

March 4, 2022

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International Organization of Securities Commissions (IOSCO)  
Submitted via email to:  
[consultation-02-2022@iosco.org](mailto:consultation-02-2022@iosco.org)

## **Re: Public Comment on IOSCO Consultation Report on Retail Distribution and Digitalisation**

FAIR Canada is pleased to provide comments on the above-referenced IOSCO Consultation Report (Consultation Report).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. It advances its mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly moving the needle in the interests of retail investors and financial consumers.<sup>1</sup>

### **General Comment**

We applaud IOSCO for undertaking this review and consultation. As noted in IOSCO's Consultation Report, the rapid growth in digitalisation and use of social media is changing the ways investment products are marketed and distributed. This, in turn, is creating new risks for investors (particularly retail investors) and challenges for regulators around the world. The risks include being subjected to misleading investment advice from social media influencers, gamification tactics that encourage unsuitable or frequent trading, and investment scams where fraudsters exploit new platforms to harm investors.

Given the significant rise in trading by retail investors that began during the COVID-

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<sup>1</sup> Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

19 pandemic, the potential for harm has continued to increase. We believe this trend will continue beyond the pandemic as younger investors continue to gravitate towards on-line trading platforms with a “do-it-yourself” mentality.

As outlined in the Consultation Report, regulators in many jurisdictions have adopted various policy positions and enforcement tactics to try to address these issues. Because these issues essentially stem from internet-based platforms, international co-operation and approaches are needed to effectively mitigate these new risks. IOSCO’s effort to establish “toolkits” of proposed policy and enforcement measures for its members is an important step in promoting a co-ordinated international effort in this regard.

We are particularly supportive of the Consultation Report’s call for IOSCO members to “share experiences and good practices with each other.” We would urge IOSCO to look for ways to facilitate this sharing on an ongoing basis to help its members keep pace with the rapidly evolving online and social media investing landscape.

### **Consultation Questions**

*Do market participants agree that the proposed measures included in the policy and enforcement toolkits are appropriate for addressing the specific risks arising from “retail distribution and digitalisation”? Are there any areas that are missing and/or merit IOSCO consideration?*

We agree with the proposed measures included in the toolkits as providing the necessary foundation for more specific initiatives to be adopted by individual IOSCO members.

We propose two additional measures to consider including in the toolkits:

#### ***(i) Expand Disclosure Requirements for those Engaged in Promotional Activity***

One approach would be to expand the scope of persons required to disclose potential conflicts when promoting a security in the local jurisdiction. This approach is being considered in Canada.

For example, in May 2021, the British Columbia Securities Commission issued a [proposed Instrument](#) that would require anyone engaged in “promotional activity” in British Columbia to disclose certain information about potential conflicts of interest.<sup>2</sup> The information required to be disclosed includes whether the individual

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<sup>2</sup>“Promotional activity” is defined in the [BC Securities Act](#) to mean “any activity, including... any oral or

owns any of the securities being promoted, information regarding any compensation the individual is receiving for promoting the security, and whether the individual intends to make any trades involving the security being promoted. The disclosure must be made at the time the promotional activity occurs.

Subject to certain exceptions, the disclosure would apply, for example, to anyone who speculates on social media on the share price of a listed issuer in Canada. The attraction of the proposed approach is it places the burden on the individual to demonstrate they made the required disclosure, as opposed to putting the burden on the regulator to establish wrongful intent by the individual. This approach is similar to the [“stock-touting” provisions](#) found in the United States, which make it illegal to promote a security without disclosing the nature and amount of compensation received for the promotion, regardless of the accused’s intent.

FAIR Canada believes this type of approach would improve transparency and help investors make more informed investment decisions, especially when relying on information provided by paid influencers on social media.

### *(ii) Attaching Liability to Electronic Intermediary Services*

Enforcement Measure 4 calls for IOSCO members to “collaborate” with providers of electronic intermediary services such as ISPs, domain registrars and social media platforms, in curbing digital illegal activities.

Where warranted and feasible, IOSCO members should consider going beyond collaboration and consider whether such service providers should assume greater legal responsibility for the content they host or agree to have posted on their platforms.

One example of this approach is the model being developed in the United Kingdom (U.K.), where online platforms recently became accountable for financial promotions passed on to their users where the platforms provide “value adding services” (such as hosting ads). The U.K.’s Financial Conduct Authority has been in discussions with social media firms about these requirements and signalled that it is “prepared to act” if it fails to see effective compliance.<sup>3</sup>

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written communication, that by itself or together with one or more other activities encourages or reasonably could be expected to encourage a person (a) to purchase, not purchase, trade or not trade a security, or (b) to trade or not trade a derivative...” The required factors to consider in determining whether the person is engaged in promotional activity in the jurisdiction [are listed in a proposed companion policy](#).

<sup>3</sup> [The rise in scams and the threat to a legitimate financial services industry](#) (FCA, May 18, 2021). The position that online platform operators should bear “clear legal liability” for financial promotions they pass on

We would encourage IOSCO to study the U.K. model as it may provide additional measures to add to the toolkits. Such measures could act as an important supplement to members' limited capacity to monitor online content.

## Conclusion

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please be advised that we intend to make our submission public by posting it to the FAIR Canada website. Should you have questions or require further explanation of our views on these matters, please contact me at [jp.bureaud@faircanada.ca](mailto:jp.bureaud@faircanada.ca).

Sincerely,



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

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was first articulated in the FCA's annual [Perimeter Report 2019/20](#) (see paragraph 3.30).