

VIA email

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**Comments on OSC Notice 11 -768 Priorities for fiscal year ending March 31, 2014**

[http://www.osc.gov.on.ca/en/SecuritiesLaw\\_sn\\_20130404\\_11-768\\_rfc-sop-fiscal-2013-2014.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20130404_11-768_rfc-sop-fiscal-2013-2014.htm)

It is my pleasure to provide an input into the Commission's 2013-2014 priorities.

For me, the key issue is that I would like to feel confident that my advisor can be trusted to give me honest advice for my financial health the same way I trust my doctor with my physical health. The CSA have highlighted five principal concerns they have with the investor protection regulatory regime in Canada as part of their rationale for proposing a Best interest standard:

1. The current regime is not based on the most principled foundation, but rather is based on concepts of “Caveat Emptor” supported by prescriptive prohibitions and key disclosure obligations;
2. Current standards of conduct do not address the problems associated with asymmetry in investment knowledge between advisors/ dealers and their retail clients, particularly if the documented low levels of financial literacy in Canada are taken into account;
3. Investors like myself mistakenly believed that advisors and dealers already have a duty to act in their best interest, which leads to a gap between investor expectations and legal requirements;
4. The suitability standard is not functioning to provide investors with the investments and portfolios that may be in the client’s best interest; and
5. The conflict- of- interest disclosure requirements are not being employed effectively, particularly in a sales commission-based environment and when proprietary products are being distributed.

Who can argue with this? Study after study shows that Canadians have too much debt, pay high mutual fund fees , are ill-prepared for retirement and the trust in the financial services industry is low. Establishing trust should be JOB #1 for 2013-2014. This can be done by establishing a regulatory framework for advice giving .

Here are some other suggestions for improving investor protection for Ontarians:

- Implement procedures to actually collect the fines that are so publicly announced. Without diligent collection, the credibility of enforcement is impaired. There is no deterrence. I think it's important that people who break the rules actually be sanctioned. According to a CBC Report <http://www.cbc.ca/player/Shows/ID/2251007268/> just 30 % of fines assessed were collected between 2007 and 2011. Outsourcing the task might be a viable alternative. Better collection would also provide the Commission valuable funds to execute its Mission statement.

- Fine companies utilizing misleading advertisements . It is not enough to periodically report on all the wrongdoing / suggest best practices – Bay Street ignores the light touch. Only fines will incent them to alter their sales practices.
- Put some clamps on misleading advisor titles . These titles lure retail investors into a false confidence. There are far too many “advisors”, Consultants, Vice President's, Investment specialists, Seniors Specialists etc. salespeople masquerading as professional advisers.
- Constrain the use of advisor titles that are being used to deceive older investors. The use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of mutual funds, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that implies that the holder has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person should be ruled as a dishonest and unethical practice subject to sanctions. We urge the OSC to adopt **NASAA MODEL RULE ON THE USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS** [http://www.nasaa.org/wpcontent/uploads/2011/07/3-Senior\\_Model\\_Rule\\_Adopted.pdf](http://www.nasaa.org/wpcontent/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf) without undue delay . [ See this eye-opening Consumer Financial Protection Bureau report on the use of seniors designations by financial advisers . [http://files.consumerfinance.gov/f/201304\\_CFPB\\_OlderAmericans\\_Report.pdf](http://files.consumerfinance.gov/f/201304_CFPB_OlderAmericans_Report.pdf) ]
- Provide educational materials, checklists, tools etc. in various formats explaining how individuals can protect themselves from unscrupulous advisors and dealers.
- Implement a One stop integrated website for checking advisor qualifications and disciplinary history. The current system is too disjointed making it difficult and awkward for investors to check up on firms and individuals.
- Put some money in the kitty to encourage whistle blowers and tipsters to come forward .This will be a terrific assist to enforcement.
- Require that mutual fund Fund Facts document is made available to investors **prior to sale**. Unitholders need to know all the terms and conditions , investment strategy, risk factors and fees associated with owning a mutual fund.
- Provide investors with redress and force wrongdoers to disgorge ill- gotten gains .The Expert Panel on Securities Regulation <http://www.expertpanel.ca/eng/reports/final-report/better.html> recommended the following to improve investor complaint-handling and redress mechanisms:
  1. a securities regulator with the power to order compensation in the case of a violation of securities law so that the investor would not be required to resort to the courts;
  2. establishment of an investor compensation fund funded by industry to allow the securities regulator to directly compensate investors for a violation of securities law; and
  3. mandatory participation of registrants in the dispute resolution process of a legislatively designated dispute resolution body. [The Panel noted: "During our consultations, we heard accounts from investors who were compelled to navigate through the system to recoup funds lost as a result of error or wrongdoing. These accounts vividly described many of the shortcomings of the complaint-handling and redress mechanisms in Canada. We believe

investors are not particularly well-served by the system." .This was in the context of a national securities regulator which did not come to pass. There is however no reason why the OSC cannot on its own cognizance proceed to better protect Ontarians.]

- Find out why the complaint cycle time at OBSI is so long and take steps to shorten it. Justice delayed is justice denied..
- Establish a plain language standard clarifying what suitability is and how suitability can be determined. Include case examples .In my opinion , product and account cost is a consideration but most dealers don't factor in cost in suitability recommendations. I need to better understand what the OSC means by “ suitable investment” and “to act fairly, honestly and good faith” means..
- Review the TSX's listing requirements so that firms listed comply with applicable laws/regulations, accounting standards and corporate governance and can be effectively audited.
- Compel that fairness be a core element of dealer complaint handling systems. Investors are not getting a fair shake – too many valid complaints are summarily dismissed via form letters.
- Regulate complex products better. There is a crying need to be better regulate them and to better understand their method of distribution . These have caused a lot of mis-selling to occur. e.g. Portus, Return of capital mutual funds , reverse ETF's , Non-bank ABSP etc. have cost Ontarians a lot of stress and money.
- Examine “ Free lunch” seminars. These events are often marketed as educational seminars, when in fact they are staged sales events to sell investment and other financial products.

## CONCLUSION

The OSC has set an impressive number of meaningful priorities. We hope that the resources are matched to needs. The key thing is to end up with actionable information that results in regulations/rules that will actually make a difference to small investors. We want to see measurable progress and a bias towards action.

I hope this input is useful to you.

Please feel free to contact me if additional information is required.

Sincerely,

Arthur Ross , Toronto