended and implemented in multiple jurisdictions,⁵ the OSC has still determined that this is an issue for which a regulatory impact assessment is necessary.

Relationship between Best Interest and Conflicted Compensation Structures

- 3.9. Any discussion of a best interest standard cannot occur without addressing conflicted compensation structures, particularly embedded commissions. For a best interest standard to be successfully

⁴ *Ibid* at 7.

⁵ See *Final Report of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives* (November 2016), online: <<http://www.fin.gov.on.ca/en/consultations/fpfa/fpfa-final-report.html>>; see also FAIR Canada, *FAIR Canada Comments on Proposed Best Interest Standard and Proposed Targeted Reforms* (30 September 2016) at Appendix A – Reforms in Other Jurisdictions, online: <<https://faircanada.ca/submissions/fair-canada-comments-on-proposed-best-interest-standard-and-proposed-targeted-reforms/>>.

implemented, rules prohibiting conflicted compensation structures must also be adopted.

- 3.10. FAIR Canada is pleased that the OSC, with the CSA, is looking at proposals to discontinue embedded commissions. However, FAIR Canada would like to stress that it is essential for the OSC to take a comprehensive approach regarding best interest and embedded commissions. The OSC must avoid working in silos, as best interest and embedded commissions are part and parcel of the same key issue. For regulation to be truly effective, those working on best interest must communicate and collaborate with those working on embedded commissions, as regulation of the two issues is necessarily intertwined. Any kind of collaboration must not result in delays.

Conflicted Compensation Structures other than Embedded Commissions

- 3.11. FAIR Canada wishes to highlight that other conflicted compensation structures require sufficient attention from the OSC as well. Like embedded commissions, addressing these conflicted compensation structures underpins the successful implementation of a regulatory best interest standard.
- 3.12. In particular, FAIR Canada would like to see the OSC address the harms caused by affiliated dealer flows from proprietary products. Professor Douglas Cumming has commented that “In terms of which is the bigger concern, our research has shown that both affiliated dealer flows and the payment of trailing commissions result in material conflicts of interest that are detrimental to mutual fund investors over the long term.”⁶ In its submission last year on a best interest standard, FAIR Canada warned against conflicts arising from selling proprietary products, which ultimately harm investors and market efficiency. Unfortunately, compensation grids, performance measures and other incentives routinely favour the sale of these types of products.
- 3.13. FAIR Canada has a number of recommendations regarding the sale of proprietary products. Bank branches and others who are proprietary should ideally move to an open shelf, and if they don’t, they must not hold out that they act in the best interest of the consumer and restrict their title to “salespeople”. Furthermore, the experiences of other jurisdictions make it clear that explicit rules are required about what sales practices will and will not be permitted in order to change how firms operate and ensure that the interests of firms are aligned with their clients.
- 3.14. For example, Article 24(1) of Europe’s MiFID II states that an investment firm “which provides investment services to clients shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interest of clients. In particular, it should not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment firm could offer a different financial instrument which would better meet that client’s needs.”⁷ The final technical guidance states that “Remuneration policies and practices shall be designed in such a way so as not to create incentives that may lead relevant persons to value their

⁶ Professor Douglas Cumming, *Frequently Asked Questions about the Dissection of Mutual Fund Fees, Flows and Performance Report* (2016), at 7, online: <http://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20160209_81-407_faq-dissection-mutual-fund-fees.pdf>.

⁷ Article 24(1) of MiFID II, Directive on Markets in Financial Instruments repealing Directive 2004/39/EC and amending Directive 2011/61/EU and Directive 2002/92/EC.

own interests or the firm's interests to the potential detriment of any client.”⁸

- 3.15. The OSC needs to act in a timely fashion to not only ban embedded commissions, but set rules that avoid and address other forms of conflicted compensation, particularly affiliated dealer flows from proprietary products.

