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Dear Mr. Wetston,

We attach the 2011-2012 Annual Report of the Investor Advisory Panel. The Panel continues to be firmly committed to representing investor interests in the policy-making process. In this Report, we highlight the many ways in which our commitment has taken shape. We also suggest certain reforms to the terms under which the Panel operates.

We look forward to hearing from you.

Sincerely,

The Investor Advisory Panel

Anita Anand, Nancy Averill, Paul Bates, Stan Buell, Lincoln Caylor, Steve Garmaise and Michael Wissell

**The 2011-2012 Annual Report of the
Ontario Securities Commission's
Investor Advisory Panel**

August 31, 2012

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1. INTRODUCTION

a. Background

The Investor Advisory Panel (“IAP” or Panel”) is an independent body formed by the Ontario Securities Commission in August, 2010. Our mandate is to represent the views of investors during the rule and policy development process. We provide written input on the Commission’s policy initiatives, including proposed rules and policies, as well as the annual Statement of Priorities, concept papers and specific issues. We also seek to engage with investors and consult with advocacy groups and other professionals in order to strengthen our feedback to the Commission.

Monthly meetings. The Panel meets monthly, either in person or by conference call. During the 2011-2012 year, we met 12 times. During our meetings, we discuss upcoming submissions and plans for outreach and consultation. Commission staff and others are often present at our meetings to discuss specific initiatives. We continue to reach decisions by consensus, and maintain frequent contact between meetings to develop and review our submissions and to discuss securities law developments, outreach, and other relevant issues.

Transparency. Transparency is an important principle underlying the Panel’s activities. We publish the minutes and agenda of each of our meetings on our webpage, which also includes member biographies, a description of our activities, links to past submissions, and information about the Panel’s initiatives. We also publish letters from the public that we receive from time to time and in response to specific requests for investor feedback. The Panel’s Terms of Reference and other foundational documents are also accessible from our webpage.

Independence. Independence is the second key principle underlying our work. While we maintain open channels of communication with Commission staff, we conduct all of our activities, including our deliberations, decision-making, and the formulation of our submissions without any direction or influence from the Commission. It is important that the Panel continue to operate independently from the Commission, including from the Office of the Investor (OTI) once it is established.

b. Consultations

In order to assist us in fulfilling the terms of our mandate, the Panel regularly consults with outside professionals, such as financial and legal experts and other investor advocacy bodies. These consultations further our understanding of investor issues and assist us in drafting our submissions. Information about others’ experiences, in particular in the U.S., the U.K., and other developed markets, helps us to better gauge the strength of securities regulation in Ontario and thereby improve our recommendations to the Commission.

Consultations with the Commission. Our access to Commission staff and resources has improved in response to our call for greater contact and communication with the Commission in our Annual Report last year.¹ Commission staff have frequently presented at our meetings and have contributed to the planning of our deliberative engagement process, which we discuss below. Both sides benefit from these less formal exchanges. They allow Panel members to deepen our understanding of specific issues and provide OSC staff with feedback from retail investors' perspective. Specifically, we benefitted from discussions with individuals from the Commission's Enforcement, Compliance & Registrant Regulation, Corporate Finance, and Investment Funds branches regarding upcoming submissions and provided feedback to staff about specific initiatives including those that we did not formally comment upon.²

Consultations with other professionals. In March, 2012 the Panel convened a roundtable with nine individuals with expertise in securities law and investor advocacy to discuss issues facing Ontario investors. Discussion topics included the responsibilities of financial advisers to their clients, developments in securities regulation and consumer protection, enforcement of securities act violations, corporate governance issues, and the role of the Commission, the IAP, and, going forward, the OTI in protecting and providing a voice for investors.

The Panel also spoke with the heads of the Office of Investor Education and Advocacy for the U.S. Securities Exchange Commission and the U.K. Financial Services Consumer Panel in March of this year. The discussion yielded valuable information about the operation, funding, activities and priorities of these organizations, and about regulatory developments including the introduction of a fiduciary standard for financial advisers in the U.S., U.K., and other developed markets.

In April, 2012 the Panel met with the Ombudsman and CEO of the Ombudsman for Banking Services and Investments (OBSI) to discuss the challenges facing OBSI following the withdrawal of a second bank and the undermining of the public ombuds service model. We also met with the entire staff of The Foundation for Advancement of Investor Rights (FAIR) Canada at this time to discuss the Commission's 2012-2013 draft Statement of Priorities, the possibility of information sharing between FAIR and the IAP, and other issues such as limited funding for retail investor representation. The principal founder of Democracy Watch attended our May meeting to discuss the history of consumer advocacy in Ontario and Canada as well as methods of outreach and fundraising for investor advocacy bodies.

Topics for public comment. The Panel sought public input in March, 2012 to identify investor concerns and provide data to support our submission on the draft Statement of Priorities. In addition to the annual Statement of Priorities, we requested feedback regarding:

¹ IAP, "Annual Report of the Investor Advisory Panel" (August 31, 2011).

² Minutes from these meetings are available online at:
http://www.checkbeforeyouinvest.ca/en/Investors_iap_meeting-agenda-minutes_index.htm.

- Fiduciary duties and education requirements for investment dealers/advisers;
- Point of sale disclosure for mutual fund purchases and ongoing cost and performance disclosure obligations of registered dealers/advisers;
- Investor protection measures;
- Retail investor representation;
- Restitution/compensation for investors harmed by securities act violations;
- Enforcement, including whistleblowing rules;
- Corporate governance and shareholder democracy issues;
- The Commission's 2012-2015 Strategic Plan; and,
- Ombuds services for consumer financial complaints.

We received 10 written submissions from the public, many of which are published on our webpage. While we did not respond to every submission given resource constraints, a number of issues raised in these submissions were brought forward in our response to the Commission's draft Statement of Priorities.³

Reaching out to investors. Investor outreach is a significant part of our mandate and an explicit requirement under the IAP's Terms of Reference.⁴ Our budget is limited, which impairs our ability to plan and implement meaningful outreach projects. Last year, we organized four retail investor focus groups and commissioned the Brondesbury Group to provide a report analyzing the data from this initiative.⁵ This year, we organized a deliberative engagement process as our main outreach project. Because the scale of this initiative exceeded our budget, it required partnering with the Investor Education Fund (IEF) and the Commission, as well as a lengthy approval and Request for Proposals process.

Webinar and social media. As an interim measure, the Panel organized a webinar to solicit public input regarding the Commission's policies and the annual Statement of Priorities. The webinar was unfortunately hampered by technological issues. Our Chair followed up individually with a number of participants, by email and telephone, which produced some useful feedback, albeit less than we had planned for. The Panel has also set up a Facebook page to supplement our webpage on the Commission's website.⁶ This page serves as a secondary platform for investors to access information about the IAP's activities; it includes links to our submissions as well as current notices and initiatives.

Deliberative Engagement Process. The Panel has planned a major research initiative (a "deliberative engagement process") that is being implemented in collaboration with the

³ For these submissions, see: <http://www.checkbeforeyouinvest.ca/en/35820.htm>.

⁴ IAP "Terms of Reference" (revised, adopted August 2, 2012) ("Terms of Reference"), online: http://www.osc.gov.on.ca/en/Investors_iap_20120802_terms-reference.htm.

⁵ See Report of the Brondesbury Group for the Investor Advisory Panel, "Focus Groups with Retail Investors on Investor Rights and Protection," (April 7, 2011) Appendix A to IAP, "Re: OSC's Notice 11-765 Statement of Priorities for Fiscal Year ending March 31, 2012" (April 27, 2011), online: http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20110427_11-765_ananda.pdf.

⁶ Online at: <https://www.facebook.com/pages/Investor-Advisory-Panel-Ontario-Securities-Commission/275376659213543>.

IEF and funded by the Commission. The purpose of the initiative is to involve the public in the identification of investor issues through an online and in-person deliberative process. The theme of the consultation is “How can investors best be protected?” Back-to-back deliberative fora will be conducted with key internal stakeholders (the Commission, IAP, and IEF) and with members of the public both in-person and online to investigate and render empirical data on this issue. Ascentum Incorporated, which specializes in stakeholder engagement, will manage the engagement process and provide a formal report to the IAP and the IEF at the conclusion of the study. This research will assist us in developing recommendations for a stronger investor protection regime.

c. Submissions

The Panel has increased its productivity this year. We drafted six formal submissions addressing cost and performance disclosure for investment dealers/advisers, venture issuer regulation, point of sale disclosure, enforcement, the exempt market, and the OSC’s draft Statement of Priorities. We also drafted an open letter to Commission Chair Howard Wetston commenting on developments with OBSI. At the time of preparing this Report, we are also drafting two comment letters to be submitted in early September. We summarize all of these submissions below.

(i) Cost and performance disclosure

On September 23, 2011, the Panel responded to the Commission’s request for comments regarding proposed amendments to cost disclosure and performance reporting in NI 31-103.⁷ We expressed strong support for this long overdue initiative crucial to redressing the information imbalance between investors and their advisors. We recommended that:

- Cost disclosure should be of total costs to the investor and presented in dollar (not merely percentage) terms;
- The annual performance and cost statement should be combined in a single annual statement, which would be more meaningful to investors;
- Performance reporting should be standardized to make it easier for investors to compare investment products;
- The adoption of benchmarks in performance reporting is important to deepen investor understanding, but complicated. It requires further study; and,
- The proposed two-year implementation period for the amendments is too long; a one-year timeframe would be sufficient.

The Canadian Securities Administrators (CSA) have since published a second request for comments on the issue of cost disclosure and performance reporting by registered dealers/advisers, to which we look forward to responding.⁸ Our proposed submission is outlined in part (ix) of this Section.

⁷ IAP, “Re: OSC Notice and Request for Comments re Proposed Amendments to National Instrument 31-103: Cost Disclosure and Performance Reporting” (Sept. 23, 2011) (“IAP re: Cost and Performance – 1st Request for Comments”).

⁸ OSC, “Notice and Request for Comments on Proposed Amendments to NI 31-103 Registration

(ii) Venture issuers

On October 27, 2011 the Panel commented on the CSA's proposal to reduce the disclosure and corporate governance obligations of venture issuers under NI 51-103.⁹ The Panel supports the goal of reducing the costs of reporting and therefore also of capital raising for small/junior companies. However, we are concerned about any weakening of the regulatory and reporting regime for venture issuers, for the following reasons:

- The absence of a cost-benefit analysis justifying the proposed amendments;
- There is already limited analyst coverage and public information about small issuers; reduced reporting and governance obligations for these companies will compound the issue;
- Rigorous disclosure requirements are an important constraint to small and medium sized companies among which fraud is already more prevalent; and,
- Rather than eliminating certain requirements, smaller steps may achieve the same objective with less impact on investor protection.

(iii) Point-of-sale

On November 10, 2011 the Panel commented on Stage 2 of the Commission's point-of-sale (POS) disclosure regime for mutual funds.¹⁰ We affirmed our support for the initiative and endorsed its rapid extension to other investment and financial products regulated by the CSA and other regulatory bodies. We raised the following concerns regarding the Fund Facts and delivery requirements:

- Removal of the simplified prospectus delivery requirement is premature until the current Fund Facts document is improved;
- Risk measurement in the Fund Facts is vague and needs improvement. It should also be standardized so as not to confuse or mislead investors;
- The Fund Facts reads like a sales document in certain areas and lacks clear language;
- Enforcement and penalties for non-compliance need to be considered to ensure accountability; and,
- Investors would benefit from earlier implementation of the initiative.

The Panel met with Director Rhonda Goldberg and members of the Investment Funds

Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations" (June 14, 2012), online: http://www.checkbeforeyouinvest.ca/en/SecuritiesLaw_rule_20120614_31-103_proposed-amendments.htm.

⁹ IAP, "Re: Notice and Request for Comments re Proposed Amendments to National Instrument 51-103: Ongoing Governance and Disclosure Requirements For Venture Issuers" (October 27, 2011).

¹⁰ IAP, "Re: Notice and Request for Comments re Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds – Proposed Amendments to NI 81-101 Mutual Fund Prospectus Disclosure, Form 81-101F3 and Companion Policy 81-101CP Mutual Fund Prospectus Disclosure and Consequential Amendments" (November 10, 2011).

branch in June, 2012 to discuss changes that had been made to the Fund Facts in light of feedback from the IAP and other investor advocates earlier this year. A wide-ranging discussion of risk measures took place. We heard that our input led to a more investor-friendly design for the Fund Facts document, including layout changes that highlight potential sales charges and place a greater emphasis on risk on the first page of the document. We are pleased that the Commission affirmed its plans to extend the Fund Facts initiative to other types of funds as well as scholarship plans in its 2012-2013 Statement of Priorities. We plan on submitting a comment letter responding to the Stage 2 proposal, details of which are outlined below, and look forward to commenting on Stage 3 of the POS initiative in 2013.

(iv) OBSI

On February 1, 2012 the Panel sent a letter to OSC Chair Howard Wetston regarding the OBSI controversy.¹¹ The letter emphasized the importance to Canadian consumers of an independent ombuds service, such as OBSI, and provided high-level recommendations about how this service could be improved. Our foremost recommendation was that participation in an independent and binding External Dispute Resolution (EDR) service should be a legal requirement for all firms in the financial services industry, banks included. Unfortunately, the Federal government has since responded to industry pressure and opened the door to private, for-profit EDR providers. In effect, banks may choose their own mediator to resolve consumer complaints and OBSI is precluded from investigating systemic complaints against these companies. We regret that the Federal decision weakens consumer protection in Canada.¹²

(v) Enforcement

The IAP responded to proposed amendments to the Commission's enforcement regime on January 16, 2012.¹³ We commented that on balance the proposed amendments were not in investors' interests and raised specific concerns about no-contest settlements, as well as the continued absence of an explicit restitution power by the Commission, the need for whistleblowing rules, and issues arising from the lack of national coordination of enforcement policies.

We are pleased that the Commission has amended its 2012-2013 Statement of Priorities

¹¹ IAP, "OBSI Comment Letter" (Feb. 1, 2012).

