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May 9, 2016

Robert Day  
Senior Specialist, Business Planning  
Ontario Securities Commission  
20 Queen Street West 22nd Floor  
Toronto, Ontario M5H 3S8

Delivered by email: [rday@osc.gov.on.ca](mailto:rday@osc.gov.on.ca)

Dear Mr. Day:

**OSC Statement of Priorities Draft for Comment 2016-2017**

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on the OSC's *Draft Statement of Priorities*.

IFB is a national, not for profit, professional association representing approximately 4,000 licensed financial advisors across Canada, and has done so for over 30 years. Our members are independent, in that they are able to offer clients a choice of products and services related to more than one company. We do not represent company/bank employees, or advisors who work in an exclusive relationship with one company.

Many IFB members are dual-licensed – most frequently for mutual funds and life/health insurance, although many hold other complementary financial licenses such as securities, mortgages, general insurance, etc. The majority of IFB members are licensed in Ontario. Therefore, changes affecting the retail financial environment contemplated by Ontario's government or regulators, can directly affect their businesses.

Our comments are focused on the OSC priorities most relevant to our membership.

IFB supports the OSC mandate "to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets". Ontario is a critical hub for the financial services industry in Canada. Achieving regulatory balance is challenging in an ever-increasing complex and diverse marketplace.

Increasingly, we see greater market consolidation leading to a smaller number of large, integrated financial firms. Competition in the marketplace has been reduced through the exit of smaller financial firms who cannot remain viable. In our view, consumers also lose in this scenario. Healthy competition is integral to affordable choice.

The U.K. has identified this as a priority, and created the UK Competition Network - an alliance of various regulators, including the FCA. The Network has a defined duty “to promote competition in the interests of consumers – recognizing that stronger competition across the whole economy is preferable for consumers”.<sup>1</sup> IFB was founded on the principle of choice, and it continues to be relevant today both for advisors who want to provide clients with access to a variety of products, and for clients who seek financial advice. Lack of competition will lead to less affordable and choice in providers of financial advice for consumers.

#### Goal 1 – Deliver strong investor protection

IFB agrees that investor interests should be aligned with the advisor’s such that recommendations are appropriate to that investor’s circumstances. In fact, IFB members must annually affirm their commitment to the IFB Code of Ethics, which states as its first principle that the interests of the client must be placed above that of the advisor. We recognize, however, that this is not a statutory duty and does not have application across all advisors.

Much of the discussion in support of implementing a best interest duty has revolved around protecting more vulnerable investors, who are more dependent on the financial advice received. Under current legislation, the advisor may well be found to have a fiduciary duty under such circumstances and, indeed, case law supports this. The courts have not been loath to apply a fiduciary standard in cases where it has been warranted. Imposing a single standard on all accounts, however, does not recognize the many other types of relationships that can exist between dealers/advisers and their clients. Therefore, we prefer the approach taken by Canadian regulators to-date that has bolstered investor protection, (most recently through the CRM and CRM2) and providing, in practice, many of the benefits of a best interest requirement, while not mandating a single standard across all financial advisory platforms.

IFB has not been a proponent of a statutory best interest duty (SBID) as we remain concerned that by not differentiating between the various levels of service, or advice, investors may need or want, it will lead to a regime that will make access to financial advice more complex and costly. In addition, how a SBID would be applied in dispute situations remains unclear.

We believe a preferable approach lies in initiatives like:

- i) Full implementation of CRM2 to improve investor understanding through better disclosure, and account level information on their cost of investing,
- ii) Education by regulators and the industry so consumers know how to access information on whether the advisor and firm is licensed, in good standing (as well as those with a disciplinary history), and more plain language documentation, and
- iii) Enforcement measures that will more quickly identify and remove or sanction those individuals and firms who engage in unethical or illegal activities.

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<sup>1</sup> <https://business-plan-2016-17.the-fca.org.uk/1-our-role>

We note that even amongst provincial securities regulators there is no agreement that a SBID is preferable, as evidenced by the recent release of the CSA's Consultation Paper 33-404. If Ontario pursues a stand-alone SBID, it will create an uneven experience for investors which is based on their province of residence rather than the advice received, and lead to serious complications for the many advisors and firms that are licensed in more than one jurisdiction.

We agree with a number of provincial securities commission's reservations on establishing a SBID and the need to do so now. Many improvements have been introduced which should be allowed to be implemented and evaluated before developing a policy recommendation.

Similarly, we believe the key to a better investor experience is better disclosure of compensation and fees, not an outright ban. Commissions assist in keeping the investment experience affordable for a wide array of consumers, who may not have access to professional advice if this form of compensation is banned.

We agree that finding opportunities to achieve better investor outcomes, with specific focus on senior and vulnerable investors, should be a priority. IFB, along with other associations and regulators, has increased our educational efforts to help advisors better recognize such situations and know when to seek assistance from other professionals. We also support recommendations arising from other reviews in Ontario, that there should be better clarity around the use of titles by those providing financial advice, so consumers are better able to identify what licenses are held and any restrictions on those licenses.

IFB believes mandatory errors and omissions insurance and continuing education are major contributors to investor protection, and we are pleased that the MFDA has committed to pursuing both. E&O is an effective alternative to expensive legal recourse and can provide investors with restitution in many circumstances. CE and E&O are recognized components of most professional regimes, and is already in place for securities and insurance licensees. Mutual fund advisors should be subject to an equivalent standard.

#### Goal 2 – Deliver responsive regulation

We agree with the OSC statement that an 'evidence-based approach' is critical to effective policy development and regulatory oversight, and it is crucial to track and understand the impacts of OSC regulatory actions. With this type of approach, unintended negative consequences can be identified and addressed early on in the policy development and regulatory process.

In conjunction with the evidence-based approach, we believe it is prudent to analyze and consider the results of CRM2 and point of sale initiatives, as well as the other research conducted by industry and regulators, as part of the process. Firms and advisors alike have invested significantly in education, systems development, and training to meet their requirements. Allowing full implementation provides the opportunity to identify strengths and weaknesses that can then be addressed more effectively and efficiently through more targeted reforms.

As Ontario has concurrent reviews underway considering the regulation of financial planning and the FSCO, DICO and FST mandates. It is important that any future action by the OSC be considered and coordinated with these separate initiatives so as not to lead to confusion, duplication or inconsistency in policy development or regulatory direction.

#### Goal 3 - Deliver effective compliance, supervision and enforcement

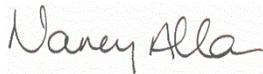
As mentioned previously, education and timely enforcement are important contributors in reducing risk for investors. Active enforcement against fraud, often conducted by otherwise unregulated individuals and firms, is important to maintaining confidence in Ontario's capital markets. The OSC has a valuable role in educating the public about these risks, including recognizing red flags and other signs to look for to help consumers to avoid becoming a victim of such activity.

IFB supports such education initiatives by regulators. Consumers should have a centralized, easily accessible source for educational tools and information.

In conclusion, IFB looks forward to working alongside the OSC, and other financial regulators, on these and other opportunities that will further the public's confidence in the investment industry.

Please contact the undersigned, or Susan Allemang, Director Policy & Regulatory Affairs (email: [sallemang@ifbc.ca](mailto:sallemang@ifbc.ca)) should you have questions on our comments.

Yours truly,

A handwritten signature in cursive script that reads "Nancy Allan". The signature is written in black ink on a light-colored background.

Nancy Allan  
Executive Director  
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