b. The Role of OBSI

- 3.16. FAIR Canada is pleased that the OSC is committed to formulating a response to the independent evaluator's review of OBSI. However, we are again concerned with timing: the independent evaluator's report was published in May 2016 and the OSC (in concert with the CSA) has yet to form a regulatory response. The time for discussions is over, as consumers need a reformed OBSI soon. In the short-term, FAIR Canada would like to see regulators, specifically the OSC, take enforcement action against firms that deliberately subvert OBSI's process and intentionally fail to deal with client complaints in good faith.
- 3.17. FAIR Canada is strongly of the view that our G20 obligations – including the obligation to ensure consumers have access to adequate complaint handling and redress mechanisms that are “accessible, affordable, independent, fair, accountable, timely and efficient...”⁹ – require giving Canadian consumers access to a dispute resolution process that will actually deliver a resolution to each dispute, as is the case in other leading jurisdictions. In the United Kingdom, Australia, New Zealand and Malaysia, for example, decisions are binding if the consumer accepts the recommendation. Canadian consumers deserve no less.
- 3.18. FAIR Canada is seriously concerned by the practice of settling investor complaints for amounts well below OBSI's recommendations – known as low-ball settlements. Low-ball offers and low-ball settlements fundamentally undermine the fairness of both outcomes and process, which undermines consumer protection and consumer confidence in our system of redress.
- 3.19. FAIR Canada notes it is the absence of binding decision-making authority that makes low-ball settlements possible. Such settlements occur because consumers feel they are out of options and are in a “take it or get nothing” position, with firms taking advantage. The prospect of OBSI imposing a result would (a) allow the consumer to have confidence that they can reject a low-ball offer and still retain the ability to achieve a fair outcome, and (b) give firms a greater incentive to make fair settlement offers instead of low-ball ones.¹⁰
- 3.20. The consumer redress system in Canada (and for OBSI in particular) requires binding dispute resolution in order to: (i) work fairly and effectively for the benefit of financial consumers and businesses; and (ii) improve confidence in, and soundness of, our financial marketplace and regulatory system. If the status quo is maintained, the opposite will be true.
- 3.21. Steps must be taken to make OBSI into a statutory ombudservice with the power to make binding decisions. This will allow for greater transparency, additional procedural safeguards to address issues

⁸ ESMA Guidelines: Remuneration Policies and Practices (MiFID) at page 6, online: https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-06_en.pdf

⁹ OECD, *G20 High Level Principles on Financial Consumer Protection* (October 2011) at 7, online: <http://www.oecd.org/regreform/sectors/48892010.pdf>.

¹⁰ *Ibid* at 12.

of natural justice, greater accountability, and improved consumer protection.

c. Transition to the CMRA

- 3.22. The last stated priority for the OSC in the 2018 Draft Priorities is to work with the CMRA partners on the transition of the OSC to the CMRA. FAIR Canada believes that there is a lot more to the transition than the 2018 Draft Priorities has identified. FAIR Canada is very concerned that the transition will be anything but “seamless” from an investor protection standpoint, and will in fact be the opposite of an “opportunity to enhance investor protection.”¹¹
- 3.23. FAIR Canada has concluded that the CMRA, as currently designed, is not in the interests of investors. FAIR Canada has come to this conclusion despite having supported the concept of a national securities regulator in the past, and specifically coming out in support of the new cooperative initiative, provided that sufficient investor protection could be ensured.
- 3.24. The CMRA governance structure lacks critical initiatives that the OSC recently put in place. For example, whereas the OSC created an investor advisory panel in 2010, and the proposed *Canadian Securities Act* of a few years ago contemplated a statutory investor advisory panel, no such panel has been contemplated in the CMRA. Furthermore, the CMRA Board of Directors lacks any individual who represents retail investor interests, the contemplated Regulatory Policy Forum does not assure investor participation and there is no contemplated investor office, despite one having been created by the OSC. This governance structure – particularly what is *not* in it – is of considerable concern to FAIR Canada.
- 3.25. With respect to substance, the proposed *Capital Markets Act* contains no statutory best interest duty and no proposal on embedded commissions. Furthermore, the provincial *Capital Markets Act* is less investor-friendly than the OSC regime, which now contains a whistleblower program with financial incentives. With the CMRA including securities regulators that oppose the introduction of a statutory best interest standard, and that have shied away from investor-friendly initiatives, FAIR Canada has real concerns that new initiatives led by the OSC aimed at protecting investors will not be carried forward under the CMRA.
- 3.26. FAIR Canada believes the governance structure and substantive law proposed under the CMRA must be reformed and become more investor-focused. If this cannot occur, FAIR Canada recommends that the OSC withdraw from the CMRA in order to maintain its investor focus. The loss of an investor-focused OSC, without significant changes to the CMRA, will undermine investor protection.

