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ONTARIO SECURITIES COMMISSION NOTICE 11-777
STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS
REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2018

I welcome this opportunity to comment on the recently published Ontario Securities Commission (OSC) 2017-2018 Statement of Priorities (SoP). I want to begin by confessing that I am a big fan of the OSC and gratefully acknowledge the leadership role that it has consistently played in protecting investors and regulating securities markets on behalf of residents of Ontario and Canada. The many investor protection and market transparency priorities set out in the 2017-2018 SoP reaffirm the OSC's ongoing efforts to promote and maintain safe and fair markets for savers and investors in this country.

My comments in this letter are primarily directed at the four very significant investor protection initiatives identified in the SoP, namely: the introduction of a best interest standard, the elimination of embedded commissions, the publication of a seniors' strategy and the commitment to make OBSI a more effective financial dispute arbiter. Each one of these priorities, if implemented, would represent a very substantive and impactful positive contribution to investor confidence and safety in our markets and I applaud the OSC for championing their adoption. I am, however, a less enthusiastic supporter of the modest measures of success and long timeframes that the OSC has identified for these initiatives in the SoP.

In terms of development, the introduction of a best interest standard appears to be the most advanced of these four priorities. It is frustrating, therefore, that the measure of success that the SoP identifies for this most advanced initiative is limited to completing consultations. Implementation appears even further away for the other three priorities, where the SoP is content to characterize success as some variant of ongoing consultations, further discussions or initial proposals. Identifying baby steps in an overly protracted development and implementation process as success seems at odds with the OSC's own commitment in the SoP "to remain abreast of regulatory challenges and developments and adapt quickly to maintain healthy and competitive capital markets". With the communication technology and analytics capabilities available to us today, it is

neither obvious or acceptable that the development and implementation of important securities regulatory policies requires decade-long (viz. CRM and CRM2) gestation periods.

The long delays in introducing a best interest duty and eliminating embedded commissions are particularly hard to justify. For one thing, both these policies have been discussed, debated and analyzed for many years and the added value of additional discussions at this point is small, if any. All the issues have long since been identified, all the players have staked out their (anticipated) positions and the time has arrived for decision makers to make decisions. Furthermore, implementing these two initiatives would not constitute an irresponsible leap into the unknown. Other international jurisdictions with well-developed and well-regulated markets like Australia and the U.K. have already pioneered their versions of both these progressive policies. Closer to home, the final report of Ontario's expert committee that reviewed financial advisory and financial planning policy alternatives recommended the adoption of a universal statutory best interest duty in its recently released final report. Given the analysis, experience and support already in place, the OSC's measures of success with respect to the introduction of a best interest standard and the elimination of embedded commissions do not appear aggressive enough. I implore the OSC to move forward more quickly with the implementation of these two very important investor-friendly initiatives. Beyond accelerating these two priorities, I would also encourage the OSC to get them back in sync by especially picking up the pace on embedded commissions. The introduction and monitoring of a best interest standard would be more challenging in an environment where embedded commissions, with the inherent and opaque conflicts of interest, were still permitted.

The success measures in the SoP associated with seniors' issues and OBSI also appear insufficiently aggressive. The financial vulnerability of seniors because of the confluence of demographics, low interest rates and inadequate or non-existent pension income has become a familiar, and distressing, refrain among financial regulators in Canada, their response has so far been lacking. While governments and regulators in other international jurisdictions have introduced rules specifically designed to address the financial exploitation of seniors, regulators in Canada have so far limited their response to preaching the merits of investor education and organizing roundtables and committees to consider possible strategies. For a problem that is so pervasive and compelling and where some meaningful quick fixes could be implemented, this slow progress is both disappointing and unwarranted. Over a year has passed since the members of the North American Securities Administrators Association (NASAA), including the OSC, released a model act designed to protect seniors and other vulnerable adults from financial exploitation. Several U.S. states have already enacted customized versions of this model act but the OSC has not even started the process of socializing its key provisions with Ontario market participants. The financial exploitation of our seniors' population is a real and present danger that deserves a more timely and effective response from the OSC than that charted in the SoP.

The OSC's slow-motion response to addressing the debilitating limitations in OBSI's authority is also very disappointing. How many additional studies and how many more deliberations are necessary before regulators provide OBSI with binding authority to enforce its 'recommendations'. Support for this initiative is widespread and its introduction would constitute an important statement about investor protection and redress. The independent evaluation of OBSI prepared in 2016 recommended that it "be

enabled to secure redress for customers, preferably by empowering OBSI to make awards that are binding on the firm, and on the customer if they accept the award". While it is true that only a small number of dealers have disregarded an OBSI recommendation, the optics are horrible and the ramifications contribute to undermining investor confidence in the fairness of markets. Furthermore, per the 2016 independent evaluation report, "18% of non-backlog complainants who OBSI considered should receive compensation, received less than OBSI recommended (on average $41,927 less)", suggesting that many harmed investors are willing to accept inadequate settlements for fear that the OBSI recommendation will be ignored. Finally, considering the recently announced decision by the Ontario government to allow SRO's to enforce the collection of fines they impose on dealers, it seems only appropriate that OBSI have the comparable authority to enforce its recommended compensation for investors.

There is one additional priority in the SoP that concerns me. It is the commitment of the OSC to work with the Capital Markets Regulatory Authority (CMRA) partners on the transition to the CMRA. As I noted in my introduction, I am a big fan of the OSC and especially appreciate the proactive stance that the OSC has consistently adopted in respect of investor protection issues. In many instances, it has only been because of the leadership of the OSC that other Canadian regulators have been encouraged to embrace investor-friendly initiatives or regulations. And, on those occasions where the OSC has been unable to generate support from other jurisdictions, it has often been prepared to move unilaterally (e.g. whistleblowing, no fault settlements, JSOT). I am troubled that once the CMRA is in place, and the OSC eliminated, Ontario will lose both its capacity to lead others and its ability, when necessary, to act unilaterally. Given how effectively the OSC has been able to use these two approaches on behalf of investors in the past, I am concerned that their absence will result in a CMRA that is less attuned and less responsive to investor issues.

This concern is heightened by the fact that, to date, there has been no indication that the CMRA will exhibit the same sensitivity and attention to investor protection that we have come to expect from the OSC. The draft CMRA legislation and regulations that have been published break no new ground in terms of investor protection, engagement or redress. In fact, there is some indication of backsliding. To date there has been no confirmation that the CMRA will include facsimiles of the OSC's Investor Advisory Panel and Office of the Investor. Also, while the Chair and the Chief Regulator of the CMRA have been in place for eighteen and six months respectively, during this time neither one has articulated a go-forward investor protection vision or strategy for the new regulator. I believe that there is a legitimate basis for asking the OSC how it will be able to achieve the "seamless transition to the CMRA" promised in the SoP absent a clear and meaningful commitment to investor protection on the part of the new regulator.

Another concerning issue posed by the CMRA is its proposed timing. Based on the most recent publicly available information all the legislation and regulations necessary to launch the new regulator is targeted to be in place by the end of June 2018. In other words, just when Canadian regulators anticipate being able to finalize new rules with respect to introducing a best interest standard and (potentially) eliminating embedded commissions, resources and attention will be diverted to the CMRA initiative. It would be unfortunate if this diversion delays adoption of the new rules and would be very troubling if it deferred them indefinitely. I, therefore, urge the OSC to do whatever it can to ensure that the development and launch of the CMRA does not slow down or interfere with the

implementation of the key investor protection initiatives that it has identified in its 2017-2018 SoP.

I thank you once again for the opportunity to provide you with my comments.

Sincerely,
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