



December 18, 2023

VIA EMAIL

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

**Re: OSC Notice 11-798 – Statement of Priorities – Request for Comments
Regarding Statement of Priorities for Fiscal Year 2024-2025 (the
“Consultation”)**

The Canadian Advocacy Council of CFA Societies Canada (the “CAC”)¹ appreciates the Ontario Securities Commission’s (“OSC”) ongoing commitment to stakeholder engagement in the development of its annual Statement of Priorities (“SoP”).

The compressed 30-day comment period—a departure from prior years’ practice of allowing 60 days for comment—prevents us from fully considering all the priorities listed in the proposed SoP. The following is our summary feedback on selected elements of the proposed SoP, followed by a request to consider adding a new priority.

Priority #1 – Develop and publish OSC Strategic Plan

We are deeply concerned that the listed forward steps relating to the forthcoming six-year strategic plan suggest that whatever (private) consultation was undertaken is now complete, and that the strategic plan is now moving into the launch and implementation phases. We are of the view that an open and transparent public consultation should be the norm for such an important long-term guiding document for a publicly accountable provincial agency, and would be curious as to the list of ‘key external stakeholders’ that were privately consulted, their comments, a summary of the OSC’s responses, and how these were reflected in the formulation of the strategic plan. We are deeply disappointed at the lack of an opportunity to have input on such a foundational long-term initiative, and believe that the lack of transparency of process could beget difficult questions upon the launch of the plan.

**Priority #2 – Advance Work on Environmental, Social, and Governance
Disclosures for Reporting Issuers**

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are nearly 200,000 CFA® charterholders worldwide in 160 markets. CFA Institute has ten offices worldwide, and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on [LinkedIn](#) and X at [@CFAInstitute](#).



We are supportive of the OSC’s ongoing and proactive approach to regulating disclosure practices for investment funds as it pertains to ESG-related considerations and appreciate the added clarity provided in the recently published CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* (“**Staff Notice 81-334**”). Although we are glad that we can expect a revised version of Staff Notice 81-334 in 2024, we are concerned with what we see in the interim. In the absence of codified rules, there are now differing approaches and resulting commentary across the CSA dependent on the primary regulator, communicated privately through the prospectus review process (e.g., the concept of an “ESG consideration fund” now being applied by OSC staff).

In the absence of a clear, unified regulatory approach applicable across the CSA, supported by codified regulation with detailed substantive requirements specific to ESG-related investment fund disclosure, market participants face uncertainty in their compliance efforts, which adds unwarranted costs. The current approach of providing guidance through a Staff Notice—and subsequently through informal presentations to limited audiences within industry—also adversely impacts new entrants. We would encourage the OSC to expedite the codification of its approach to ESG-related investment fund disclosure as a next step, following the publication of the revised Staff Notice 81-334.

Priority #4 – Assess Implementation of Client Focused Reforms and Consider Impact of Limited Product Shelves

We are generally in agreement with the concerns expressed regarding proprietary product shelves and that these issues are particularly prevalent in the context of deposit taking financial institutions (“**Deposit Takers**”). We believe clients of such institutions are more likely to invest in a proprietary investment product without considering more suitable alternatives, given the structure and convenience of the relationship. We encourage the OSC to provide additional guidance on how Deposit Takers can fairly compete and promote internal offerings, while also providing more concrete expectations on offering alternative products. In an environment where Deposit Takers continue to take central position in Canadians’ financial advice and relationships,² it is challenging to comprehend how these institutions’ limitation of investor choice in available investment products upholds best interest principles and promotes confidence in Ontario’s capital markets.

We would also encourage the OSC to provide additional guidance on satisfactory approaches to comply with KYP obligations and the requirement to demonstrate that a reasonable range of alternative products were considered as part of the suitability analysis. Examples of sufficient documentation covering various security types, with listed review indicia would be helpful in aiding registrants and ensure better client outcomes. Likewise, we would encourage the OSC to provide a list of considerations or questions (even if non-exhaustive) for registrants to utilize to demonstrate that they have canvassed a reasonable range of alternative actions; such a list could then be further tailored based on each registrant’s business model.

² Deposit-Takers continue to have the majority of household relationships (72%), <https://mfda.ca/wp-content/uploads/2022/12/ClientResearchReport22.pdf>



Priority #6 – Study the Limitation of Advice in the Order-Execution Only Channel (“OEO Channel”)

The OEO Channel plays an important role for investors in Ontario, and the promotion of client choice and freedom of investing style should be safeguarded. However, we believe a balance can be struck to further instill mechanisms of investor protection. For complex products with significant potential for losses, such as derivatives and leveraged products, we would support the use of point-of-sale disclosure regarding the general risks of investing in such products written in plain English, with corresponding examples.

We would also encourage the OSC with its regulatory partners at CIRO to further investigate and prioritize issues relating to the gamification and use of potentially investor-averse behavioural techniques in the OEO Channel, which in our view presents a particular risk of harm for less-experienced retail investors. Evocations of gambling in investing promotes carelessness and risk of serious investor harm, and as such requires appropriate regulatory guardrails.

Priority #10 – Strengthen the Dispute Resolution Framework of the Ombudsman for Banking Services and Investments (“OBSI”) and Modernize OSC’s Disgorgement Framework

We agree that increased accessibility to dispute resolution services are much needed in the financial services sector. As such, empowering OBSI to make binding compensation decisions will aid retail investors in successful resolution of their claims. To further support the goal of accessibility, we would encourage the OSC to ensure that such proceedings remain retail investor friendly, i.e., the adjudicative process and the proposed framework should retain a degree of informality. For example, it should not typically require legal representation. We would also encourage the OSC to review and potentially publish statistics relating to the number of proceedings that reach the adversarial stage, and the scenarios in which that degree of process was warranted.

Priority #13 – Facilitate Financial Innovation

The creation of the Office of Economic Growth and Innovation (the “**Innovation Office**”), and its stated goals of fostering innovative, competitive markets that attract foreign capital and provide adequate safety to investors, is commendable. We support the Innovation Office, and acknowledge the strides it has made; however, we would also encourage the OSC to publish metrics that can better demonstrate how the Innovation Office’s various initiatives have led to achieving its stated goals. We believe that by doing so, internal staff and stakeholders would be in further alignment, and it would promote accountability and transparency. To this end, we would encourage the OSC to create certain success criteria for the Innovation Office.

We would also encourage the OSC to create a specific priority regarding artificial intelligence (“**AI**”). As acknowledged in the Consultation, AI presents a transformative change to businesses and capital markets in Ontario. In light of this, we would support the creation of a specific taskforce to deal with the unique challenges that AI will present on an ongoing basis. Recently, the Securities and Exchange Commission proposed



rules to deal with conflicts of interest presented by “predictive data analytics” and similar technologies. We would encourage the OSC to similarly consider its position on such technologies and the conflicts they present.

We would also encourage the OSC to collaborate on the open banking initiative led by the federal government. In our view, open banking and the broader trend for consumer control of their financial information and data represents a significant shift forward in promoting investor protection while also aiding registrants in their compliance efforts, through gaining access to a more fulsome financial profile of any given client. As such, a clarification of the OSC’s position on this initiative or role would be appreciated.

Proposal to include Reconsideration of RIME

As the OSC is aware, market participants have voiced concerns over the interpretation of sufficient relevant investment management experience (“**RIME**”) to establish proficiency for an advising representative. In recent years, we understand the threshold has become more difficult to satisfy than in the past. The narrow interpretation used by staff in evaluating RIME has created industry frustration and added unnecessary cost to market participants. We are of the view that greater deference and weight should be applied to the educational component of proficiency requirements, and that adequate RIME should reflect the contemporary and varied nature of modern registrant business models.

If RIME is going to be interpreted narrowly, where only certain specific activities will suffice for recognition, a more practical approach would be to add an equivalency element to the educational component. As it currently stands, a restrictive interpretation of RIME adversely impacts certain business models over others, leading to some firms being unable to easily promote staff internally to senior roles requiring more demanding robust individual registration. Such an approach is not conducive to nurturing a healthy industry and community of securities registrants. Given that regulatory clarity (and we would suggest change) is required in this area, we would encourage the OSC to address the concerns of market participants through a clear plan articulated in the SoP and accompanied by a commitment to an expedited regulatory policy project..

Concluding Remarks

We acknowledge the challenges the OSC faces in formulating its annual SoP and that not every issue can be of central focus. However, in our view, the above issues warrant further consideration.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in the future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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