d. Other Areas

- 3.27. The following section briefly touches upon other areas of interest for FAIR Canada.
- 3.28. Environment: FAIR Canada agrees with the OSC’s characterization of the complex financial environment that currently exists and the importance of the OSC working through these challenges to achieve its vision and mandate. More and more today, individuals are forced to take responsibility for their own financial security, while at the same time, their investment choices have become much more complex. They face a low interest rate environment with significant volatility – efforts to achieve adequate yields or capital appreciation can expose them to severe risks that can have long-

¹¹ 2018 Draft Priorities, *supra* note 1 at 13.

term negative outcomes. FAIR Canada hopes that the realities of the financial environment continue to inform the OSC as it formulates its policy agenda.

- 3.29. Investor Office – Behavioural Insights: FAIR Canada notes that the OSC Investor Office has recently published a lengthy and thorough report looking globally at the adoption of behavioural insights by governments and regulators. The report makes it clear that many jurisdictions have incorporated behavioural insights into their policy-making process. The report also states that in the coming year the OSC will conduct “pilot projects for testing using a behavioural insights lens”.¹²
- 3.30. FAIR Canada has frequently brought to the attention of regulators and stakeholders evidence from behavioural literature, such as for example, the limits of disclosing conflicts of interest.¹³ We have also called for the use of behavioural insights in investor testing of the risk acknowledgement form used for securities sold in the exempt market¹⁴ and summary disclosure documents,¹⁵ such as the Group Plan Summary Document. In addition, FAIR Canada and the Rotman School of Management’s Capital Markets Institute hosted a conference on October 28, 2014 on the topic of “Does Disclosure Work?” that explored the implications of limits of the traditional disclosure model in protecting investors given behavioural economics and consumer decision-making.
- 3.31. We believe that behavioural insights should be fully integrated into the policy-making process, given the current stage of development of behavioural economics. Therefore, FAIR Canada support goes beyond the need for pilot projects. FAIR Canada recognizes that capacity and expertise must be built up within the OSC.
- 3.32. Seniors Expert Advisory Committee: FAIR Canada commends the OSC on the establishment last year of the Seniors Expert Advisory Committee, and encourages the Investor Office as well as other departments of the OSC to engage with the Committee in order to obtain better insight regarding the issues seniors face when investing. FAIR Canada is engaged in these issues as it has partnered with the Canadian Centre for Elder Law (CCEL) in a joint one-year project funded by the Law Foundation of Ontario regarding the interplay of investment securities, elder financial abuse, mental capacity and good faith third-party notifications. FAIR Canada along with CCEL is conducting consultations on these issues with key stakeholders (including the OSC Senior Expert Advisory Committee, and the OSC’s Investor Office) and recently published a Consultation Paper for comment. A final report will be released in the late summer.
- 3.33. Whistleblower Program: FAIR Canada would like to see more disclosure provided on the OSC’s whistleblower program. FAIR Canada is of the view that there must be transparency with respect to the number and nature of tips received, in order to assess whether the number and quality of tips have improved and whether objectives of the program are being met. Structures that put an emphasis on meaningful disclosure and transparency of the enforcement process, should lead to better accountability of the whistleblower program and enforcement generally.
- 3.34. General Enforcement: FAIR Canada would also like to see greater enforcement against those who fail

¹² OSC Investor Office Staff Notice 11-778, *Behavioral Insights: Key Concepts, Applications and Regulatory Considerations* (29 March, 2017), online: http://www.osc.gov.on.ca/documents/en/Securities-Category1/sn_20170329_11-778_behavioural-insights.pdf insert.

¹³ FAIR Canada, *CSA Mutual Fund Fees* (12 April 2013), online: <https://faircanada.ca/submissions/csa-mutual-fund-fees/>.

¹⁴ FAIR Canada, *OSC Proposed Prospectus Exemptions* (18 June 2014), online: <https://faircanada.ca/submissions/osc-proposed-prospectus-exemptions/>.