¹² See e.g., Barry McKenna, "Banks will win, customers lose under Flaherty's new spat-resolution rules," *Globe and Mail* (July 16, 2012) online: <http://m.theglobeandmail.com/report-on-business/banks-will-win-customers-lose-under-flahertys-new-spat-resolution-rules/article4418026/?service=mobile>; Theresa Tedesco, "OBSI disappointed Ottawa to allow banks to hire own mediators, 'respects' decision," *Financial Post* (April 30, 2012) online: <http://business.financialpost.com/2012/04/30/obsi-disappointed-ottawa-to-allow-banks-to-hire-own-mediators-respects-decision/>; FAIR Canada, "Ottawa's Proposed Regulations for Banking Complaints Fall Short," (July 09, 2012) online: <http://faircanada.ca/top-news/ottawas-proposed-regulations-for-banking-complaints-fall-short/>.

¹³ IAP, "Re: OSC Staff Notice 15-704 – Request for Comments on Proposed Enforcement Initiatives" (Jan. 16, 2012).

to focus on providing restitution for investors in the coming year.¹⁴ Information about the status of whistleblowing rules and availability of no-contest settlements would also be welcome.

(vi) Minimum Amount and Accredited Investor Exemptions

The Panel submitted its response to the CSA's proposed review of the minimum amount and accredited investor (AI) exemptions on February 29, 2012.¹⁵ We commented that this review should be more comprehensive and should include a review of resale rules that are complex and confusing for investors. Introducing a fiduciary obligation for advisers, one of our main recurring themes, would greatly simplify regulation of the exempt market.

Minimum Amount Exemption

A single dollar amount is an inappropriate proxy for investor sophistication and discourages diversification. We believe that the best approach would be to repeal the minimum amount exemption entirely. Short of this, the amount should be increased significantly and additional requirements such as independent professional advice and a signed risk acknowledgement letter should be considered.

Accredited Investor Exemption

This exemption is more nuanced than the minimum amount exemption, however existing proxies are largely financial. We suggested that current asset and income thresholds be increased; that investors' primary residence be excluded from the net asset test; that the size of a particular investment be proportionate to investors' net worth; and that educational requirements be considered. In addition, we recommended that investors' AI status should be certified by senior executives at vendor firms and that investors should be required to consult with third-party (i.e., uninterested) financial professionals prior to investing in exempt market products.

The Panel supports the Commission's renewed focus on the exempt market as indicated in the annual Statement of Priorities, as well as the establishment of an ad hoc committee to review the current exemptions.¹⁶ We hope that the objective of this study is to ensure investors are qualified to invest in the exempt market and receive appropriate advice about the risks of doing so, and not merely to consider whether access to and "participation [in the exempt market] should be broadened."¹⁷

¹⁴ OSC Notice 11-767: http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20120628_11-767_sop-fiscal-2012-2013.htm ("Final SOP").

¹⁵ IAP, "Re: CSA Staff Consultation Note 45-401 – Review of Minimum Amount and Accredited Investor Exemptions – Public Consultation" (February 29, 2012).

¹⁶ Final SOP, *supra* note 14; OSC News Release, "Ontario Securities Commission expands its review of prospectus exemptions" (June 7, 2012), online: http://www.checkbeforeyouinvest.ca/en/NewsEvents_nr_20120607_osc-expand-prospectus-exemptions.htm.

¹⁷ The Commission reported that it received 108 written comment letters on this issue: *ibid.* In considering themes raised by these submissions, the Commission would do well to consider the proportion of industry-sponsored input compared to feedback from retail investors and investor advocacy bodies.

(vii) 2012 - 2013 Statement of Priorities

Pursuant to our mandate, the Panel submitted its response to the Commission's 2012-2013 draft Statement of Priorities on May 29, 2012.¹⁸

We raised issues relating to the governance, operation, and accountability of the Commission and substantive law. Regarding the former, we commented on:

- The need for systematic performance reporting by the Commission;
- The Securities Act requirement of an independent review of Ontario securities laws every four years;¹⁹ and,
- The governance of the OTI, and the IAP's relationship with this Office.

We also raised the following substantive issues:

- The lack of concrete progress towards the introduction of a fiduciary duty;
- The need for an explicit restitution mechanism;
- Corporate governance standards and review of shareholder democracy issues;
- Reform of the exempt market and oversight of exempt market dealers;
- Limitations periods for securities class actions;
- Regulation of structured products and OTC derivatives;
- Support by the Commission for OBSI; and
- The status of proposed enforcement policies such as a whistleblowing program and no-contest settlements.

We are generally pleased with the final version of the Statement of Priorities, in particular changes which the Commission made in response to our submission and feedback from other investor advocacy bodies such as an explicit focus on restitution under s. 128 of the Act, clearer benchmarks for the introduction of a fiduciary standard, and the commitment to develop clear performance metrics and improve progress reporting on the status of strategic goals and policy initiatives.²⁰ Much work remains to be done, particularly to develop more transparent and measurable objectives for the OSC and to address our central concerns of fiduciary obligations for advisers and practical restitution solutions for investors.

(viii) Point-of-sale – 2nd request for comments

On September 6, 2012 the Panel will submit commentary regarding the CSA's second request for comments on proposed amendments to the Fund Facts document and POS delivery regime.²¹ In this submission we affirm our support for the POS initiative, in

¹⁸ IAP, "Re: Draft Statement of Priorities 2012-2013" (May 29, 2012).

¹⁹ *Securities Act* (Ontario) R.S.O. 1990, Chapter S.5, s. 143.12.

²⁰ Final SOP, *supra* note 14.

²¹ CSA, "Notice and Request for Comment: Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds – Proposed Amendments to NI 81-101 Mutual Fund Prospectus Disclosure, Form 81-101F3 Contents of Fund Facts Document and Companion Policy 81-101CP Mutual Fund Prospectus Disclosure – 2nd Request for Comments," (June 21, 2012).

particular changes that the CSA proposes or has already made in response to the input of investor advocacy bodies, including the IAP. For example, we support the adoption of 1-year GIC as a benchmark for fund performance as well as the CSA's continued efforts to improve risk presentation in the Fund Facts document. The Panel also endorses removal of the requirement to deliver the simplified prospectus to investors as the Fund Facts document has been greatly improved. However, we note ongoing issues with the POS regime, including the absence of a specific plan for enforcement and compliance, delayed implementation of the point-of-sale delivery requirement, and narrow scope of the initiative, which should be extended to investment products other than mutual funds.²²

(ix) Cost and performance disclosure

We are also currently preparing our submission regarding the CSA's second set of proposed amendments to cost disclosure and performance reporting obligations of investment dealers and advisers under NI 31-103,²³ which we will submit on September 14, 2012. Building on our submission last fall,²⁴ the Panel commends the CSA for its resistance to industry pressure to dilute these requirements. We are particularly impressed with the proposed changes to the disclosure obligations of group scholarship funds. The plan to delay implementation of this initiative by another year is disappointing, however, and seems to neglect investors' interests. The Panel also notes developments in other advanced markets such as the European Union, United Kingdom and Australia where regulators are moving to ban third party commissions and impose a legal fiduciary or best interests standard on investment advisers. The CSA's disclosure-based approach to investment charges seems to follow the approach of the Securities and Exchange Commission (SEC)²⁵ in the United States. The key difference is that the SEC is working to implement a uniform fiduciary duty for dealers and advisers, which will supplement and lend strong support to current disclosure requirements.

d. Outreach

Raising the Panel's profile. The Chair and our members were active in promoting awareness of the Panel's activities to enhance its profile in the community. These efforts included:

- On November 1, 2011 Anita Anand and Michael Wissell were panelists at the OSC Dialogue 2011, where they addressed investor protection issues and investor-focused initiatives by the Commission.

²² Which we understand may be addressed as part of Stage 3 of the implementation process, although we urge the CSA to act quickly in this regard.

²³ CSA, "Notice and Request for Comments – Proposed Amendments to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations" (June 14, 2012).

²⁴ IAP re: Cost and Performance – 1st Request for Comments, *supra* note 7.

²⁵ As well as self-regulatory bodies such as the Financial Industry Regulatory Authority (FINRA) that regulates broker-dealers.

- On January 30, 2012 Anita Anand organized a roundtable on securities regulation in Canada following the Reference decision by the SCC; Steve Garmaise attended.
- On February 13, 2012 Michael Wissell attended a roundtable consultation session at the OSC on the CSA's review of the minimum amount and accredited investor exemptions.
- On February 10, 2012 Anita Anand addressed the role of the IAP in improving access to justice at a colloquium organized by the University of Toronto's Centre for the Legal Profession.
- On May 29, 2012, Steve Garmaise attended an industry conference on the value of financial advice.
- On June 13, 2012 Anita Anand discussed the IAP's role in policy development by the OSC at the 14th Annual Compliance & Risk Management Strategies for Portfolio Managers and Fund Managers Summit.
- On July 18, 2012 Anita Anand spoke at the IOSCO Technical Committee VI meeting on credit rating agencies.

Media. The Panel's public profile has grown considerably this year, and there has been extensive media coverage of our activities. A complete list of articles featuring or citing the IAP is contained in Appendix A.

e. Budget and Finances

Remained within Budget. The Panel was incredibly active but stayed within the limited \$50,000 annual budget that the Commission has allocated for research services, outreach, and consultation. As discussed below, our ability to stay within budget is a direct result of the commitment of Panel members to fulfill the mandate of the Panel. Full details of our expenditures are provided in Appendix B.

2. ISSUES FOR CONSIDERATION

a. Overall Funding is Too Low

The IAP's \$50,000 annual budget is a constraint on our ability to do our job properly. Research quality is important and professional research services are an expense that must be considered in establishing our annual budget.²⁶ Similar investor advisory panels in the U.S. and U.K. receive hundreds of thousands in annual funding for outreach and investor education.²⁷ The U.K.'s Financial Services Consumer Panel has several almost full-time members as well as more dedicated support staff.²⁸

²⁶ The webinar is one example of a low-cost method of outreach that we attempted, although this initiative was not ultimately successful.

²⁷ E.g., the U.K. Financial Services Consumer Panel had an annual operating budget of £611,000 for FY 2011-2012, and actual expenditures of £745,000 for this period: U.K. Financial Services Consumer Panel, *Consumer Panel Annual Report 2011/2012 – Appendix 2: Budget and expenditure* (January 25, 2012) at 44 (“FSCP Annual Report”); for information regarding the operating expenditures of the SEC Office of

b. Outreach is Difficult

We have a mandate that asks us to reach out to investors. Yet our ability to conduct in-depth and comprehensive research, and therefore to bring forward issues and produce submissions that fully reflect investor concerns, is undermined by our limited budget. Our efforts, and indeed fulfillment of our mandate, would be greatly improved if the Panel's budget were increased. At this time of change at the Commission, in particular with the formation of the Office of the Investor, much can be done to improve the operation of the IAP by simply providing it with the resources to pursue our mandate effectively.

c. Office of the Investor

A further issue for consideration is the Office of the Investor, which we understand will be formed with a new Director appointed in the near future. The relationship between the IAP and the OTI should be clear from the outset. Under our revised Terms of Reference, the OTI will replace the Office of the Secretary as the liaison between the Panel and the Commission, which implies that the OTI's role is to provide administrative support to the Panel and to coordinate communications with the Commission.²⁹ The nature of this office is extremely important to the IAP: will the OTI act as a gatekeeper or supervisor of the IAP's activities, or as a facilitative intermediary? For example, it is possible that the Panel may at some point comment on the activities and performance of the OTI. Would there be any constraints on its ability to do so? Will the OTI be filled before the Panel begins its second term, or will we continue to work with the Office of the Secretary until the new Office is established? We appreciate the Commission's consideration of these issues and ask that the Panel be kept up to date regarding developments with the OTI during this time of transition.

d. Compensation

Our members have full-time careers and/or other professional pursuits. We note that our compensation is based on a very limited per diem amount at a fraction of what comparable professionals would earn. Members are also restricted in the number of days that may be claimed. These limitations effectively require subsidization of the Panel's

Investor Education and Advocacy for FY 2012 see, e.g., U.S. SEC, *In Brief*: FY 2012 Congressional Justification (Feb. 2011) at 56. Pursuant to § 911 of the *Dodd-Frank Act*, the SEC recently appointed an Investor Advisory Committee (IAC) which has a similar mandate to the IAP, although annual budgetary information for this body is not yet available: see *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, Pub. L. No. 111-203, 124 Stat. 1376 (2010); and, SEC Investor Advisory Committee, *Charter* (draft), online: <http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-charter-061212.pdf>. The predecessor to this Committee had an estimated annual operating budget of \$175,836: see FAIR, Backgrounder – SEC Investor Advisory Committee Prepared for April 6, 2011 Investor Advisory Panel Symposium. See also IAP Conference Call with Individuals from Foreign Jurisdictions (March 9, 2012), minutes online: http://www.osc.gov.on.ca/en/Investors_iap_meeting-agenda-minutes_index.htm (confirming the funding disparity between the IAP and our counterparts in the U.S. and U.K.).

²⁸ See, e.g., Appendix 1 – Consumer Panel Members, FSCP Annual Report *ibid.*

²⁹ Terms of Reference, *supra* note 4. See also OSC, “2012 OSC Annual Report” (2012) at 11, 14.

work to draft comment letters and develop outreach projects by the members of the Panel. The Panel wishes to continue work that it sees as valuable in the policy making process. We ask the Commission to reconsider the funding model utilized to compensate Panel members for their time in order to account more realistically for the time commitment and professional expertise that Panel membership requires.

e. Support

Under its Terms of Reference, the Panel is provided with administrative support. We understand that this person, the Senior Administrator to the Panel, is dedicated to the Panel on a full-time basis and is an employee of the Commission.³⁰ The Administrator has been helpful in taking minutes at meetings and coordinating Panel activities, including liaising with Ascentum in our outreach project discussed above.

However, the current model of support is insufficient. Whether the Administrator is in fact dedicated to the Panel on a full-time basis is unclear to the Panel. A more direct relationship should be established between the Administrator and the Panel so that Panel members are at least aware of the ways in which the Administrator's role benefits the Panel on a day-to-day basis.

A primary responsibility under our mandate is to prepare formal comments on the Commission's policy initiatives, including the annual draft Statement of Priorities, as well as an Annual Report on our activities. The Panel is not provided with any research support other than what it arranges for itself. During our first year, we received pro bono research assistance generously provided by Bennett Jones, LLP. This year, a student at the University of Toronto, Faculty of Law provided part-time research assistance. The Panel Chair facilitated this research given her access as a faculty member to the law school's research assistants.

After two years under the current structure, we believe that the IAP requires consistent and fully-funded administrative and research support in order to operate effectively.³¹ The cost of professional research and drafting services needs to be considered in

³⁰ *Ibid*, OSC Annual Report at 34. Articles 6.1 and 6.2 of the IAP's Terms of Reference (2010) provide that the Office of the Secretary will provide administrative support to the Panel and will arrange facilities within downtown Toronto for meetings of the Panel: Investor Advisory Panel, "Terms of Reference" (April 6, 2010), online: http://www.osc.gov.on.ca/en/Investors_iap_20100406_terms-reference.htm. Such support is intended to be full-time: see "Further Responses to Enquiries on the OSC Investor Advisory Panel" (September 2, 2010), online: http://www.osc.gov.on.ca/en/Investors_iap_20100902_responses-enquiries.htm. ("A full time Administrator is available to act as secretary to the Panel and will support the Chair and other Panel members by facilitating meetings, assisting with the preparation of meeting agendas and minutes and acting as a resource and liaison to other staff at the OSC if requested by the Panel Chair.")

³¹ The Panel was established along the lines of provincial agency in terms of member remuneration according to the Order in Council pay scales but these organizations are usually supported by professional secretariats and member involvement is limited to quarterly meetings. See Government of Canada, "Remuneration Guidelines for Part-time Governor in Council Appointees in Agencies, Boards and Commissions" (Effective October 1, 2000), online: <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=remun1/remun1-eng.htm>

budgeting future IAPs. The current model necessitates ad hoc arrangements which may or may not be available in future years and which threatens the very work of the IAP.

3. LOOKING BACK, LOOKING FORWARD

This September marks a turning point for the Panel, with the completion of our initial two-year mandate. Three of our original seven members, including our Chair, will be leaving the Panel. Four members of the Panel will continue with an additional one or two year term, while the OSC recruits three replacement Panelists. We hope to have a new Chair in place in the early Fall.

The Panel has worked hard over the past two years to fulfill our mandate, to raise our profile in the community and to consult with investors, regulatory staff, and other advocacy bodies to contribute thoughtfully to the Commission's rule and policy development process. Our existence as a Panel is reflective of the Commission's renewed focus on investor protection, and we remain deeply committed to this mandate.

The Office of the Investor is a further step by the Commission towards entrenching the voice of the investor and promoting the public interest in regulatory matters. As we renew our members, we look forward to developing a strong and collaborative relationship with this Office, while maintaining the independence from the Commission that we have enjoyed to date.

In terms of substantive contributions, the renewed Panel will soon determine its new priorities. We will no doubt continue to work to ensure the fulfillment of key objectives, including:

- *Fiduciary duty.* The introduction of a fiduciary duty for financial dealers/advisers *such as already underway or achieved in other developed markets.* In the absence of the introduction of a fiduciary duty, we will seek clarity from the Commission on the precise duty owed by financial service professionals to their clients.
- *Restitution for investors.* The introduction of an explicit, *non-discretionary* restitution mechanism, and whether the Commission makes increased use of its referral powers under s. 128 of the Act as it indicated in its final 2012-2013 Statement of Priorities.
- *Whistleblowing rules.* The Commission committed to researching whistleblowing rules in January: what progress has been made on this issue?
- *Disclosure.* The extension of POS to other types of financial products and continued efforts to clarify and ensure meaningful cost and performance reporting by investment dealers/advisers.
- *An independent ombuds service.* Lending our voice in support of a mandatory structure for dispute resolution despite proposed legislative changes by the Federal government that allow banks to choose their own mediator in consumer financial disputes.

- *Exempt market issues.* Review by the CSA to ensure prospectus exemptions are not being abused, focusing on heightened scrutiny of exempt market dealers and amendment or repeal of certain exemptions as may be required to protect investors.

4. CONCLUSION

This Report summarizes the IAP's activities in its second year since inception. The numerous comment letters that we have submitted is an indicator of our success. Indeed, we have heard from Commission staff and others in the community, including the media and investor advocates, that we have made a valuable and important contribution to the Commission's policy development process.³² We have sought to meet (and indeed surpass) the terms of our mandate, despite limited resources to do so. We hope to build on this momentum in the upcoming year in further collaboration with the Commission, including the OTI once established, and stakeholders in the community.

³² See Appendix A for a list of media references and acknowledgements; see also email from Allan Krystie, June 29, 2012 referring to the IAP's contribution to the Commission's final 2012-2013 Statement of Priorities (on file with IAP); comments to a similar effect were also made during our March 8, 2012 Roundtable, as well as our meeting with representatives of FAIR Canada on April 11, 2012. Minutes from these meetings are available online: http://www.osc.gov.on.ca/en/Investors_iap_meeting-agenda-minutes_index.htm.

APPENDIX A

IAP Media Coverage

1. James Langton, "OSC expands Investor Advisory Panel mandate" *Investment Executive* (August 3, 2012).
2. James Langton, "Legislators must force cultural change in financial services, says UK advocacy group" *Investment Executive* (July 18, 2012).
3. James Langton, "FSCO urged to protect consumers, improve accountability" *Investment Executive* (June 08, 2012).
4. Ben Maiden, "Move Forward on Fiduciary Duty, OSC Told" *Compliance Reporter* (June 1, 2012).
5. IE Staff, "OSC Investor Advisory Panel to host webinar" *Investment Executive* (April 20, 2012).
6. Michael McKiernan, "Regulator at a crossroads" *Canadian Lawyer* (April 2012).
7. Evelyn Juan, "Broker's World Canada: Rule Changes Sought For Prospectus-Exempt Securities" *Dow Jones News Service* (March 19, 2012).
8. "OSC FP says makeup of OSC panel lacks investor friendliness" *Canada Stockwatch* (March 8, 2012).
9. Barry Critchley, "OSC panel to talk priorities" *Financial Post* (March 8, 2012).
10. Janet McFarland, "OSC releases strategic plan for a standalone future" *Globe and Mail* (February 29, 2012).
11. Barry McKenna, "Strengthen banking ombudsman, panel urges" *Globe and Mail* (February 28, 2012).
12. Ellen Roseman, "Investor advisory panel bites back" *Toronto Star* (November 6, 2011).

"The panel's work has exceeded everyone's expectations. It's done an outstanding job,' says Ermanno Pascutto, executive director of FAIR Canada, an investor advocacy group that lobbied for its creation." (Roseman, quoting Ermanno Pascutto, Executive Director of FAIR Canada)

"I'm pleased to see this panel speak out strongly, since I was part of an earlier OSC

effort to speak for investors.” (Roseman)

13. Evelyn Juan, “Broker’s World Canada: Regulators Look At Fiduciary Alternatives” *Dow Jones News Service* (November 23, 2011).
14. Julius Melnitzer, “OSC Investor Advisory Panel Releases Annual Report” *Financial Post* (October 28, 2011).
15. James Langton, “OSC advisory panel wants greater say in policymaking” *Investment Executive* (October 28, 2011).
16. Evelyn Juan, “Ontario Investor Panel Seeks To Ramp Up Fiduciary Discussion” *Dow Jones News Service* (October 28, 2011).
17. James Langton, “Advisory Panel Gains Traction” *Investment Executive* (October, 2011).

“So far, the OSC seems pleased with the IAP’s work. ‘In its first year,’ says OSC chairman Howard Wetston, ‘the IAP has been very active and has provided invaluable feedback regarding investor concerns and our policy-making process. We have a number of investor initiatives underway, and look forward to further engagement with investors through the IAP.’” (Langton, quoting OSC Chair Howard Wetston)

“We are watching the OSC investor advisory panel with interest and hope that it will provide a good foundation on which the [proposed Canadian securities regulatory authority] can build.” (Doug Hyndman, chairman of the Canadian Securities Transition Office)

“We see the OSC’s IAP, and the proposed [national] IAP, as a valuable initiative that will be one of a number of ways to get input from investors to help inform regulation.” (Hyndman)

18. “IAP Submits Cost Disclosure and Performance Reporting Comment Letter” *Canada NewsWire* (September 26, 2011).
19. Jonathan Chevreau, “Regulators considering fiduciary duty standard for advisers and dealers” *Financial Post* (Sept 26, 2011).
20. Michael McKiernan, “Why majority should rule” *Canadian Lawyer In House* (September 2011).

APPENDIX B

Investor Advisory Panel Expenditures F2011 – 2012

Research & Consultation	\$7,635.00
Remuneration	\$51,837.50
Travel	\$2,450.99
Meeting Costs	\$523.87
Training	\$0.00

Total Expenditures: \$62,447.36

Note:

- 1. The Panel is provided with a yearly budget of \$50,000 to facilitate its ability to carry out its mandate through consultations with investors or the procurement of professional services to assist in drafting comment letters (see line 1 of the table above).**
- 2. The Chair and Members are compensated for their time and effort in meeting the Panel's mandate as follows:**
 - a. For attending at meetings of the Panel, \$275 per meeting for members; \$550 per meeting for the Chair of the Panel; up to a maximum of 12 meetings per year.**
 - b. For meeting preparation or post meeting follow up work, \$275 per day for members; \$550 per day for the Chair of the Panel; up to a maximum of 3 days of such work per meeting for members and up to a maximum of 5 days for the Chair.**
- 3. Travel expenses are covered to an estimated maximum of \$30,000 for the Panel per year.**