

# FAIR

Canadian Foundation for  
Advancement of Investor Rights  
Fondation canadienne pour l'avancement  
des droits des investisseurs

February 11, 2010

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**Re: Request for Comments regarding Statement of Priorities for Fiscal Year  
Ending March 31, 2011**

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We are pleased to provide you with the comments of the Canadian Foundation for Advancement of Investor Rights (**FAIR Canada**), in response to the request for comment on the Ontario Securities Commission's (the **OSC** or the **Commission**) Statement of Priorities for Fiscal Year Ending March 31, 2011 (the **2010-2011 Statement of Priorities**).

FAIR Canada is a non-profit, independent national organization founded in 2008 to represent the interests of Canadian investors in securities regulation. Additional information about FAIR Canada, its governance, and priorities is available on our website at [www.faircanada.ca](http://www.faircanada.ca).

## **SUMMARY OF RECOMMENDATIONS**

FAIR Canada supports the OSC's initiative to request comments on its Statement of Priorities at an earlier point in the process so that comments from market participants can be better integrated into the Commission's planning and budgeting process. Addressing the lack of a strong investor voice in securities regulation was one of the key reasons for the founding of FAIR Canada.<sup>1</sup>

Our two principal recommendations are as follows:

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<sup>1</sup> See James Langton, April 13, 2009, Investment Executive at <http://www.investmentexecutive.com/client/en/News/DetailNews.asp?id=48949&IdSection=8&cat=8&BImageCl=1>, "FAIR Canada pleased with OSC plans for Investment Secretariat".

**1. Create a Small, Paid Investor Panel.** It is FAIR Canada’s view that the OSC needs to take the Investor Steering Committee/Secretariat to the next level or replace it with another structure in order to have a truly effective, transparent and credible mechanism for investor consultation and feedback. FAIR Canada recommends that the OSC create a small, paid investor panel that would consist of eight to ten members representing retail investor and shareholder rights. The OSC needs to create and implement a concrete proposal for the creation of such a panel, including a specific workplan, mandate and timeline for its creation.

**2. Appoint a Commissioner with a Strong Retail Investor Perspective.** FAIR Canada strongly urges the OSC to appoint a Commissioner with a strong retail investor perspective. There is currently an imbalance at the Commission, in terms of influencing OSC decision-making and policy development. Given that the OSC’s primary mandate is investor protection, it is incumbent on the OSC to ensure that the interests of key stakeholders, notably retail investors, are well-represented in senior levels of the organization, including the Commission itself. FAIR Canada continues to be concerned that retail investor representation is lacking in the make-up of the Commission as it is presently constituted.

## **FAIR Canada Comments on the OSC 2010-11 Statement of Priorities**

### **1. Deepening the OSC’s Focus on Investor Protection - Problems with the Current Investor Steering Committee/Secretariat**

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We are pleased that deepening the Commission’s focus on investor protection is the first priority listed under the OSC’s ‘Key Regulatory Priorities for 2010-11’. We have focused this submission on that key priority. We also appreciate the focus within the 2010-2011 priorities on investors, particularly the commitment expressed to continue (a) championing investor protection, especially for retail investors, and (b) reflecting investor interests in all OSC initiatives.

**However, we believe that the goal outlined under that priority to “leverage the work of the OSC Investor Steering Committee through the OSC website”<sup>2</sup> is, in isolation, an ineffective means to consult with investors and obtain their feedback during the policymaking process.** Although FAIR Canada considers the creation of the Investor Steering Committee/Secretariat<sup>3</sup> an important first step forward<sup>4</sup>, we view the structure of the Secretariat to be problematic in several respects:

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<sup>2</sup> See page 10314 at (2009) 32 OSCB, dated December 11, 2009.

<sup>3</sup> The terms “Investor Steering Committee” and “Investor Secretariat” are used interchangeably throughout this letter. As of February 11, 2010, the OSC website only contained a description of the “OSC Investor Secretariat”, but did not describe an “Investor Steering Committee”. Confusingly, the draft 2010-2011 Statement of Priorities only

- 1) **No investor representative** – We understand that the Secretariat is solely composed of OSC staff, therefore no input is requested or obtained from investor advocates in the context of its work.
- 2) **Lack of Transparency** – The mandate, goals, composition and ongoing initiatives of the Secretariat are not disclosed to the public. Consistent and continuous transparency is critical to the credibility of the OSC vis-à-vis retail investors – that credibility is currently lacking.
- 3) **No resources** – The Secretariat does not have separate funding or “back-office” staff.
- 4) **No accountability** – We are not aware of any accountability mechanism by which the Secretariat is required to set priorities or report on its ongoing progress.

## 2. Additional Concerns for Retail Investors in Ontario

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In addition to the problems identified above, FAIR Canada is further concerned by the OSC’s lack of progress in bringing retail investors inside the “circle of policy development” through decisions to dissolve, discontinue, or not follow the following initiatives or recommendations:

- 1) **Dissolution of the Investor Advisory Committee (the IAC)** – The IAC , which was originally created to “play a key role in [the OSC’s] efforts to address issues of importance to retail investors”<sup>5</sup>, was dissolved in December 2007 without consultation, public announcement, or move to reconstitute the committee. We recognize that certain aspects of the IAC were problematic, but we believe that the solution was to change the committee for the better (for example, by examining the consumer panel in the UK as one possible model) rather than dissolve it altogether.
- 2) **No Further OSC Investor Town Halls** – The Investor Town Halls were useful venues where investors could voice concerns and questions. They have been discontinued, without consultation or public announcement, since 2005.
- 3) **No Further Annual “Dialogue with the OSC” events** – These events, where all market participants had the opportunity to engage in dialogue with OSC staff, were discontinued without consultation or public announcement in 2008.

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refers to an “OSC Investor Steering Committee”. FAIR Canada staff phoned the OSC to obtain clarification on this point.

<sup>4</sup> *Supra* Note 1.

<sup>5</sup> See page 7 of the SCOGA Submission at <http://faircanada.ca/wp-content/uploads/2008/12/Final-Submission-to-Standing-Committee-july-30-FINAL.pdf>, where OSC Chair David Wilson comments on the importance of creating the IAC.

- 4) **No Commissioner with a Strong Retail Investor Perspective** – As we recommended in our submission on February 23, 2009 to the Ontario Standing Committee on Government Agencies (**SCOGA**) (the **SCOGA Submission**), we strongly urge the OSC to appoint a Commissioner with a strong retail investor perspective.

### 3. Obtaining investor input in other contexts

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In contrast, we would note that other organizations, such as the Canadian Securities Transition Office (the **CSTO**), the Investment Industry Regulatory Organization of Canada (**IIROC**), and the Mutual Fund Dealers Association of Canada (the **MFDA**) have held roundtables over the past eight months with investor advocates. The roundtables with IIROC and the MFDA took place in August and June 2009, respectively, and focused specifically on the IIROC and MFDA Client Relationship Model initiatives. On January 22, 2010, six months after its creation, the CSTO, together with FAIR Canada, hosted a roundtable where fourteen investor advocates (including one institutional investor representative from the Canadian Coalition for Good Governance) participated and provided meaningful feedback to the CSTO about the creation of a national, statutory investor panel. The roundtables organized and hosted by these organizations were important first steps in bringing investors ‘inside the regulatory tent’.

As a result of the problems and issues that we have identified above, retail investors in Ontario remain marginalized and continue to struggle with effective representation at the OSC, whereas a powerful, well-resourced industry is amply represented on the Commission and on its consultative committees. This is an imbalance that needs to be remedied. We recommend that the OSC create and implement a concrete proposal for the creation of an investor panel, including a specific workplan, mandate and timeline for its creation. Such a panel could also be used as a trial phase for the statutory investor panel of the national securities commission.

