

December 20, 2024

The Secretary
Ontario Securities Commission (OSC)
20 Queen Street West, 22nd Floor
Toronto Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Re: OSC Notice 11-799 – Request for Comments Regarding Statement of Priorities for Fiscal Year 2025-2026

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.¹

A. Key Concerns

1. Lack of Specificity to Measure Outcomes

We appreciate the Statement of Priorities (SoP) stating that investor protection and fostering confidence in capital markets remain at the forefront of the OSC's work. However, we are concerned that many priorities lack specificity, making it difficult to comment on them meaningfully or determine whether they will advance investor protection.

For example, the SoP says the OSC will enhance stakeholder engagement by building and exploring partnerships with other regulators and entities. It is unclear which partnerships and other regulators are the focus of this priority. Another priority is reviewing and optimizing technology and strengthening the OSC's enforcement powers by working with governments and law enforcement authorities. It is unclear what optimization is planned or what enforcement powers the OSC aims to strengthen.

We are also concerned that it is difficult to distinguish between "business as usual" work and the priorities for 2025-26. Several initiatives, such as focusing on crypto asset trading platforms and using behavioural

¹ Visit www.faircanada.ca for more information.

science to inform policymaking, are carried over from previous Statements of Priorities. Differentiating between priorities that continue from prior years and those the OSC will start in the fiscal year would be helpful for stakeholders.

Lastly, there are no clear or concrete outcomes associated with different priorities. In previous years, the Statements of Priorities included planned outcomes for the actions the OSC intends to take during the year. We recommend that the OSC revert to this approach.

We also encourage the OSC to consider the U.K. Financial Conduct Authority's (FCA) method for distinguishing between priorities and highlighting outcomes. In its 2024/25 Business Plan, the FCA outlines the outcomes it wants to achieve, key activities it will start in the upcoming year, and key activities that continue from previous years.²

2. Certain Capital Formation Priorities Risk Harming Retail Investors

We are troubled by the focus on exposing retail investors to long-term, illiquid, private market assets and worry that this could impair rather than enhance the investor experience. We also question why the Long-Term asset fund (LTAF) proposal is a priority and are concerned that it could do more harm than good. Our forthcoming comment letter will provide more details about our concerns.

Retail investor access to the private markets is often framed as "...remedying a perceived inequality of opportunity for retail investors."³ Indeed, the LTAF proposal positions access to long-term assets as an "opportunity" that could benefit retail investors. However, retail investors tend to do worse in the private markets than in the public markets.⁴ Private markets favour insiders and institutional investors, who have more bargaining power, sophistication, and access to information than retail investors.⁵

Moreover, firms with the worst prospects often struggle to attract institutional investors' funding in the private market.⁶ Getting more retail investors involved in private markets might make it easier for these high-risk companies to raise money from them,⁷ putting retail investors at risk.

Finally, we are concerned that the average retail investor may not fully appreciate the risks of these complex products. Research shows that many investors struggle to understand basic investment products, including their embedded fees.⁸

Instead of facilitating the ability of private companies to raise money from retail investors, the focus should be on how the OSC could foster stronger and more vibrant public markets. Public markets provide a more level playing-field for retail investors. They also provide fundamental investor protections that

² FCA, [Business Plan 2024/25](#), March 19, 2024.

³ Benjamin Schiffrin, Better Markets, [The Rise of the Private Markets Poses Risks for Retail Investors and Capital Formation](#), November 18, 2024, p. 5.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ See FAIR Canada's [Investor Survey](#), December 2022 and [Focus Groups - Understanding Canadian Investors](#), January 2024.

private markets lack, such as corporate governance and continuous disclosure requirements, rules regarding fair markets and conduct, enhanced liquidity and price transparency, and enforcement against misconduct.