¹⁵ FAIR Canada, *FAIR Canada Comments on the OSC’s Notice 11-771 – Statement of Priorities for 2016* (1 June 2015), online: <https://faircanada.ca/submissions/fair-canadas-comments-on-the-oscs-notice-11-771-statement-of-priorities-for-2016/>.

to comply with existing rules and harm investors. There continues to be widespread non-compliance with rules in the exempt market¹⁶ and enforcement against wrongdoers would send a signal that such non-compliance will no longer be tolerated. Similarly, recent staff notices on compensation and sales practices highlights serious conflicts of interest that warrant enforcement proceedings.

- 3.35. Fintech and OSC LaunchPad: FAIR Canada commends the OSC for taking a leadership role in the emerging area of fintech, and establishing LaunchPad to support fintech innovation. FAIR Canada is optimistic about the opportunities that fintech will bring for investor protection, such as financial aggregator platforms, more standardized services through automated tools and lower cost investor options.
- 3.36. However, there are also a number of risks associated with fintech that should not be overlooked: (i) technological errors such as deficient algorithms; (ii) failure to account in a timely fashion to changing financial circumstances of consumers; (iii) risk of platform being operated by an unregistered entity; (iv) failure to prevent money laundering through failure to know your client; (v) financial exploitation of older investors through the accessing of funds online; and (vi) lack of transparency regarding fees and conflicts of interest. In addition, fintech may seek to take advantage of behavioural biases of financial consumers or may unwittingly accentuate them.
- 3.37. While innovation and technology can be good for the capital markets, a focus on lowering standards to encourage innovation and technology can also be detrimental for the capital markets. FAIR Canada encourages the OSC to keep on top of issues affecting – or that may affect – investors adversely in the area of fintech, in order to further inform policy development and investor protections.¹⁷
- 3.38. Fintech also presents opportunities for consumers to become more empowered through the use of open data, greater transparency and disintermediation. Regulators should examine what role they can play in fostering the use of fintech for the benefit of financial consumers.
- 3.39. Finally, regulators themselves can use fintech to benefit their own activities. Regulators could use the increase in available data and greater ability to access and process the data, to improve their compliance and surveillance tools and enforcement programs.
- 3.40. Fixed Income Reform: FAIR Canada would like to see further steps being taken to enhance the transparency and regulation of the fixed income market. Retail investors are important participants in fixed income markets, but are disadvantaged given its opacity.
- 3.41. Syndicated Mortgages: FAIR Canada is pleased by the announcement of the Ontario government in the 2017 Budget that it plans to transfer regulatory oversight of syndicated mortgages from the Financial Services Commission of Ontario to the OSC. FAIR Canada has recommended in the past that it was necessary for the OSC to oversee syndicated mortgages. FAIR Canada would like to see syndicated mortgages included in the 2017-2018 Statement of Priorities, including exploring ways to

¹⁶ For example, see recent sweep by Alberta Securities Commission: Alberta Securities Commission, *ASC Notice 33-705 Exempt Market Dealer Sweep*, online:

<http://www.albertasecurities.com/Regulatory%20Instruments/5331553%20_%20EMD_Project_Staff_Notice%2033-705.pdf>. See also Canadian Securities Administrations, *CSA Staff Notice 31-350 Guidance on Small Firms Compliance and Regulatory Obligations* (18 May 2017), online: <https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20170517_31-350_guidance-on-small-firms.pdf>.

¹⁷ International Organization of Securities Commissions, *IOSCO Research Report on Financial Technologies (FINTECH)*, online: <<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD554.pdf>>.

build appropriate mechanisms and close regulatory gaps in order to ensure effective oversight and protection of investors. FAIR Canada recommends that risks to investors from real estate investments be a specific focus of the OSC and other regulators across the country.

4. Conclusion

- 4.1. FAIR Canada notes that we have made substantial comments to prior years' Draft Statement of Priorities that have not been addressed. We believe these suggestions are important and remain very relevant, and urge the OSC to consider unaddressed recommendations
- 4.2. 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 Marian Passmore at 416-214-3441/ marian.passmore@faircanada.ca or Samreen Beg at [416-214-3442](tel:416-214-3442)/samreen.beg@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights