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Comment Letter from Peter Whitehouse

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ONTARIO SECURITIES COMMISSION NOTICE 11-771 – STATEMENT OF PRIORITIES REQUEST FOR COMMENTS REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2016

http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150402_11-771_rfc-sop-end-2016.htm

I am an 81-year old retired senior with some bad experiences with a Canadian Investment Dealer and its Investment Advisor employees and the subsequent complaint resolution process. This includes a lack of commitment on the part of the Investment Industry Regulatory Organization of Canada (IIROC) to enforce any of the present statutory Regulatory Rules, Regulations and Guidelines that are said to be in place to protect against such investor abuse.

I am pleased to provide comments on the proposed OSC priorities for the fiscal year 2015-2016 based on my experiences. My comments can only deal with recommendations based on my personal exasperation when finding out that there is a great void between the vulnerability of placing ones trust with an Investment Dealer which turns into an adversarial engagement after filing a complaint. My recommendations only deal with a narrow area of financial governance, that does not appear to be getting Regulatory implementation and enforcement. The effects of maintaining the status quo can only perpetuate the continued abuse of unwary investors strictly for the disproportionate financial gain of the investment industry and its employees.

From what I see as a layman, the years go by with all the talk, studies, reviews and reports and the banner headings on the websites of the FCAC, the CSA, the OSC, IROC and the OBSI proclaiming protection for investors, but the lack the preemptive deterrent for the protection for investors continues.

Recommendation #1 - An **"Investing Instruction Manual"** must be provided by the Investment Dealer to every investor at ***prior to, or at the time an investor opens an account*** with an Investment Dealer. The new CRM II requirements and the Fund Facts may be considered as ways to induce some conscience and moral responsibility in the dealing relationship by the Investment Dealer and its employees with the investors. However, what is required is a **standardized manual set of investing instructions** that is co-authored by the Regulators, the Investor Advisor Panel, The Office of the Investor as well as investors. It should not be diluted with the Investment Industry participation aimed at trying to keep the investor in the dark and from asking too many self-protection questions.

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This Investing Instruction Manual would be written in point form just as any standard **"User Operating Manual"**. In this way the first time user (the investor) would be provided with an education of the factors that should be considered and that would influence the success or failure of the investments and the ongoing relationship with their Investment Advisor. This is as opposed to the present situation whereby the investor lack of investment knowledge gets a posthumous education only after they later discover how the Investment "Advisor" has negatively influenced their investment results.

The present Regulatory requirement is that the Investment Dealer must, by law, provide every investor with instructions for the process of filing a complaint with the Dealer in the case of a dispute. Then, if the complaint is not resolved, there are instructions for the investor to register the complaint with the Self Regulated Organizations (SROs) of OBSI and IIROC.

It is then follows that it is ridiculous that there is a Regulatory obligation for the Investment Dealer to provide the investor with instructions on how to file a complaint after there is a dispute with the Dealer and the damage is done, yet there is no Regulatory specified obligation for the dealer to provide an "Investing Instruction Manual", including advice on all the vital points to consider before investing. With this preventative information, at least the investor would be better informed on how to protect their investment capital. The idea that there is investor educational information already out there for the potential new investor to get an education and all the investor has to do is go looking for it, is a philosophical cop out.

It is a fact that most investors engage the services of an Investment "Advisor" because they do not have all the knowledge necessary to make suitable investment decisions for a long term investment planning. As there is a drive for greater financial literacy, a standardized "Investment Instruction Manual" provided to every new investor by the Dealer would be a solid way to broaden the effectiveness of the drive for greater investor self-protection. Without the educational benefit of an "Investment Instruction Manual", the vulnerability of the trusting investor is already increased with the prospect of an Investment "Advisor" recommending and making inappropriate investments on behalf of the investor.

Recommendation #2 - Focus on Seniors Issues With the gradual demise of Defined benefit Plans, seniors are more dependent than ever on their own investments for retirement. Investment dealers are developing and offering a variety of complex new products and services that are intended to generate higher yields in a low interest rate environment. It is imperative that firms are recommending suitable investments and providing proper disclosures regarding the related terms and risks. With the dramatic increase in the population of our nation's seniors, it is critical that securities regulators work collaboratively to make sure that senior investors are treated fairly. The culture of compliance at firms is key to ensuring that seniors receive suitable recommendations and proper disclosures of the risks, benefits and costs of any investments they are purchasing and have a fair dispute resolution mechanism. Clear standards and robust enforcement are critical investor protections that should be top of mind for 2015-2016.

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I urge the OSC to gather data from dealers regarding the products they market to seniors, the percentage of revenue they derive from those sales, how advisors are assigned to elderly investors and the designations/titles firms are using to market themselves to older Canadians. Once the data is distilled, appropriate measures need to be introduced.

Given that thousands of Canadians each month are retiring/entering into RRIF's, time is of the essence. This is a major socio-economic issue as well as an important regulatory issue. I also recommend that the OSC establish a standing ,well funded multi-stakeholder Seniors Advisory Committee to keep on top of the developing situation and follow up on the Investor Advisory Panel's incisive Report on Seniors.

Recommendation #3 - Implement a Fiduciary standard for all advisors: Much independent research has already been done in Canada and elsewhere that demonstrates that conflicted advice acts against investors. Multiple consultations have been conducted. It has been over a decade since the Fair Dealing Model was first proposed The adverse impact of NOT imposing a fiduciary duty is obvious. The status quo is, in my view, a prescription for a socio-economic crisis.

Canadian retail consumers need increased protection when dealing with the financial planning industry, according to a report released March 26, 2013 by the Public Interest Advocacy Centre (PIAC) entitled, ***Purse Strings Attached: Towards a Financial Planning Regulatory Framework***. The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," noted Jonathan Bishop, co-author of the report.

The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by not being fully informed .The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors . Report at ttp://www.piac.ca/files/pursestrings_attached_final_for_oca.pdf I note parenthetically that the Wynne Government has established a Panel to examine the regulation of financial planners.

In **Should Canada's financial advisors be held to a higher standard? :**Research paper (Jan. 2015) http://dtpr.lib.athabascau.ca/action/download.php?filename=mba-15/open/punkon-aprj-final.pdf the authors conclude " *The implementation of a fiduciary standard would have widespread implications for the financial industry, as advisors would be required to ensure that all recommendations were in the best interest of their clients, including the minimization of all fees and expenses, which is typically at odds with the advisor's goal of maximizing revenue from a client account.* " . I agree with this for it is only a disruptive change that will elevate advice giving to the professional status it deserves and that clients need. Patching the system with more disclosure and enhanced investor financial literacy is not a effective plan

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Recommendation #4 - Make OBSI a real Ombudsman Restitution is the top priority for investors who suffer losses because of violations of the securities Acts. OBSI needs teeth as the current system is clearly not functioning. It should be noted that OBSI has encountered a record number of Name and Shame cases and in its latest Annual report cited the developing issue of low balling restitution settlements. The impact on victims, especially retirees is life altering.

Recommendation #5 - Rein in Free Lunch seminars Some rules and guidelines need to be put in place for such seminars. Seniors especially are adversely impacted by these well disguised sales pitches.

Recommendation #6 - Fix the NAAF/KYC process I appreciate that the OSC will continue with its focus on suitability sweeps and take enforcement actions as appropriate. This is necessary and appropriate. I believe however that the entire process needs an overhaul. We are hopeful that the OSC's research into risk profiling will prove useful in improving KYC . One chronic underlying problem for investors and OBSI (and industry participants) – non-standard, misleading and inadequate NAAF forms within the industry. If the NAAF/KYC process were re-engineered and standardized, a large number of complaints could be avoided. I recommend this be a specific 2015-/2016 priority as it will have a big payoff for all stakeholders. This was recommended to the OSC by the Regulatory Burden Task Force in December 2003. http://www.investorvoice.ca/Research/OSC_RegulatoryBurden_Dec03.pdf

Even where there are regulations, IIROCs' own 12-0109 Rules and KYC Guidance Notes are not being enforced by IIROC when they allow an Investment "Advisor" to illegally change the Risk Tolerance Rating on an investors KYC from Low to Medium after the investor refused to sell $63,000. in equity mutual funds purchased on a DSC basis and replace them with Fixed Income investments. What good are Regulations when they are not being enforced by IIROC !

Recommendation #7 - Update dealer complaint handling rules. Closely related to the KYC issue is the question of fairness of dealer complaint handling practices. Unsuitable investment recommendations is one of the top reasons for complaints. Dealer responses too often are unfair, dismissive and abrupt.

To support this point, at the age of 72 and in the RRIF payout phase, what was the Investment "Advisor" doing recommending and placing over 80% of our total of 3-RRIF portfolios in **long term risky equity mutual fund investments. In addition, recommending that we purchase these investments on a DSC basis that increased the redemption liability costs if there was a necessity to make an early redemption before we reached the age of 79 ?** There is something wrong here, the Dealer Supervision and Compliance Department could see nothing inappropriate. There is another problem here. When the complaint was submitted to IIROC, some way or other they did not seem to consider that these were unsuitable and appropriate investments. If, in the eyes of IIROC these were suitable investments, where does one draw the line on unsuitability ? With this level of IIROC permissiveness, no wonder complainants become frustrated with the IIROC complaint recognition process.

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I recommend that a compliance sweep of dealer complaint handling practices be part of the 2015-2016 work plan. There are many other regulatory issues facing small investors but I believe these are among the most important for retail investors.

In a April 20, 2015 column entitled **How mutual fund salespeople in Canada who lie, cheat and steal from clients are escaping justice** Financial Post financial journalist Claire Brownell describes the results of his investigation into "advisor" wrongdoing. In the period 2013–14, the amount the MFDA claims was stolen by salespeople ranged from $3,500 to $11.6 million. The representative in the latter case, Toronto's Paul Yoannou, was one of the three who were criminally charged. Yoannou was sentenced to six years in prison last year after pleading guilty.

The Post's investigation restricted its scope to cases that appeared to constitute crimes, as defined by the Criminal Code, and where it appeared that the representative should have reasonably known the behaviour would harm victims or amount to improper personal gain. Not included, for instance, were cases where mutual fund salespeople were found to have forged client signatures for the sake of convenience; but the investigation included several cases where the MFDA found representatives falsified information to get around limits on highly leveraged — and handsomely commissioned — investments.. Between 2013 and 2014 there were an additional 12 cases where mutual fund salespeople "misappropriated" client funds, as the MFDA calls it.

A common method the salespeople used was to incorporate a company with a misleading name and get clients to make cheques out to it, thinking the money would be used to purchase securities. Because MFDA decisions are not backed by the same enforcement authority as a court of law, of the $12,372,500 in fines and costs levied against the 20 mutual fund salespeople disciplined in the cases between 2013 and 2014, only $20,000 has so far been repaid. In the column, Shaun Devlin, the MFDA's head of enforcement, is quoted as saying that the regulator has asked provincial securities commissions for the power to enforce fine payment by non-members — or, more to the point, ex-members — but so far, it has been to no avail. I strongly **recommend** this as a 2015-2016 priority. If that cannot be done, then regulators should make dealers responsible for unpaid fines of its representatives. This would help bring back trust in the system and in its regulators.

Recommendation #8 - OSC should immediately perform an in-depth examination of the way IIROC uses its discretion to take action on only some investor complaints, while at the same time it can indiscriminately reject, for its own convenience, other legitimate investor complaints. IIROC has openly declared to me that *"IIROC uses its discretion in determining the most appropriate cases to pursue in order to ensure the most responsible use of our (IIROC) resources".*

I would like to see under its charter how IIROC are permitted to indiscriminately use this said discretionary principle, especially when there is a demonstrated evidence of violations of Regulatory Rules, etc. by a registered Investment "Advisor" employed by an Investment Dealer.

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This raises the question of a possible conflict of interest when the aforementioned IIROC discretion declaration takes precedence over the interests of a legitimate investor complaint.

Also related to this issue is the hierarchical dissuasion process used by IIROC whereby a **Senior Case Assessment Officer** authors a November 21st 2011 complaint rejection letter which includes an invitation for the complainant to ask questions. When the complainant asks questions, the response is elevated up the line. The response comes from the **Manager, Case Assessment, Enforcement.** Questions are then asked of this next person and the response comes from a further higher level **Senior Complaints & Inquiries Specialist,** Then, on account of the continuing twisted responses from IIROC, questions are raised with this person. The IIROC response is then escalated up one more level in the chain of command to the **Director, Case Assessment, Complaints & Inquiries.** The response from this person was so unbelievable it prompted further leading questions. That is when the next response dated January 28th 2014 came from the **ex-Vice-President, Registration, Complaints & Inquiries.** Copies of both the IIROC original November 21st 2011 complaint rejection letter and the January 28th 2014 V-P letters are being sent to you via Canada Post..

The purpose for providing the forgoing information is to show that certain IIROC staff members should not be free to make statements that, when challenged, are not responded to with facts to support their statements. Rather, they hope to silence the complainant by bringing in a higher person of authority. This policy should not be allowed. Either the evidence of violations provided by the complainant should be refuted or contradicted by IIROC or accepted as a fact.

Here is the evidence to support this #8 Recommendation.
Rather than going in to a long explanation for my #8 Recommendation, I am separately sending to you via Canada Post, a copy of the 7-page January 28th 2014 letter I received the fifth person in IIROC, the **Vice-President Registration, Complaints & Inquiries.** This person departed from IIROC shortly after sending the said letter. Enclosed will also be a copy of the IIROC original November 21st 2011 complaint rejection letter.

This V-P letter claims to be a review of our complaint file but it totally avoids refuting or contradicting any of our written allegations and evidence of where the Dealer and its employees violated Regulations. The said letter also ignores addressing our criticism of the explanations and rationalizations put forward in the ensuing communications by the four lower levels of IIROC staff, when they sought to justify their reasons for not taking action to enforce the Regulations.

In response to this IIROC V-P letter, I am sending you a draft copy of my 26-page letter dated May 5th 2014 which was to be delivered to IIROC, but was never sent after we were informed that the V-P was no longer employed by IIROC. It is important that OSC take an unbiased examination of the facts included in this letter. The facts speak for themselves.

The first page alone lists the CSA, OSC and IIROC Rules, Regulations and Guidelines that were violated by the Investment Dealer employees. There are other references on later pages.

#8 Continued. . . . . .

The fundamental IIROC explanation for not pursuing our complaint against the Investment Advisors and the Investment Dealer was because IIROC said in their original November 23rd 2011 rejection letter that there were no violations of the Regulations. As you will discover, there is no truth to this illusion. The inadequacy of the explanations and rationalizations in the letter speak for themselves.

Going back to the IIROC ex- Vice President letter. The letter illogically defends the four lower levels of IIROC employee explanations for not pursing our complaint. In permitting this discretionary principle to go unchecked, this IIROC act is an outrageous repudiation of their responsibilities, which is supposed to protect the interests of all defenceless investors (not just the most victimized) who have been abused by the acts of greedy Investment Advisors and their Investment Dealer employers.

In light of my experiences, the fact that the V-P is no longer with IIROC does not change my view that the oversight of the competence of the IIROC Management needs to be seriously examined by the OSC.

My 26-page letter to the exited IIROC V-P makes detailed reference to our original complaint about the conduct of the Investment Dealer and its employees. More over, my response letter dissected the twisted explanations of where the 7-page V-P letter tried to extinguish my complaint about the way IIROC had continued to defend their decision not to take enforcement action on our complaint. The nature of the responses received from the five levels of IIROC management, have done nothing but to confirm that my allegations that our complaints have been ambushed.

Reference to the OSC 2015 -- 2016 Regulatory Goals -

Overall, the proposed priorities appear to address most key investor protection issues and particularly the proclamation -

1. Deliver strong investor protection -- The OSC will champion investor protection, especially for retail investors

I would be pleased to discuss my comments and recommendations with you in more detail at your convenience.

I agree to public posting of this Comment Letter.

Sincerely,

Peter Whitehouse