Moreover, based on US research, public markets allocate capital much more efficiently than private markets.⁹ A recent study found that “[a] dollar of equity allocated in public markets generates \$0.35 more in annual revenue over the next three years than a dollar allocated to a comparable firm via a private market deal.”¹⁰

3. Expanding the Focus on Do-it-Yourself (DIY) Investing

DIY investing is a significant trend affecting retail investors. In 2020, Canadians opened more than two million DIY investment accounts, up from about 846,000 in 2019.¹¹ Given the surge in DIY investing, we expected the SoP to prioritize examining this phenomenon more thoroughly. However, the SoP is limited to clarifying the ability of order-execution-only (OEO) firms to provide non-tailored advice. We support this priority but encourage the OSC to go further. It should focus on the everyday investor experience in the OEO channel, their needs, and the quality of information OEO firms give investors.

Some measures the OSC should consider include:

- Basic assessment tools before account opening to help investors determine whether DIY investing is right for them,
- Evaluating DIY account opening documents to determine whether to prescribe plain language versions,
- Enhanced warning mechanisms, particularly regarding trading complex products and opening a margin account, and
- Developing regulatory responses to address concerns identified with gamification.

4. Some Critical Investor Protection Priorities are Missing

a. Client-facing titles and proficiencies

We are disappointed that, besides a vague, passing reference in Goal 2 to advisor proficiency, the SoP is silent about client-facing titles and proficiencies.

FAIR Canada has raised serious consumer protection issues arising from Ontario’s title protection framework.¹² Contrary to consumers’ expectations, it allows individuals licensed to sell only one type of

⁹ Ali Sanati and Ioannis Spyridopoulos, [Comparing Capital Allocation Efficiency in Public and Private Equity Markets](#), August 30, 2024, p. 3.

¹⁰ Ibid.

¹¹ Canadian Investment Regulatory Organization, [Canadians Opening Do-It-Yourself \(DIY\) Accounts in Unprecedented Numbers](#), February 9, 2021.

¹² For example, see FAIR Canada’s [Comment Letter](#) on the Financial Services Regulatory Authority of Ontario’s Proposed FY2024-2025 Statement of Priorities, November 16, 2023.

financial product to use the “financial advisor” title. FAIR Canada’s research found that 88% of respondents expect individuals calling themselves financial advisors to be able to provide comprehensive advice.¹³ This gap between consumers’ reasonable expectations and what the regulatory regime permits could mislead consumers, violating the prohibition on misleading titles in National Instrument 31-103.¹⁴ This should be cause for concern for the OSC and its mandate to protect investors.

Related to titles is the issue of proficiencies. Over the past few years, the Canadian Investment Regulatory Organization (CIRO) has enhanced its competency model, developing competency profiles for its approved person categories and moving to an assessment-centric approach.

It is not clear what, if anything, the OSC (and the Canadian Securities Administrators (CSA)) are doing to improve proficiency. A review of proficiency requirements is long overdue. We understand the OSC and other CSA members last reviewed these requirements more than a decade ago. Moreover, many dealers are not complying with their obligations under the client-focused reforms (CFRs), as last year’s review of the conflict-of-interest practices at firms revealed.¹⁵ Finally, we are concerned that many people working in bank branches may not fully understand the products they are compensated to sell, which could lead to poor investor outcomes.

High proficiency standards are critical to investor protection and promote confidence in the capital markets. We encourage the OSC to prioritize reviewing how to enhance registrant proficiency standards.

b. Problematic promotional activity

Another key topic missing from the SoP is problematic promotional activity, mainly via social media. Research shows that reliance on social media for investment information is increasing. The 2024 CSA Investor Index found that more Canadians, especially younger ones, use social media for investment information. The proportion of investors using social media for investment information grew by 18 points since 2020 to 53%.¹⁶

This trend raises significant investor protection concerns. Finfluencers and others on social media often oversimplify complex financial products, may have limited investment knowledge, or may be paid to promote certain investments, skewing their advice.

The British Columbia Securities Commission (BCSC) has proposed disclosure requirements for promotional activity on social media and other sources. The BCSC rule would require a person or company that conducts promotional activity for an issuer to disclose certain information at the time of the activity, including the name of and amount of compensation provided to the person conducting the promotional

¹³ [FAIR Canada Job Title Survey](#), November 2023, p. 9.

¹⁴ See section 13.18 of NI 31-103.

¹⁵ [Joint Canadian Securities Administrators / Canadian Investment Regulatory Organization – Staff Notice 31-363 Client Focused Reforms: Review of Registrants’ Conflicts of Interest Practices and Additional Guidance](#), August 3, 2023 [CFR Review].

¹⁶ CSA, [2024 CSA Investor Index](#), April 2024, p. 7.

activity.¹⁷ The proposed requirements are intended to provide investors with greater transparency about the source and reliability of promotional activity, enabling them to make more informed investment decisions.

The BCSC's most recent Service Plan discusses this issue. It states that the BCSC will develop new strategies for detecting and analyzing social media promotions and review regulatory oversight in this area to help stop abusive market activity.¹⁸ Moreover, the BCSC led the creation of a CSA task force that identifies barriers to addressing abusive promotions and trading.¹⁹ We are pleased that the BCSC and CSA are examining this issue. We encourage the OSC to consider measures like the proposed BCSC rule to better protect Ontario investors from problematic promotions.

B. Comments on Select Priorities

1. Goal 1: Quickly Deliver Effective Regulatory Actions in Anticipation of Emerging Trends

a. Stakeholder engagement

The SoP states that the OSC will enhance stakeholder engagement by building and exploring partnerships with other regulators and entities. We would encourage the OSC to continue to reach out to stakeholders to discuss their views and concerns before and during any rule-making initiative. Strengthening this practice would ensure diverse perspectives are considered early on, facilitating more tailored and effective rule development.

b. Artificial intelligence (AI) in capital markets

We support the OSC's focus on AI and consideration of guidance or rule changes to support the responsible adoption of AI in capital markets. The rapid development and widespread use of AI highlight the need for a clear framework to guide market participants. Delays could result in AI outpacing regulators' ability to establish proper practices and safeguards. We encourage the OSC to continue collaborating with other regulators to harmonize its approach to AI.

c. Crypto asset trading platforms

We support the OSC's continued focus on crypto asset trading platforms and encourage it to prioritize enforcement action in this area. The crypto asset sector is high-risk for retail investors, who bear the brunt of abuses in this space. Crypto crime has increased significantly in recent years. Between 2018 and 2020, crypto-related investment scams accounted for \$12.6 million in losses.²⁰ In 2021 alone, the Canadian Anti-Fraud Centre received reports of cryptocurrency fraud losses totalling \$75 million.²¹

¹⁷ BCSC, [Proposed British Columbia Instrument 51-519 - Promotional Activity Disclosure Requirements](#), May 26, 2021.

¹⁸ BCSC, [2024/25 - 2026/27 Service Plan](#), February 2024, p. 12.

¹⁹ Ibid., p. 7.

²⁰ Paul Northcott, [Countering the Rise of Cryptocurrency Fraud](#), March 21, 2022.

²¹ Ibid.

The SoP is silent on whether the OSC intends to acquire more human resources to tackle this burgeoning problem. We recommend that the OSC consider additional resources to strengthen its ability to detect, intervene in, and protect investors from crypto-related fraud.

2. Goal 2: Enhance the Experience of Individual Investors

a. Investor redress

We strongly support the OSC's commitment to advancing investors' opportunities for redress, including implementing the disgorgement framework and finalizing the framework for OBSI binding decisions.

The disgorgement regime will help promote confidence in the capital markets by offering wronged investors another avenue for redress. Binding authority will also help to level the playing field between investors and firms.

We look forward to the next consultation on binding authority in 2025, which will focus on proposed refinements to the existing OBSI oversight regime. FAIR Canada urges the OSC and the rest of the CSA to make binding a top priority and work with governments nationwide to make it a reality.

b. Understanding investor challenges and opportunities

The SoP prioritizes understanding individual investor challenges and opportunities and analyzing the investor experience in priority investor segments to address gaps. We support this priority. Regulators need to better understand ordinary investors' needs, challenges, and experiences and tailor the regulatory framework to serve them better.

We would appreciate more details on the types of analysis the OSC plans to conduct (e.g., focus group research) and who the "priority investor segments" are. We anticipate these segments may include seniors and vulnerable groups, such as low-income investors.

c. Align investor-facing disclosure and processes with behavioural science

We support the ongoing assessment of OSC investor-facing processes for alignment with behavioural science and the early embedding of behavioural science insights in developing new policies.

The OSC should prioritize behavioural research that examines how investors interact with and understand client-facing disclosure. Many disclosure documents are too long, complicated, and written in a way that most retail investors cannot easily digest. By prioritizing policy projects that view the world through the lens of everyday Ontarians, the OSC can improve the regulatory system and promote better outcomes for investors.

d. Quality of investor service

The SoP indicates that the OSC will continue to focus on the quality of investor service and the choices available to them, advisor proficiency, and conflicts of interest, including those related to firms' product shelves.

We support the focus on the quality of investor service. We are pleased that the OSC and CIRO are investigating aggressive sales tactics at Canadian bank branches, particularly regarding mutual funds. Many bank representatives, often called "financial advisors," are merely salespeople limited to selling specific products and driven by sales targets and incentives, which can lead to poor consumer outcomes.

In last year's Statement of Priorities, the OSC committed to conducting CFR sweeps of the know-your-client, know-your-product, and suitability requirements and communicating the outcome to stakeholders. The current SoP is silent on this matter. In addition to reviewing the sales practices, we urge the OSC to further investigate registrants' shelf formulation approaches and assess whether they comply with the conflict-of-interest requirements. We encourage the OSC to prioritize this issue, especially because the 2023 sweep of registrants' compliance with the CFRs' conflict-of-interest requirements revealed deficiencies at almost 80% of the firms reviewed.²²

3. Goal 3: Dynamically Right-Size Regulation Informed by Changing Needs, Risks, and Practices in Ontario and Globally

a. Access model

FAIR Canada is pleased with the OSC's commitment to advancing access models for corporate finance and investment fund issuers. We support the CSA's revised access model for non-investment fund reporting issuers.²³ Please refer to our forthcoming comment letter for more detailed comments on the updated model.

While we support the revised model, we encourage the OSC/CSA to consider other ways to:

- Modernize shareholder communications and engagement, and
- Promote more straightforward access to reporting issuer information.

b. Climate-related disclosure rule

We support developing a revised climate-related disclosure rule for reporting issuers other than investment funds. The objective should be to provide consistent, reliable company disclosures and help protect investors from investing based on misleading environmental, social, and governance information (greenwashing).

²² CFR Review, *supra* note 19.

²³ [CSA Notice of Republication and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Model for Certain Continuous Disclosure Documents of Non-Investment Fund Reporting Issuers](#), November 19, 2024.

The CSA intends to publish its climate-related disclosure rule for comment after the Canadian Sustainability Standards Board’s (CSSB) consultation on disclosure standards is complete. We appreciate the need to wait until the conclusion of the CSSB consultation. In the interim, however, we encourage the OSC to prioritize compliance and enforcement action against issuers that engage in greenwashing contrary to existing disclosure requirements.

4. Goal 4: Implement a Tougher and More Visible Response to Capital Markets Misconduct

a. Strengthen OSC enforcement powers

The SoP provides that the OSC will work with governments and law enforcement to seek to strengthen its enforcement powers.

We strongly support enhanced OSC enforcement powers. Our comment letter on the OSC’s disgorgement proposal discusses the importance of giving the OSC the authority and legal tools to collect financial penalties from wrongdoers.²⁴ The BCSC has a range of tools to support effective collections, such as not issuing or renewing a wrongdoer’s driver’s license. We urge the Government of Ontario to provide similar tools to the OSC. This would improve investor protection and support the OSC’s disgorgement framework, helping ensure it achieves the intended outcomes for investors.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve investor outcomes. We intend to post our submission on the FAIR Canada website and have no concerns with the OSC publishing it on its website. If you would like to discuss our submission further, please get in touch with Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Tasmin Waley, Policy Counsel, at tasmin.waley@faircanada.ca.

Sincerely,



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FAIR Canada | Canadian Foundation for Advancement of Investor Rights

²⁴ FAIR Canada Comment Letter, [Proposed OSC Rules 11-502 and 11-503 and Companion Policies 11-502 and 11-503 Distribution of Amounts Paid to the OSC under Disgorgement Orders](#), October 7, 2024.