

# Increasing Investor and Shareholder Engagement

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## Overview<sup>1</sup>

As a financial sector supervisor, you are faced with the continual challenge of administering your regulatory framework with investor and shareholder perspectives in mind. This note provides an overview of how you, as a financial sector supervisor, can create a plan to maximize your engagement with investors and shareholders.

## Assess the Challenge

### Introduction

As a financial sector supervisor, you are continually asked to consider a broad range of views in determining how to set your strategic priorities and undertake different policy initiatives. It is often difficult to identify and bring together views from a range of different investors and shareholders, potentially representing different types of interests, and to incorporate those views into your day-to-day work. In particular, retail investors and minority shareholders may have no obvious advocate for their interests.

In assessing your over-all strategy and day-to-day programs within this context, you are determining the type of challenge that your organization is facing vis-à-vis the investor/shareholder community. Your challenge can take a variety of forms. For example:

- Is your organization trying to better incorporate the views of investors and shareholders into the policymaking process?
- Is your main problem one of lack of compensation for victims of financial scandals?
- Is your organization considering offering recommendations for certain financial products over others, based on a merit review of securities being offered?

In each instance, you must determine: (1) your challenge and (2) does the challenge that you have identified fall within your remit?

To assess your challenge, you must understand the situation that is spurring you to action. Naming the challenge is your most important first step. The problem may be immediate, or it may simply be a temporary source of discomfort at a point in time. Each situation necessitates a unique response. It is absolutely imperative for you to understand the challenge before trying to find a solution.

For example, is your challenge one of protecting investors against financial industry misinformation? Or is it a situation where, in the policymaking process, your organization does not feel that it is incorporating the investor and shareholder perspectives into its analysis? If the former is your challenge, better investor education may be an appropriate solution. If the latter is your problem, an appropriate response may be to consider creating a special body, department or organization to take investor and shareholder perspectives into account during the policymaking process.

In this note, we are making the assumption that your challenge falls into the latter category – that your organization, in order to better protect investors in the long run, is seeking to better accommodate investor and shareholder perspectives within its regulatory process. If one of the primary mandates of

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<sup>1</sup> This note was prepared by Ilana Singer on behalf of Toronto Centre.

your agency is to protect investors, it will be important for you to consider how this link – between investor protection and investor engagement – is perceived in your jurisdiction.

Will it be clear to your stakeholders that, in order to bolster investor protection, it will be important to increase investor engagement? Or will this be a difficult argument to advance? In many cases, this will not be an easy argument to put forward, and evidence of the link may not be easy to obtain. Possible questions to consider are:

- Has there been a problem with investor and shareholder engagement in the past?
- If so, how has the problem manifested itself in your jurisdiction?
- Is this related to investor protection concerns? If so, how?

If you decide that investor and shareholder engagement should be improved in your jurisdiction, you are then faced with consideration of a number of possible preferred outcomes including, for example, creating:

- A paid or unpaid investor advisory committee(s), housed within your organization
- A paid or unpaid investor advisory committee or entity, housed outside your organization.

For any type of investor advisory body, important issues and questions to consider will be:

- The mandate and composition of the body
- How its mandate would fit within any existing administrative processes or legislative requirements
- Will members be tasked with commenting on all published policy initiatives? If so, how that will fit within existing notice, comment and feedback processes?
- Will the body be consulted on general organizational priorities and strategies?
- Will the body be encouraged to set its own priorities?
- Will it be required to report in writing on an annual basis to your organization?

## Preliminary Definitional Matters

### Investor versus Shareholder

In looking at the issue of increased investor/shareholder engagement, there are preliminary definitional issues that should be addressed. For example, in referring to "investors" and "shareholders", are you alluding to institutional investors and/or retail investors? Or are you referring to "investors" for certain purposes, and "shareholders" for others?

In the context of this note, "investor" means the purchaser of securities (the so-called "end user" in a securities transaction) and "shareholder" refers to a person or entity that already owns securities. For the sake of simplicity, when we use the term "investor", we are referring to both investors and shareholders.

### Some Examples of Investor and Shareholder Rights Mandates

In Canada, the Canadian Coalition for Good Governance has focused on advancing the rights of institutional shareholders and investors across Canada since 2003. However, there was no well-funded, non-governmental national voice for Canadian retail investors until FAIR Canada (the Canadian Foundation for Advancement of Investor Rights) was created in 2008.

FAIR Canada was originally established to advance the interests of both investors and shareholders (see the discussion in the next paragraph regarding the distinction between the two terms). However, it became clear after the first year of operation that there was a greater need in Canada for a voice of retail investors. As a result, the focus of FAIR Canada's work has shifted to principally focus on issues affecting retail investors, including: high fee mutual funds, effective dispute resolution mechanisms for retail investor complaints, compensation for victims of financial crimes, improving the financial client-advisor relationship, and increasing the effective representation of retail investors in securities regulation. See Appendix A for a list of FAIR Canada's 2011 strategic priorities.

Another salient example in Ontario of an initiative to increase investor engagement in securities regulation was the creation of the Investor Advisory Panel (the IAP) in August 2010. That panel, created by and housed within the Ontario Securities Commission (the OSC), is representative of both retail and institutional investors. However, much of its focus has been on issues that are of particular interest to retail investors (one example is the IAP's support of an explicit fiduciary obligation for all advice-giving financial professionals/salespeople). See Appendix C for a copy of the IAP's terms of reference.

In the U.K., there are separate retail and institutional investor panels. Notably, there are three statutorily mandated advisory panels that advise the U.K. Financial Services Authority (the FSA). The first is the U.K. Financial Services Consumer Panel (the U.K. FSCP). It focuses on representing the interests of consumers and providing advice to the FSA. The second is the Practitioner Panel, whose key remit is to represent the interests of industry practitioners, and to provide input to the FSA from industry. The third is the Smaller Businesses Practitioner Panel, which represents the views and interests of smaller regulated firms when providing advice to the FSA.

### **Which Area(s) of Regulation Will Be Relevant to Your Initiative?**

It is important to determine whether your initiative will focus primarily on securities regulatory matters, or if you will have a broader mandate. For example, the U.K. FSCP deals with consumer issues in the banking, investment, insurance and mortgage sectors in the U.K. because those are the FSA's areas of regulation. In Ontario and the U.S., the OSC and the U.S. SEC currently focus on securities regulation. Therefore, the IAP (and, previously, the U.S. SEC's Investor Advisory Committee) focused on securities regulatory matters, not on banking, insurance and mortgage issues (even though these topics can be of equal concern to consumers in Ontario and the U.S.).

## **Develop a Solution**

### **Overview of the Steps**

The seven steps involved in developing a solution are as follows:

- Assess the problem (WHY are you embarking on your plan?)
- Identify a preferred outcome (WHERE do you want to get to?)
- Outline the plan (WHAT?)
- Analyze stakeholders (WHO will be affected?)
- Detail the plan (HOW will you reach your goal?)
- Evaluate the plan (WHETHER)
- Prepare a contingency plan (WHAT IF?)

In connection with strengthening engagement with stakeholders such as investors and shareholders, consider how you would fit your analysis into these seven steps. *This note, however, focuses principally on Step 5: Detail the Plan (HOW).*

To move forward on a project aimed at increasing investor and shareholder engagement, it is imperative to first assess why such an initiative is important in your jurisdiction:

- What is the problem?
- Is there evidence of its existence?
- Is it a big enough problem to warrant initiating such a project?
- Can the problem be characterized as a general "investor protection" problem, or can the problem be described more specifically as a lack of investor and shareholder engagement, which then leads to reduced investor protection in your jurisdiction?
- What resources will be needed and how will they be obtained?

It is essential to consider existing statutory requirements when determining how to fashion your initiative. You will need to fit your initiative into your jurisdiction's statutory and other requirements. Before embarking on your project, verify what, if any, requirements exist in your jurisdiction for setting up either a new organization or creating a panel within your agency.

The views of stakeholders also must be taken into consideration. It is important to analyse your stakeholders as you are putting your plan together. Discussions with your stakeholders can help inform the details and different components of your plan.

Finally, it will be helpful to develop a contingency plan at the same time as you are putting your project plan together. You will be able to benefit from your stakeholder analysis and discussions while contemplating different contingency situations, and amend your contingency plan accordingly.

## Develop a Detailed Project Plan

### Identify Each Specific Activity in Your Plan

In formulating your plan, it will be useful to group your activities according to theme within a table or chart, and to have separate columns detailing anticipated timing, resource needs, and whether any particular item is a precondition to a subsequent step in your plan.

For example, if you have decided to create a paid investor advisory panel within your organization, one theme in your overall plan might be the establishment of criteria for and the development of a process for the appointment of Panel members. You will also need to consider whether there are any legislative requirements in this regard.

In the U.S., the *Federal Advisory Committee Act*<sup>2</sup> (the **FACA**) mandates a level of transparency, oversight and accountability for federal advisory committees. The act also:

- Restricts the formation of such advisory committees to only those which are deemed essential
- Limits the term during which any committee may operate
- Mandates that a database that describes Committee fact sheets, reports, expenses, charters and other information be made available to the public.

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<sup>2</sup> 5 U.S.C. Appendix 2. To view an online copy of the act, see <http://www.archives.gov/federal-register/laws/fed-advisory-committee/>.

These requirements were put in place to open the advisory process and advisory committee records to public scrutiny.<sup>3</sup>

In Ontario, although not required to do so by statute, the OSC’s IAP makes the agendas and minutes of its monthly meetings publicly available, and has published an annual report.<sup>4</sup>

## Project Plan Table (Excerpt) - Example

If you decide to create an internal advisory panel in your jurisdiction and wish to focus on the theme of establishing criteria for and developing a process for appointing Panel members, the section of your project plan relating to that theme could contain some of the following elements that document a specific sequence of steps for your plan:

Appointing Members for Internal Investor Advisory Panel				
Number	Task	Deadline	Responsibility	Status
1	Verify legislative requirements with respect to advisory panels, particularly regarding the process for selecting committee members, oversight and accountability mechanisms, budgetary constraints, and transparency requirements.	____, 20__	Mr/Mrs/Ms _____	_____
2	Draft description of criteria for member selection.	____, 20__	Mr/Mrs/Ms _____	_____
3	Determine interview and decision-making process, including timetable, for member selection.	____, 20__	Mr/Mrs/Ms _____	_____
4	Draft advertisement for newspapers, journals and online channels.	____, 20__	Mr/Mrs/Ms _____	_____

## Stakeholder Identification and Analysis

The sequence of steps that you formulate is crucial to the successful implementation of your plan. To strengthen engagement with investors and shareholders, it is key that a detailed stakeholder identification and analysis be one of the first steps described in your project plan. In addition, given the potential resistance that you could encounter, both from within your organization and externally, it is important to ensure that you properly sequence the steps of your plan so that all of these potential obstacles are identified (with corresponding plans to deal with them) prior to plan implementation. You will need separate strategies and communication techniques for each set of identified stakeholders.

<sup>3</sup> See Markham, Jerry W., The Federal Advisory Committee Act (Spring 1974). University of Pittsburgh Law Review, Vol. 35, No. 3, 1974; Florida International University Legal Studies Research Paper No. 10-57. Available at SSRN: <http://ssrn.com/abstract=1706371>.

<sup>4</sup> See [http://osc.gov.on.ca/en/Investors\\_nr\\_20111028\\_iap-annual-rpt.htm](http://osc.gov.on.ca/en/Investors_nr_20111028_iap-annual-rpt.htm).

## Stakeholder Examples

Examples of potentially supportive stakeholders include:

- **Investor Activists and Organizations:** Since your interests will likely be closely aligned, these activist individuals and organizations can be helpful allies in your initiative. Ensure that you work together with them as a team with common goals because, as noted below, it will be important for those individuals and organizations not to feel threatened by your entry into the field.
- **Governments and Governmental Agencies:** There are frequently branches of government that focus on consumer and/or investor issues. From their perspective, having a more formalized, streamlined way of obtaining feedback from the investor community would likely be viewed as a positive development.
- **Non-Governmental Organizations:** It is worthwhile to check whether there are non-governmental organizations (also known as "NGOs") in your jurisdiction whose mandate is to focus on advancing the rights of investors and shareholders. Even if the focus of those organizations is tangentially related to the goals of your initiative, it will be worthwhile to liaise, and ally yourself with, those entities. This will enable you to advance your initiative more effectively, as well as work together on projects where you share common goals.

Universities and other academic institutions: If one of the goals of your initiative is to conduct research in the area of investor and shareholder rights, universities and other academic institutions that house business or law schools will likely be interested in the results of your research. For example, FAIR Canada, through a partnership with York University,<sup>5</sup> organized two roundtables focused on the “fiduciary duty” debate.<sup>6</sup> In addition, FAIR Canada partnered with York University to create an Investor Protection Seminar for York University’s Osgoode Hall Law School.<sup>7</sup>

Examples of stakeholders who might be unsupportive include:

- **Trade Associations:** There will likely be organizations representing interests that are in conflict with the goals of your initiative. They may be worried about how changes to the status quo could affect their bottom line. Despite these differences in opinion, it will be important to have regular discussions with these groups, and to try to work together on issues where you share common goals.
- **Investor Activists and Investor Advocacy Organizations:** It can be difficult for organizations to be accepting of new entrants in the advocacy area, especially if there is a fear that your initiative will use up the majority of available funding. It is important for you to allay these concerns, and find common ground to work together as allies.

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<sup>5</sup> FAIR Canada has a relationship with both the business and law schools at York University through The Hennick Centre for Business and Law.

<sup>6</sup> In Canada, FAIR Canada was instrumental in bringing the debate about fiduciary duties in financial client-advisor relationships to the fore. Simply put, the issue is whether or not financial advisors must put their clients’ interests ahead of their own and their firms’. This is a debate that has been ongoing in Australia, the U.S. and the U.K. for several years. See <http://archive.constantcontact.com/fs070/1102284477892/archive/1103235077660.html> and <http://www.investmentexecutive.com/-/news-57045> for summaries of the issues discussed during the 2010 and 2011 FAIR Canada/Hennick Centre fiduciary duty events.

<sup>7</sup> See [http://hennickcentre.ca/documents/SETOR1-5736280-v1-IPS\\_2011\\_Course\\_Syllabus\\_Outline.pdf](http://hennickcentre.ca/documents/SETOR1-5736280-v1-IPS_2011_Course_Syllabus_Outline.pdf) for the 2011 course syllabus.



## Preconditions

Determine whether certain steps are necessary preconditions for subsequent parts of your plan. As described in the first part of this lesson, to properly determine how to organize your project plan, it is imperative for you identify and build into your plan information about preconditions. For example, if you have decided to strengthen your investor and shareholder engagement by creating and funding an Investor Advisory Panel, it is important to determine:

- Where the funding will come from
- The number of panel members you wish to appoint (paid or unpaid) and term of service
- The criteria upon which you will make selection decisions
- How you will select a Chair
- The number of meetings expected.

These are, for example, all necessary preconditions to creating and posting an advertisement for panel members. One of the most important preconditions to consider will be funding:

- Where the money will come from
- Whether there is a budgetary pre-approval process that must be built into your project plan
- What types of procedures may need to be implemented for the funding to be provided to you, for example the obligation to audit your financial statements
- Other accountability arrangements, such as annual or more frequent reporting (and to whom).

At FAIR Canada, the Investment Industry Regulatory Organization of Canada (IIROC) provided one-time funding of C\$3.75 million, which is intended to cover all operating costs of the organization for several years.<sup>8</sup> The OSC's IAP has an annual budget of C\$50,000, which is intended to cover meeting and research.<sup>9</sup> In the U.K., the FSCP had a budget of £681,000 for the period April 2010 to March 2011. This amount covered, *inter alia*, panel member fees and expenses, research expenditures, and recruitment and meeting facility costs.<sup>10</sup>

## Determine Necessary Resources

Identify the types of resources needed for your project, including: human, legal, information technology, and infrastructure. Determine to what extent these resources will be external or internal.

## Assessing Resource Needs

In assessing your resource needs, it is important for you to consider all of the types of resources you will need for your project. In thinking about this question, you must determine whether these resources are available to you on an internal or external basis. You must also ascertain your specific needs for each type of resource.

For example, with respect to information technology, will a new system need to be built, or will you be able to expand upon already existing IT infrastructure? With respect to human resources, determine the criteria you will use to hire the staff needed to complete the project.

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<sup>8</sup> See <http://faircanada.ca/about-us/background/>.

<sup>9</sup> See page 15 of the IAP's 2011 annual report at [http://www.osc.gov.on.ca/documents/en/Investors/iap\\_20111028\\_annual-rpt.pdf](http://www.osc.gov.on.ca/documents/en/Investors/iap_20111028_annual-rpt.pdf).

<sup>10</sup> See page 36 of the UK FSCP 2010-2011 annual report at [http://www.fs-cp.org.uk/publications/pdf/annual\\_report11.pdf](http://www.fs-cp.org.uk/publications/pdf/annual_report11.pdf).

In the U.S., all expenses of federal advisory committees governed by the FACA must be made public. It is important for you to check into whether any such restrictions exist in your jurisdiction. And an ongoing issue for your organization will be securing a long-term funding source.

Potential funders will be interested in reviewing your business plan, how you intend to spend the money, how you will account for the spending, and whether the funder will have any say in the governance of the initiative.

## **Human Resources – Examples**

In the U.K., a dedicated secretariat recruited and employed by the FSA supports the FSCP. The secretariat team is led by a manager (who also oversees the support provided to the Practitioner Panel and the FSA Board), three policy advisors (two who specialize in domestic financial services issues, and one who specializes in EU/international issues), one relationship/research specialist, one media/communications expert, a chartered secretary, and two administrators.<sup>11</sup>

In Ontario, the IAP has access to limited OSC resources, including staff from the Office of the Secretary. One of the points noted in the IAP's 2011 annual report is the potential benefit to the IAP of having greater access to Commission staff and studies when preparing submissions and conducting research.<sup>12</sup>

## **Define Timing and Preconditions for Each Action**

In order for your plan to work effectively, it is crucial for you to determine both the timing and preconditions for each task. The greater level of detail that you can provide, the better. For example, in the sample segment of a plan noted above under Section 3, the plan was missing an additional column describing whether any particular preconditions needed to be satisfied before the specific task was carried out. That column might contain a description along the lines of the added highlighted column below:

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<sup>11</sup> This information was confirmed by Sue Burness, FSCP Secretariat, on December 30, 2011.

<sup>12</sup> See page 9 of the IAP 2011 annual report at [http://www.osc.gov.on.ca/documents/en/Investors/iap\\_20111028\\_annual-rpt.pdf](http://www.osc.gov.on.ca/documents/en/Investors/iap_20111028_annual-rpt.pdf)

## Creation of Internal Investor Advisory Panel

Appointing Members for Internal Investor Advisory Panel					
Number	Task	Deadline	Responsibility	Status	Is there a necessary precondition to complete before proceeding?
1	Verify legislative requirements surrounding advisory panels, particularly regarding the process for selecting committee members, oversight and accountability mechanisms, budgetary constraints (if any), and transparency requirements.	____, 20__	Mr/Mrs/Ms _____	_____	Yes. Note that this precondition is relevant for all of the tasks described in this table. Discussion with, and approval by, the Executive Committee will be necessary before proceeding with the appointment process. It will even be worthwhile to discuss the initiative with the Executive Committee prior to proceeding with the first task, namely verifying existing legislative requirements (although some knowledge of the requirements will be helpful during your discussions) so that you do not expend too many resources on research, if the necessary approval is not obtained.
2	Draft description of criteria for member selection.	____, 20__	Mr/Mrs/Ms _____	_____	
3	Determine interview and decision-making process for the member selection.	____, 20__	Mr/Mrs/Ms _____	_____	
4	Draft advertisement for newspapers, journals and online channels.	____, 20__	Mr/Mrs/Ms _____	_____	

## Evaluate the Plan

### Plan Evaluation

Evaluating the plan after its finalization is key to its successful implementation. You may also consider engaging in continuous evaluations during the course of implementation, sometimes referred to as ‘mid-course adjustments.’

In order to properly evaluate your plan, it is important to consider whether the timelines you have set for yourself, your staff and your organization are realistic.

- Will you be able to achieve your desired goals on time?
- If achieving your desired goals by specific deadlines is crucial to the plan's success, should you consider additional resources?
- Finally, what are the specific risks (both internal and external) related to implementation of your plan?
- Are there portions of the plan that can be phased in or transitioned to over a period of time based on meeting specified benchmarks or other criteria?

It is important for you to have considered as many risks to your plan as possible, and to have plans in place to handle those identified risks.

It will be worthwhile for you to discuss risks when you meet with stakeholders (both supportive and unsupportive ones). There are numerous risks and issues that you may not appreciate until you speak with your stakeholders.

You may also consider having regular meetings with staff within your agency to discuss implementation of the plan, particularly with respect to risks that you did not foresee at the outset.

It is also worthwhile to check into whether, within your jurisdiction, the same or similar type of initiative was previously launched. For example, in Ontario, the Ontario Securities Commission had, prior to the creation of the Investor Advisory Panel in August 2010, created an Investor Advisory Committee in 2005. The original committee, according to a number of sources, did not succeed in bringing the investor voice to the fore, in part, because it lacked resources and independence.<sup>13</sup> Feedback on prior successes and failures will be important to assess.

It will also be helpful to review developments in other jurisdictions, particularly if similar types of initiatives have succeeded. One example of an investor panel that is often viewed as a success is the U.K. FSCP.<sup>14</sup>

It is worth noting that, unlike in many other jurisdictions, the U.K. FSCP is a creature of statute. It was formed in 1998 pursuant to the *Financial Services and Markets Act* (2000), together with a statutory Practitioner Panel and a Smaller Businesses Practitioner Panel. The FSCP has a memorandum of understanding (MOU) with the U.K. Financial Services Authority, and that MOU governs the relationship and the panel's formal terms of reference. Included in Appendix B is a copy of the FSCP's formal terms of reference.

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<sup>13</sup> See, for example, the following article written by a former Investor Advisory Committee member: <http://m.moneyville.ca/article/1082369--roseman-osc-s-investor-panel-bites-back>.

<sup>14</sup> See page 36 of the following Canadian expert panel report: [http://www.expertpanel.ca/eng/documents/Expert\\_Panel\\_Final\\_Report\\_And\\_Recommendations.pdf](http://www.expertpanel.ca/eng/documents/Expert_Panel_Final_Report_And_Recommendations.pdf). See <http://www.fs-cp.org.uk/> for further information about the UK FSCP.

## Prepare a Contingency Plan

Contingency plans include specific strategies and actions to deal with variances to your project plan. They also include a monitoring process and “triggers” for initiating planned actions. They are crucial to assist you in recovering from the possibility of your plan not moving forward, with minimum time, cost and disruption.

Stakeholder support for the contingency plan, and for the change in implementation of your original plan, will be crucial. Stakeholders need to be kept informed of the:

- Reasons for any changes
- Vision of the end result
- Proposed plan for getting there.

The level of stakeholders’ importance and influence should be considered when determining the amount of marketing required, the timescales for implementation and completion, and the overall effectiveness of the contingency plan. If time permits, input and consultation from your most influential stakeholders should be incorporated into the building of any contingency plan since, without acceptance from them, any plan will at best encounter limited success.

In the case of an internal investor advisory panel, a contingency plan could involve thinking about (a) alternate sources of funding, and (b) a different way of fashioning your initiative, such as creating an independent advocacy organization (similar to FAIR Canada).

When you evaluate your contingency plan, consider which stakeholders will be supportive or opposed to this plan. Set up meetings with those stakeholders and adjust your contingency plan according to the concerns and suggestions raised during those discussions. This does not necessarily mean that you would air the contingency plan itself, just that you would be aware of potential objections to your primary plan and construct your back-up plan accordingly.

Questions to consider as you are creating your contingency plan are:

- What kind of alternate funding models can we consider for this initiative? For example, if the original plan was to seek governmental funding, are there ways that industry funding could be obtained with minimal conflicts?
- Will you need different stakeholder support for a new model?

## Appendix A

### Canadian Foundation for Advancement of Investor Rights 2011 Strategic Priorities<sup>15</sup>

FAIR Canada plans to focus on four strategic priorities for 2011. These priorities were the result of deliberations by the board of directors at our October 2010 strategic planning meeting.

#### 1. Investor Representation in Securities Regulation

An imbalance of power exists between retail investors and the financial services industry. Although Canada has a number of dedicated independent investor advocates, increased consumer engagement in securities regulation and retail investor input in policy development is necessary to counterbalance industry influence.

- FAIR Canada will advocate for increased prioritization of investor protection and greater representation of retail investors in securities regulation. FAIR Canada will encourage the Canadian Securities Administrators' members, Canadian self-regulatory organizations ("SROs"), the Canadian Securities Transition Office, the proposed Canadian Securities Regulatory Authority, and government to give priority to investor issues through investor advisory panels and other means.
- FAIR Canada will submit comments on all relevant requests for comments issued by Canadian securities regulators (including SROs) and government. These comments will focus on investor protection aspects of policy development.

#### 2. Combating Financial Fraud and Improving Compensation for Victims

- Financial fraud is a major problem in Canada. The current system does not provide sufficient investor protection or compensation, nor does it adequately deter or punish fraudsters.
- FAIR Canada will develop a strategy aimed at
  - improving the prevention, detection, investigation, prosecution, and punishment of financial fraud;
  - educating investors, especially vulnerable groups, about the importance of dealing with registered individuals or firms and the implications of SRO membership and compensation fund backing; and,
  - improving avenues of compensation for victims of financial fraud.

#### 3. Mutual Funds and Advertising of Financial Products

- Canadians pay higher fees for mutual funds and other financial products than investors in other developed markets. Disclosure of fees and risks in financial products and regulation of marketing and advertising is inadequate.
- FAIR Canada will investigate and analyze the impact of complex and high-fee products on investors. FAIR Canada will issue a report focused on mutual funds' disclosure and fees.

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<sup>15</sup> This text was reproduced from the following website: <http://faircanada.ca/about-us/strategic-priorities-2011/>.

- FAIR Canada will also review advertising and marketing of mutual fund and other financial products by the financial services industry and advocate for requirements for fair, balanced and objective advertising so that retail investors are not misled.

#### 4. **Client-financial advisor relationship**

- Retail investors depend on the integrity of the client-financial advisor relationship and many rely on registered professionals to provide financial advice and recommend products that are in their best interests. However, current regulatory requirements are not aligned with consumer needs and expectations.
- FAIR Canada will stimulate discussion about the client-financial advisor relationship to encourage a better alignment of the interests of retail investors and financial advisors, and will advocate for the adoption of a requirement that registrants have a duty to act in the client's best interests.

## Appendix B

### UK Financial Services Consumer Panel Terms of Reference

Beyond our statutory remit in the Financial Services and Markets Act 2000, we have formal terms of reference agreed with the FSA which set out our role and responsibility as follows:

1. The Financial Services Consumer Panel ('the Panel') is established by the Financial Services Authority (FSA) under the Financial Services and Markets Act to represent the interests of consumers. The Panel is independent of the FSA and can speak out publicly on issues where it considers this appropriate.
2. Panel members are appointed by the FSA, in accordance with Nolan principles in order to represent consumers, with HM Treasury's approval in the case of the Chairman. The FSA Board approves the Panel's annual budget and provides a dedicated secretariat to support the Panel.
3. The main purpose of the Panel is to provide advice to the FSA. As such it does not carry out responsibilities on behalf of the FSA. For example, the Panel does not undertake consumer education, nor does the Panel take up individual consumer complaints.

The emphasis of the Panel's work is on activities that are regulated by the FSA, although it may also look at the impact on consumers of activities outside but related to the FSA's remit.

The Panel will have regard to the interests of all groups of consumers including those who are particularly disadvantaged in the context of financial services, including consumers who have little or no access to financial services.

4. The Panel will:
  - a) Represent the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate
  - b) Speak on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of FSA's policies and practices in pursuing its duties
  - c) Keep under review and influence actual and potential developments in financial services to enable it to fulfill (a) and (b) effectively.

In addition, it can advise the Government on the scope of financial services regulation. The Panel can consider other matters that assist it in carrying out its primary functions. The Panel shall publish an Annual Report on its work and expenditure.

The Panel can speak out publicly when it wishes to draw attention to matters in the public interest and when it disagrees with the FSA.

## Appendix C

### Ontario Securities Commission Investor Advisory Panel

#### Terms of Reference

##### ARTICLE 1 - MANDATE OF THE PANEL

1.1 Advisory Panel. The Investor Advisory Panel (“Panel”) is an advisory panel to the Commission.

1.2 Advice and comment. The Panel will respond in writing to notices and requests for comment issued by the Commission in respect of proposed rules and policies, concept papers and discussion drafts. The Panel will also provide commentary on the Commission’s proposed annual Statement of Priorities, and will respond to other requests from the Commission for advice and comment.

1.3 Other matters. At the request of the Commission, the Panel will consider specific issues and make comments on the potential implications for investors posed by the issues.

1.4 Consultation. In formulating responses and submissions to the Commission, the Panel will consider views that are representative of a broad range of investors and, where practicable, will consult with and seek input from investors and organizations representing investors.

##### ARTICLE 2 – MEMBERSHIP

2.1 Appointment of Members. The Panel will consist of seven members appointed by the Chair of the Commission on the advice of a selection committee consisting of three part-time Commissioners (“Selection Committee”).

2.2 Chair of the Panel. The Chair of the Commission will select one member of the Panel to act as the Panel’s Chair.

2.3 Vacancies. Vacancies on the Panel, howsoever caused, shall be filled by the Chair of the Commission on the advice of a Selection Committee.

##### ARTICLE 3 - TERM OF APPOINTMENT

3.1 Term. Members of the Panel, including the Chair of the Panel, shall be appointed for terms of up to two years.

3.2 Replacement members. A person appointed to replace a member of the Panel before the member’s term expires shall hold office for the remainder of the term.

3.3 Reappointments. Members of the Panel, including the Chair of the Panel, are eligible for reappointment by the Chair of the Commission on the advice of a Selection Committee for one additional term.



## **ARTICLE 4 - ROLES AND RESPONSIBILITIES OF ALL PANEL MEMBERS**

4.1 Responsibilities of members. By accepting an appointment to the Panel, it is the responsibility of all members to abide by the Panel's Terms of Reference and to participate in all Panel activities in good faith to ensure the effective discharge of the Panel's mandate.

## **ARTICLE 5 - ROLES AND RESPONSIBILITIES OF THE PANEL CHAIR**

5.1 Responsibilities of the Chair of the Panel. In addition to the responsibilities described in Article 4.1, the responsibilities of the Chair of the Panel are to:

1. Lead and manage the Panel in its activities.
2. Oversee the Panel's development of an annual work plan, including objectives and develop performance measures, to promote the Panel's fulfillment of its mandate.
3. Co-ordinate, prepare the agenda for and chair meetings of the Panel.
4. Ensure that the scheduling, organization and procedures of Panel meetings provide adequate time for due consideration and meaningful discussion of relevant issues.
5. Ensure that the Panel works as a cohesive team.
6. Evaluate proposals by the Panel to conduct consultations with investors or procure professional services that require funding from the Panel's budget and authorize, where appropriate, any such funding, having regard for the funding limits established by the Commission and the process described in Article 12.
7. Ensure that the Panel operates within its budget.
8. Oversee the preparation of comment letters and reports for approval by the Panel.
9. Act as the Panel's primary contact with the Office of the Secretary and the Commission.
10. Monitor the performance of the Panel in fulfilling its mandate and facilitate, on behalf of the Panel, any periodic review of the Panel's activities that may be directed by the Commission.
11. Manage the accountabilities and deliverables established under these Terms of Reference.
12. Act as the Panel's spokesperson.

5.2 Incapacity. In the event the Chair of the Panel is unable to act due to incapacity or otherwise, the Chair of the Commission shall appoint an acting Chair.

## **ARTICLE 6 – ROLE OF THE SECRETARY TO THE COMMISSION**

6.1 General. The Secretary to the Commission shall serve as the general liaison between the Panel and the Commission and will serve as the Secretary to the Panel.

6.2 Administrative support and meetings. The Office of the Secretary will provide administrative support to the Panel and will arrange facilities within downtown Toronto for meetings of the Panel.

6.3 Referral of matters to the Panel. Matters may be referred to the Panel by Commission staff or the Commission through the Office of the Secretary.

6.4 Requests for information. Any requests from the Panel for information from the Commission must be made through the Office of the Secretary.

## **ARTICLE 7 - PANEL MEETINGS**

7.1 Meetings. The Panel will meet at least quarterly and may, at the discretion of the Panel's Chair, hold additional meetings as often as may be necessary to discharge its mandate, having regard for the remuneration and funding limits fixed by the Commission from time to time and attached as Schedule A to these Terms of Reference.

7.2 Notice of Panel meetings. Notice of the time and place of meetings shall be telephoned or sent by electronic means by the Office of the Secretary to each member not less than 10 days before the meeting is to take place. Panel meetings shall take place in downtown Toronto at a location arranged by the Office of the Secretary.

7.3 Attendance at meetings. Panel members are expected to attend meetings in person and must maintain a good attendance record.

7.4 Quorum. The presence of a majority of the members shall be necessary to constitute a quorum for the transaction of business at any meeting of the Panel.

7.5 Acting Chair. The Chair of the Panel may designate a member to act as Chair in his or her absence. In the event the Chair of the Panel has not made such a designation, the members present shall choose one of their number to chair the meeting.

7.6 Voting. Any questions arising at any meeting of the Panel that the Chair of the Panel determines is required to be decided by a vote shall be decided by a majority of votes. Each panel member is entitled to exercise one vote. In the case of an equality of votes, the chair of the meeting shall not have a second or casting vote. All votes at any such meeting shall be taken by a show of hands.

## **ARTICLE 8 – CONSULTATION AND CONFIDENTIALITY**

8.1 Consultation. The Commission recognizes that the members of the Panel will not be expert in all issues considered by the Panel. Subject to the exceptions in Articles 8.2 and 8.3, the Panel is expected to draw on the expertise and experience of others to provide appropriate input into its deliberations and is encouraged to consult outside of its membership.

8.2 Confidentiality – Information or documents. In some cases, the Commission may provide information or documents to the Panel that are confidential in nature and will expressly identify them as such. In accepting an appointment to the Panel, members agree that they will not disclose or give to any person any confidential information or document that comes to their knowledge or possession by reason of being a member of the Panel.

8.3 Confidentiality – Panel deliberations. Panel members shall respect the confidentiality of Panel deliberations.

## **ARTICLE 9 – REPORTING**

9.1 Responses to public notices and requests for comment. The Panel's written responses to notices and requests for comment published by the Commission will be publicly posted and considered in the same manner as comment letters received in the normal course of a request for comment.

9.2 Annual report. The Panel will report annually to the Commission on its activities for the preceding year, which shall include a written report and presentation by the Chair of the Panel to the Commission. Such report shall include an assessment of the Panel's performance against its mandate, and shall be published on the Commission's website.

9.3 Additional reporting at the request of the Commission. At the request of the Commission, the Chair of the Panel shall appear before the Commission to report on matters specified by the Commission.

## **ARTICLE 10 - PERIODIC REVIEW BY THE COMMISSION**

10.1 Review of the Panel. The Commission will review the activities and mandate of the Panel periodically and may amend, affirm or rescind the mandate following its review.

10.2 Amendments – Terms of Reference. The Commission may, at any time, amend the Panel’s Terms of Reference. Subject to Article 10.3, such amendment shall take effect on a date specified by the Commission not less than sixty (60) days after notice of the amendment is given to Panel members and posted on the Commission’s website.

10.3 Exception. An amendment that is procedural in nature or would make no material substantive change to the Terms of Reference takes effect immediately.

## **ARTICLE 11 - REMUNERATION AND EXPENSES**

11.1 Compensation. Panel members will be compensated for their time and effort in meeting the Panel’s mandate according to a remuneration schedule to be fixed by the Commission from time to time and attached as Schedule A to these Terms of Reference.

11.2 Process. Panel members shall keep records of their meeting attendance and preparation activities and submit invoices for approval (up to the maximum identified in Schedule A) to the Secretary to the Commission for reimbursement. All remuneration shall be paid to members personally.

11.3 Other expenses. Any other expenses not specifically identified (including meals associated with meetings) may be reimbursed if incurred in connection with activities undertaken at the request of the Commission and by prior approval by the Secretary to the Commission. These expenses shall be reimbursed according to Part XIII: Expense Reimbursement of the Commission’s Financial Policies in effect from time to time.

## **ARTICLE 12 – PROCUREMENT**

12.1 Procurement. The Panel will be provided with a yearly budget, to be fixed by the Commission from time to time and attached as Schedule A to these Terms of Reference, to carry out its mandate through consultations with investors or the procurement of professional services to assist in drafting comment letters. Expenditures may be made only by the Chair of the Panel through a procurement process approved by the Office of the Secretary.

## **ARTICLE 13 - CONFLICT OF INTEREST**

13.1 General. Panel members must conduct themselves in a manner consistent with their role as advisors to the Commission.

13.2 Conflicts of interest generally. A conflict of interest arises where a Panel member has a personal interest which conflicts, might conflict or may be perceived to conflict with the interests of the Panel. A conflict of interest exists if employment, business, financial or other personal considerations may interfere with a Panel member’s ability to objectively express his or her opinions regarding what Ontario investors need, want or should be provided or protected from (“investor interests”). A conflict of interest does not exist simply because different Panel members have different views about investor interests, or have views which reflect differences between different types of investors (e.g., individuals vs. institutions).

13.3 Conflict of interest (other than Panel Chair). If a conflict arises between the private interests of a Panel member and the responsibilities of that individual as a Panel member, the member shall declare the conflict by submitting a letter to the Chair of the Panel outlining the nature of the conflict. The Chair of the Panel and the member shall resolve the conflict in favour of the public interest.

13.4 Conflict of interest – Panel Chair. If a conflict arises between the private interests of the Panel Chair and his or her responsibilities as a Panel member, the Panel Chair shall declare the conflict by submitting a letter to the Chair of the Commission. The Chair of the Commission and the Panel Chair shall resolve the conflict in favour of the public interest.

13.5 Voting. A Panel member shall refrain from voting on matters that the member believes may pose a conflict of interest in relation to the member’s employment, business, or other personal concerns.

#### **ARTICLE 14 – REMOVAL OF MEMBERS**

14.1 Removal of members (other than the Panel Chair). If a Panel member is no longer able to meet his or her responsibilities, that member shall so advise the Secretary to the Commission and shall resign from the Panel. If the Chair of the Panel forms the view that a Panel member is not meeting his or her responsibilities, the Chair of the Panel shall advise both the member and the Chair of the Commission. After due consideration of the matter, the Chair of the Commission may request and the Panel member shall tender his or her resignation from the Panel.

14.2 Removal of Panel Chair. If the Chair of the Panel is no longer able to meet his or her responsibilities, the Chair of the Panel shall so advise the Secretary to the Commission and shall resign from the Panel. If the Commission forms the view that the Chair of the Panel is not meeting his or her responsibilities, the Commission shall advise the Panel Chair. After due consideration of the matter, the Commission may request and the Chair of the Panel shall tender his or her resignation from the Panel.

Adopted by the Commission on April 6, 2010

#### **Schedule A**

Investor Advisory Panel

Remuneration and Budget

(March 2010)

Members of the Investor Advisory Panel will be compensated for their time and effort in meeting the Panel’s mandate as follows:

1. 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.
2. 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.
3. Travel expenses (mileage etc excluding time for the members) will be covered to an estimated maximum of \$30,000 for the Panel per year, as it is anticipated that some members may have to travel to attend meetings.

The Panel will be 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.

#### **Schedule B**

Investor Advisory Panel

Annual Certification

I, \_\_\_\_\_, the undersigned, a member of the Investor Advisory Panel to the Ontario Securities Commission, hereby:

1. Acknowledge that I have received, read, and understand the provisions of the Panel's Terms of Reference.
2. Agree to abide by the Panel's Terms of Reference.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

Signature: \_\_\_\_\_