## **FAIR Canada Recommendation 1: Create a Small, Paid Investor Panel**

### **Creation of an Investor Panel**

As FAIR Canada noted in the SCOGA Submission:

“[t]he OSC should be asked to implement an independent investor committee as part of its consultative committee structure, along the lines of the UK Investor Panel, including adequate financial resources and support and compensation for the members of the committee”.

It is FAIR Canada’s view that the OSC needs to take the Investor Steering Committee/Secretariat to the next level or replace it with another structure in order to have a truly effective, transparent and credible mechanism for investor consultation and feedback. The OSC should

create a small investor panel consisting of eight to ten paid members representing retail investor and shareholder rights, such as FAIR Canada, the Small Investor Protection Association, the Canadian Association of Retired Persons, the Common Front for Retirement Security, Consumers Council of Canada, the Canadian Coalition for Good Governance and others. This panel would be modeled after the U.K.'s successful Financial Services Consumer Panel (the **UK Panel**), and its creation would be consistent with the recommendations in the Final Report and Recommendations of the Expert Panel (the **Expert Panel Report**).

The panel would meet four to six times per year with a detailed agenda and time limits on member contributions. Members could be chosen through a process similar to the OSC Commissioner selection system, in order to properly vet candidates and ensure broad representation. Payment of panel members, including the panel Chair, could be modeled on a combination of the UK Panel and OSC Commissioner payment systems. Funding for the panel could be obtained, at least initially, from the OSC's discretionary fund, which over this past year has increased significantly to over \$17 million.

Panel members would be brought 'inside the regulatory tent' through regular interactions with OSC staff, and by obtaining the resources and time necessary to provide informed and constructive comments on policy initiatives. The mandate of the panel could be broadened over time to cover panel-initiated projects. We also suggest that senior-level decision makers from the OSC attend the panel meetings to convey a sense of the panel's importance and ensure that decisions can be made soon after the meetings.

### **CSTO and Expert Panel Report**

The Expert Panel Report commented on the lack of engagement of retail investors in the regulatory process, and recommended the establishment of a national, statutory, independent investor panel. The report also recommended that the provincial securities regulators establish a dedicated investor issues group within each organization.

FAIR Canada recognizes the importance of a national, independent investor panel, but can appreciate that it will likely take several (if not more) years for a national securities regulator and such a panel to be created. Ontario investors should not be asked to wait for several years to provide much-needed input to the regulatory process. Investor input continues to be critical to the health of Ontario's capital markets. FAIR Canada strongly urges the OSC to follow the recommendations in the Expert Panel Report and take a leadership role in the retail investor area through the creation of an Ontario-based investor panel. We will be making similar submissions and recommendations to other securities commissions across Canada.

## **FAIR Canada Recommendation 2: Appoint a Commissioner with a Strong Retail Investor Perspective**

As we noted in our SCOGA Submission, FAIR Canada continues to be concerned that the retail investor perspective is lacking in the make-up of the Commission as it is presently constituted. There is currently an imbalance at the Commission, in terms of influence on OSC decision-making and policy development. Given that the OSC's primary mandate is investor protection, it is incumbent on the OSC to ensure that the interests of key stakeholders, notably retail investors, are well-represented in senior levels of the organization, including on the Commission itself.

We recognize that one of the criteria for selecting Commissioners is experience in investor-related issues. However, the selection process is not sufficiently transparent for the public to determine the extent to which that criterion has been satisfied. We urge the OSC to be more transparent in its Commissioner selection process. In addition, the OSC should actively seek out individuals with a background in retail investor issues (provided they satisfy the other necessary criteria) so that, as stated in the draft 2010-2011 Statement of Priorities, the work of the OSC "continue[s] to reflect investor interests."

We would be pleased to discuss our comments with you in more detail, including suggestions for possible Commissioner candidates. Feel free to contact Ermanno Pascutto at 416-572-2282/ermanno.pascutto@faircanada.ca or Ilana Singer at 416-572-2215/ilana.singer@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights