

May 8, 2013

ATTENTION:

Mr. Robert Day,

rday@osc.gov.on.ca

Senior Specialist, Business Planning and Performance Reporting

Ontario Securities Commission

20 Queen Street West, Suite 1900, Box 55

Toronto, Ontario M5H 3S8

Canada

Comments on Priorities for OSC fiscal year 2013- 2014

http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20130404_11-768_rfc-sop-fiscal-2013-2014.htm

I would like to provide an input into the Commission's priorities for the year ahead. I have read and heard a lot about the state of investor protection in Canada. There are many issues at the retail investor level. This is the first time I have ever taken the time to submit my views but I feel compelled to lend my voice to the call for better investor protection. I believe a sense of urgency is needed if we are to avoid a serious socio-economic problem in Canada.

A number of newspaper articles have pointed out that Canadians are heavily indebted, pay high product costs, lack financial literacy skills and are ill-prepared for retirement. The trust in the financial services industry is very low at this time due to poor performance and the amount of wrongdoing (most technically within today's rules) that prevails.

I believe the following suggestions can make a big difference in protecting small investors:

- **Repair Fund Facts (especially risk disclosure)** and require it be made available to investors before purchase. By knowing investment strategy, risks and fees associated with owning a mutual fund, better financial outcomes will prevail. Mis-rated funds have been adroitly used by dealers to defend the sale of unsuitable investments leaving hapless investors with a loss and reduced chances of compensation. If Fund Facts of a precious metals fund says the risk is Low, who can argue, right?
- **Implement procedures to collect fines imposed.** It's important that people who break the rules actually be sanctioned. According to MFDA and IIROC reports only a small percentage of fines levied are collected from individual. Without diligent collection, the credibility of enforcement is greatly impaired. There is no deterrence impact. If these SRO's require more powers to enable collection, the Commission should grant them.
- **Treat misleading advertisements more seriously.** A few big fines will help cut down this nasty practice which too often leads to unsuitable investments being bought. "Free lunch" seminars. also merit attention .At these seminars, participants are provided with a sales pitch and sales materials that describe possible investment strategies. These seminars sometimes offer unsuitable sales of securities for attendees...Prepare a Guide like this one for Ontarians
http://www.law.cornell.edu/wex/investor_protection_guide_investment_seminars_free_lunch .

- **Assess the distribution of structured products** Structured products, due to their very nature, can be difficult for investors to understand. This can lead to them being mis-sold, particularly when investors are searching for yield. IOSCO has noted that several events, including the 2008 default on products following the failure of Lehman Brothers, highlighted the problems retail investors can face when dealing with structured products. In particular, I believe the Commission should be concerned about investors' understanding of these products, their design and disclosure, suitability criteria, promotion standards, potential for mis-selling especially to retirees and post-sale product controls.
- **Investigate sale of specialized ETF's** The 2012 Ombudsman for Banking Services and Investments (OBSI) annual report indicates that unsuitable investments and advice continue to be the biggest source of investment industry complaints. OBSI says that leveraged exchange traded funds (ETFs) continue to be a focus of investment suitability complaints. "In some cases we are finding that investment advisors are not aware of the risks and characteristics of the investments they are recommending. In the case of leveraged ETFs this is resulting in some investment advisors not trading the products appropriately and making unsuitable investment recommendations to their clients," it says. The added complexity of leveraged and inverse exchange-traded products makes it essential that brokerage firms have an adequate understanding of the products and sufficiently train their sales force before the products are offered to retail customers. Firms should be required to conduct reasonable due diligence and ensure that their representatives have an understanding of these hard to understand products.
- **Restrict Crowdfunding to sophisticated investors** I would worry that these high-risk investments may result in a trail of losses for smaller investors who aren't used to navigating the less transparent, more complex start-up market. Fraud would also be a major concern. Like Labour Sponsored Investment funds, the likelihood of a positive outcome is low. Sounds like an accident waiting to happen with the elderly likely the biggest victims. In testimony before the U.S. Senate Banking Committee, Columbia Law School Professor John Coffee [declared](#) that as drafted the "crowdfunding" component of the bill "could well be titled 'The Boiler Room Legalization Act of 2011.'" He said, "It is likely to create "few jobs... and much fraud."
- **Clamp down on the use of inflated "advisor" titles.** These titles lure retail investors-they are misleading and deceptive. Also, provide a table on the website explaining all the designations used by dealer Reps.
- **Treat the Seniors issue as high priority** – they are highly vulnerable. Many seniors qualify as vulnerable because of a loss of cognitive ability, their ability to doubt or to question, their isolation and willingness to trust others. As the Canadian population ages, more advisors will be working with vulnerable clients, which means regulators, advisors and dealers need to take steps to protect these clients and their own businesses. A vulnerable client is an individual who is easily influenced, has limited investment knowledge or is unable to make independent decisions. The Mutual Fund Dealers Association of Canada (MFDA) report that about a third of cases before the MFDA involve seniors. The 2012 OBSI Annual Report states that 38.6 % of complainants are retirees which is higher than the percentage of the general population; 48 % of complainants are 60 years of age or older).
- **Provide educational brochures on key topics** e.g. Investing in an IPO, Buying on margin, Pros and Cons of ETF's, Transferring Accounts, Completing the new Account application form, why the Trade confirmation slip is important, What does

suitability mean , What does "to act fairly, honestly and good faith" really mean? etc. This will assist individuals in protecting themselves.

- **Improve the whistleblowers program** by offering a meaningful percentage of fines to informants.
- **Establish a investor restitution fund like the one used in Quebec.**
- **Provide oversight over OBSI.** Make their recommendations final. The complaint route is a long and stressful one for retail investors. They deserve closure after OBSI has done its work." Name and Shame" doesn't work and civil litigation is prohibitively expensive.
- **Tighten criteria for listings/reverse takeovers** Prevent another Sino-Forest by defining the TSX's listing requirements that listed companies must comply with.
- **Examine dealer complaint handling processes.** Clients are not being treated fairly – OBSI reports that over 4 in 10 investment dealer complaint decisions are overturned. Who knows how many valid complaints never reach OBSI because the dealer's rejection was taken at face value?
- **Regulate securities lending better.** This seems to be in open loop mode with the possibility that the votes cast are greater than the eligible votes. It makes a mockery of shareholder democracy and can be a destabilizing force to the economy.
- **Support the Office of the Investor.** Since the Office of the Investor leads the effort to identify and understand investor issues and concerns through investor engagement and research it needs an adequate budget. By ensuring investors perspectives are considered and addressed in policy and operational activities, better rules will be enacted. We hope the Office is provided the resources needed to address Seniors issues in particular.

Many of the root causes of investor abuse can be found in the deficiencies of the KYC/suitability system and the apparent lack of a fiduciary duty for advice givers. A standard application form with clearly defined terms would be very helpful. Reps filling in pre-signed blank forms should be dealt with severely. People just do not understand that the new account application form is a contract and the information they provide can and will be used against them in the event of a dispute. We commend the OSC/CSA for opening the dialogue on Best interests and expect measurable progress in 2013-2014. With so many investors so vulnerable, the timing couldn't be better for real regulatory reforms.

I sincerely hope this feedback will be useful to you.

Permission is granted for public posting.

Feel free to contact me if there are any questions.

Sincerely,

Stan Gourley