

INVESTOR ADVISORY PANEL

December 22, 2022

Kathryn Royal
Manager, Strategic Planning and Reporting
Ontario Securities Commission
Email: kroyal@osc.gov.on.ca

Re: OSC Notice 11-797 – Statement of Priorities

The Investor Advisory Panel (Panel) welcomes this opportunity to comment on the Ontario Securities Commission's draft Statement of Priorities for the fiscal year ending March 31, 2024. The IAP is an initiative of the OSC to ensure investor concerns and voices are represented in the Commission's policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

Overall comments

Last year, in reviewing the [OSC's 2023 Statement of Priorities](#), the Panel acknowledged the challenges and complexity underlying the organization's mandate of protecting investors and fostering fair and efficient capital markets. We also noted that expanding this mandate further to include an explicit requirement to foster competition and capital formation could risk overburdening the organization with too many competing and perhaps conflicting priorities to the detriment of investors.

This year's report, unfortunately, has garnered the same reaction from Panel members. We see a high number of priorities with a concerning lack of focus on investor protection at a time when investors are particularly vulnerable in the face of rapid development of new products and delivery mechanisms, rising interest rates, and higher inflation. As the Statement of Priorities acknowledges in the environmental scan at the outset of the report, "retail investor participation in the capital markets saw rapid growth during the pandemic years, particularly in terms of self-directed investors." At the same time, "the desire for returns in the face of challenging economic conditions may have led to more speculative investments, such as crypto assets and meme stock trends." In the Panel's view, the market today is fraught with opportunities for uninformed decision-making by investors and fraud by bad actors.

Lack of transparent and specific actions

We find, once again, that the goals lack specificity such as concrete and transparent deliverables, desired outcomes and, most importantly, stated progress markers that could provide a roadmap for delivery on the many competing goals in the Statement of Priorities. Also absent from the Statement of Priorities are success measures or data-gathering related to one of the most significant regulatory initiatives of the last decade: the ongoing implementation and impact on investors of the Client-Focused Reforms, which are referenced only once and not in relation to any specific goal.

The Panel urges the OSC to pare back its list of goals to a set of meaningful and actionable imperatives that can ensure that it clearly carries out its mandate in ways that can be measured.

Specific Panel Comments on Proposed Goals:

GOAL 1: Building Trust and Fairness in Ontario's Capital Markets

We support this goal and recognize the importance of maintaining a balanced policy framework in meeting it. More problematic is the lack of clarity on how this differs from the OSC's ongoing activities. We would have liked to see a much more concrete priority described in this section, beyond a restatement of the organization's day-to-day work. It is also imperative that the OSC consider all of these issues through an investor protection lens.

1.1 - Advance Work on Environmental, Social, and Governance (ESG) Disclosures for Reporting Issuers

The Panel supports the goal of mandating disclosure by public companies of material ESG information. However, the planned outcomes are too vague and will prove difficult if not impossible to measure. At the same time, the lack of focus on enforcement across the asset management industry makes the OSC appear far behind the work of other jurisdictions such as the U.S., where the [U.S. Securities and Exchange Commission](#) is using sophisticated data analysis to identify material gaps, misstatements, or compliance issues related to climate change disclosure and ESG strategies. This, in our view, is a missed opportunity to protect investors as the ESG space continues to grow and proliferate.

1.2 - Enhance Fee Transparency Through Total Cost Reporting

We support enhanced fee transparency through total cost reporting and agree that confidence in Ontario's capital markets is promoted when the costs of investing are clearly and consistently reported. As with many of the other goals listed, however, this lacks specifics such as a plan for monitoring the effectiveness of Total Cost Reporting going forward.

1.6 - Implement the New Single Enhanced Self-Regulatory Organization (SRO)

We support this goal however, we also urge the OSC to ensure that the new organization clearly communicates its public interest mandate and that this message is reinforced through specific metrics related to the impact of its initiatives on retail investors. We provided this input in an [earlier submission](#) to the CSA Working Group, together with our strong recommendation that the new SRO ensure that its investor advisory panel be properly resourced and consulted regularly at the highest levels of decision-making at the organization. We would like to have seen these critical issues explicitly addressed in the Actions and Planned Outcomes. We would be interested in how the new consolidated investor compensation fund fits into this goal and how the OSC sees this being implemented.

Goal 2: Strengthening Investor Safeguards

The Panel fully supports this goal. However, we also strongly encourage the OSC to list this goal as its top priority and the primary goal to be woven throughout the Statement of Priorities. We would also observe that there does not appear to be a reference to the Client-Focused Reforms (CFR) which have occupied the time, resources and energy of so much of the investment industry, and which we believe can and should have a positive impact on outcomes for retail investors. In particular, we would be interested in understanding whether the OSC is aware of any negative consequences of the CFR, particularly when dealers limit their offerings to their proprietary products only, potentially reducing market confidence and choice for investors.

2.1 - Expand the Focus on Retail Investors Through Specific Education, Policy, Research and Behavioural Science Activities

The Panel supports ongoing research and outreach, particularly from an innovative perspective. The goal, however, is a restatement of the organization's day-to-day work. We would encourage the OSC to develop actionable imperatives to address key emerging risks that now face retail investors, particularly the gamification of investing which serves to amplify and expand investor access to the types of speculative investments cited in the Statement of Priorities' environmental scan. Although research has been published on this topic, there was no action plan or any next steps described to address this risk.

2.2 - Strengthen Investor Redress and the Ombudsman for Banking Services and Investments (OBSI)

For years now, the Panel has been urging action on the OBSI file, to ensure that OBSI continues to provide retail investors with access to redress and restitution. While we support this goal, we find it light on specific measurables and objectives, such as that of binding authority for OBSI. We encourage the OSC to include more details regarding binding authority, including the expected timing for achieving this important goal. Doing so will ensure that there is greater understanding and accountability regarding this important initiative.

2.3 Monitor and Respond to the Impacts of the Deferred Sales Charges Ban (DSC ban) and Order-Execution-Only Ban (OEO ban)

The Panel supports this goal, however it lacks specificity and raises questions, particularly around the nature of the impacts that are referenced. We urge the OSC to ensure that any review is done primarily from an investor protection perspective.

Goal 3: Adapting Regulation to Align with Innovation and Evolving Markets

We support this goal and look forward to seeing concrete and meaningful recommendations for regulators and policymakers with respect to innovation and regulation. The goal, however, misses another opportunity to address key trends such as gamification and significant regulatory developments such as the Client-Focused Reforms, which firms have spent the last two years implementing across their organizations. At the same time, the Panel would like to see investor protection embedded in all of these focus areas as a key lens through which to consider which innovations are truly improving outcomes for investors and which ones put them more at risk.

3.1 - Strengthen Oversight and Enforcement in the Crypto Asset Sector

In our [Horizon Report](#), the Panel expressed concerns about the emergence of unregulated trading in highly speculative and non-traditional investments such as crypto assets. We encourage the OSC to continue scrutinizing this area and seek to better understand how and why investors are engaging with crypto assets. In doing so, we strongly caution against placing the goal of fostering innovation ahead of the OSC's central investor protection mandate.

3.6 - Further Initiatives that Promote Capital Formation and Foster Competition

The Panel encourages the OSC to ensure that investor protection concerns are at the forefront when initiatives to promote capital formation and foster competition are being considered, as we are of the view that investor protection is critical to capital formation and a truly competitive market.

Summary

While the Panel supports many of these goals, we would have preferred a set of concrete and actionable priorities that put investors first at all times and that can be monitored with clearly identified milestones. This is especially important, given the leading role the OSC plays among Canadian regulators. As we have cautioned before, we remain very concerned about the OSC's expanded mandate that includes fostering competition and capital formation, and we urge the OSC to continue, within its Statement of Priorities and beyond, to prioritize investor protection first and foremost.

Moving forward, we encourage the OSC to get specific about its goals, to put investors first, and to measure progress with concrete and meaningful metrics that demonstrate that it is delivering on its mandate.

Yours truly,

A handwritten signature in black ink, appearing to read 'Ilana Singer', with a stylized, cursive script.

Ilana Singer
Chair, OSC Investor Advisory Panel