

2016 Annual Report of the Ontario Securities Commission's Investor Advisory Panel

April 2017



Introduction

The Investor Advisory Panel is pleased to present our 2016 Annual Report outlining our activities, submissions, consultations, and meetings during the calendar year. Since the Panel was formed in August, 2010, we have worked consistently with the Ontario Securities Commission (OSC) to ensure investor concerns and voices are represented in its rule- and policy-making process.

The Panel is a critical channel connecting the investor perspective with policymakers set with the task of protecting them. To that end, we believe that retail investor input is essential to ensuring a healthy and fair regulatory regime. For six years, we have worked to identify existing and emerging areas of concern and risk for retail investors and have acted as an important policymaking resource for the OSC as it develops policies that protect investors and promote capital markets.

We represent a range of expertise taken from across the investment industry, consumer advocacy and the legal and regulatory fields. Collectively we fulfill our mandate by engaging with the OSC at every stage of the policymaking process, from issues identification to policy development to commenting on new policy once it has been drafted.

The Panel provides input into policymaking with the OSC at three critical stages in the regulatory process.

Stage 1 - Issues Identification

We bring emerging investor trends and concerns to the OSC thereby allowing us to inform policymaking at the earliest stages. We do this through face to face meetings with key staff, sitting at the same table to share insights and inform policy. When needed, we follow up with letters and concrete recommendations to add necessary context and clarity on emerging issues.

We also meet annually with OSC staff as they conduct their business planning process and we subsequently provide a public comment on their Annual Statement of Priorities.

Making a difference

In 2012, we raised concerns we were hearing from investors about the misleading use of titles by advisors. In 2016, we were pleased to see our recommendations put into action as titles were addressed in *CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients*.

In 2013, we called on the OSC to add seniors' issues to its annual proposed priorities. In 2014, we organized, with Office of the Investor assistance, a successful 2014 Seniors Roundtable and published a report of roundtable participants' recommendations.

In 2016, the OSC Investor Office made seniors a priority issue and established the Seniors Expert Advisory Committee to advise OSC staff on securities-related policy and operational developments that impact older investors.

Stage 2 - Input on policy development

The IAP has been engaged with the OSC providing an investor view on regulatory policy as it takes shape both through face to face meetings and in follow up communications.

Ongoing discussions with OSC staff have provided a forum for constructive and thoughtful dialogue regarding the roles of investor education and disclosure in investor protection. We called for less regulatory reliance on disclosure and on investor education (as distinguished from the provision of information to investors). We are pleased to see this investor perspective reflected in OSC policy and rule making.

Making a difference

In 2015, we provided input on the OSC's Whistleblower Program as that policy was being developed.

We also meet annually with the Commission as they set their business plan and provide comments on annual oversight reviews of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA).

Stage 3 – Policy Proposals and Discussion Papers

The Panel regularly provides input on policy once it has been released for comment. Throughout the past six years we have offered our collective written input on critical policy documents, including offering comments on the Capital Markets Act creating a Common Market Regulator and a new Mutual Fund Risk Classification Methodology.

We have also made submissions on mutual funds and conflicted compensation, the status of the Ombudsman for Banking Services and Investments (OBSI), and on the introduction of a best interest standard.

Key Numbers for 2016

10

Meetings

5

**Submissions to
the OSC/CSA**

7

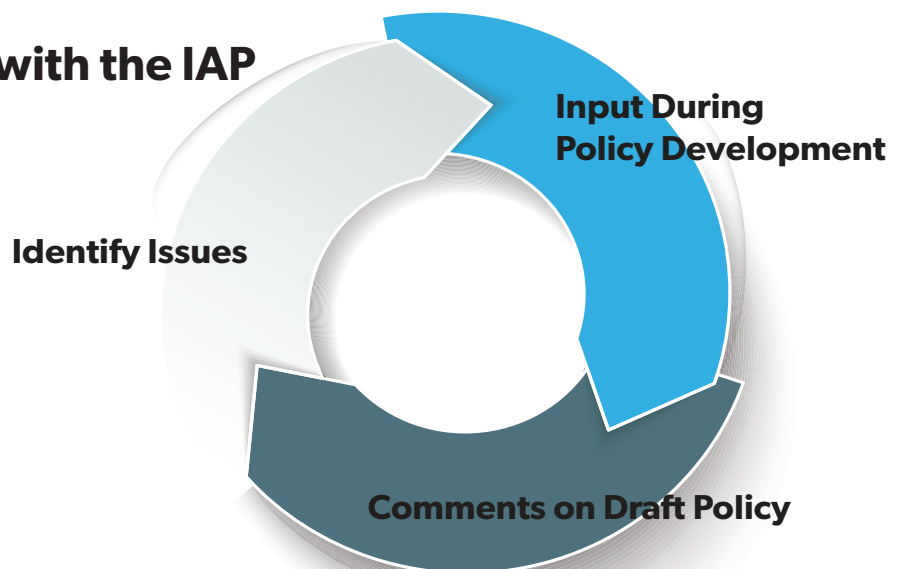
**Submissions to
other bodies**

Investor Input in Other Countries

The OSC isn't the only regulator with a formal mechanism for retail investor input – it's part of the regulatory landscape in other countries as well.

- U.S. Consumer Financial Protection Bureau (CFPB)
- Consumer Advisory Board
- U.S. Securities and Exchange Commission (SEC)
- Investor Advisory Committee
- U.K. Financial Conduct Authority (FCA)
- Consumer Advisory Panel
- U.S. Financial Industry Regulatory Authority (FINRA)
- Investor Issues Committee
- Australian Securities and Investments Commission (ASIC) - Consumer Advisory Panel

How the OSC Engages with the IAP



2016 Issues and Priorities

It was a busy year for the OSC Investor Advisory Panel as the Canadian Securities Administrators (CSA) sought commentary on draft targeted reforms and a best interest standard. The Panel also continued to advance and explore the findings from the independent research it commissioned on the role and limitations of risk profiling.

Throughout 2016 several themes and areas of concern prevailed throughout all our work and commentary.

Key themes for 2016

Conflicts of Interest, Conflicted Compensation

Conflicts of interest and conflicted compensation once again made our list of top concerns for retail investors. We addressed this in several ways during the year.

The Panel was pleased for the opportunity to provide comments on CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* (CSA Consultation Paper 33-404). The CSA consultation was aimed at better aligning the interests of registrants with the interest of their clients and, ultimately, to improve outcomes for clients. We expressed our view that conflicted compensation and inducements which result in investors' interests being subordinated to those of the registrant are unacceptable. Speaking to the stated goal of the targeted reforms, we pointed out that such conflicts challenge the alignment of interests that must exist for advisors to have a healthy relationship with their clients.

While the Client Relationship Model and Point of Sale Disclosure guidelines aim to address this issue by ensuring conflicts are disclosed to investors, this is a poor substitute for what is needed – a regulatory regime where conflicts of interest and conflicted compensation are not permitted. Disclosure alone is a poor substitute for meaningful reforms in this critical area. As we wrote in our submission: "Conflicted compensation can undermine the trust that is an integral part of the advisor-client relationship."

What's next – The Panel will prepare its response to the CSA paper on embedded commissions and conflicted compensation and reiterate our position that they be banned. The Panel will also closely monitor compliance and enforcement actions flowing from the December 2016 CSA, IIROC and MFDA review findings of conflicted compensation practices at regulated firms.

Our view on conflicts of interest and conflicted compensation has never wavered – there is simply no place for them in a healthy securities regulatory landscape.

The Need for a Best Interest Standard

The Panel has for years urged the OSC to adopt a Best Interest Standard that would better align the interests of advisors with those of their clients. We know that such an approach would ensure conflicts that put advisors' interests ahead of their clients are eliminated, not simply disclosed.

During 2016, the need for a Best Interest Standard was on our agenda consistently. We raised this topic with IIROC CEO Andrew Kriegler during meetings with him – and we urged IIROC to spearhead the adoption of a best interest standard in our response to their white paper, *The Public Policy Implications of Changes to Rules Regarding Proficiency Upgrade Requirements and Directed Commissions on the IIROC Platform*.

We also discussed the importance of a Best Interest Standard in addressing advisor-client challenges in our submission to the MFDA in response to Proposed Amendments to MFDA Rule 2.3 *Power of Attorney/Limited Trading Authorization/Discretionary Trading*.

However, our most significant and comprehensive commentary on the benefits of a Best Interest Standard came in our detailed response to the CSA Consultation Paper 33-404. Here, we noted that the benefits of a Best Interest Standard have been recognized by G20 governments within the High Level Principles on Financial Consumer Protection: “[f]inancial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer

protection... the remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest."

We also explained that a best interest standard for dealers and advisors would address many of the issues highlighted in the targeted reforms, including conflicted compensation and inducements that result in investors' interests being subordinated to registrants'. Moreover, we pointed out that a best interest standard is far preferable to a suitability regime, where advisors are still permitted to put commercial interests ahead of clients. Advisor proficiency could also be significantly improved as we noted:

A best interest standard would facilitate the shift of investment advice from a sales focused industry to a profession, where investors are well-served by individuals with the expertise and training to meet their needs and consider their interests first and foremost. Proficiency and standards of education would be consistent with what is needed to provide a professional standard of care to clients – a standard that will lead to trustworthy advice for investors.

Title reform, an issue we have long argued for, would also be addressed under Best Interest. As we noted, *"in the context of a best interest standard, there would be no benefit to using a title created to mislead investors about what advice an advisor is authorized to or can provide."*

Proficiency reform, another issue we have long argued for – is not fully addressed in the proposal and will be a focus area for the Panel in the year ahead.

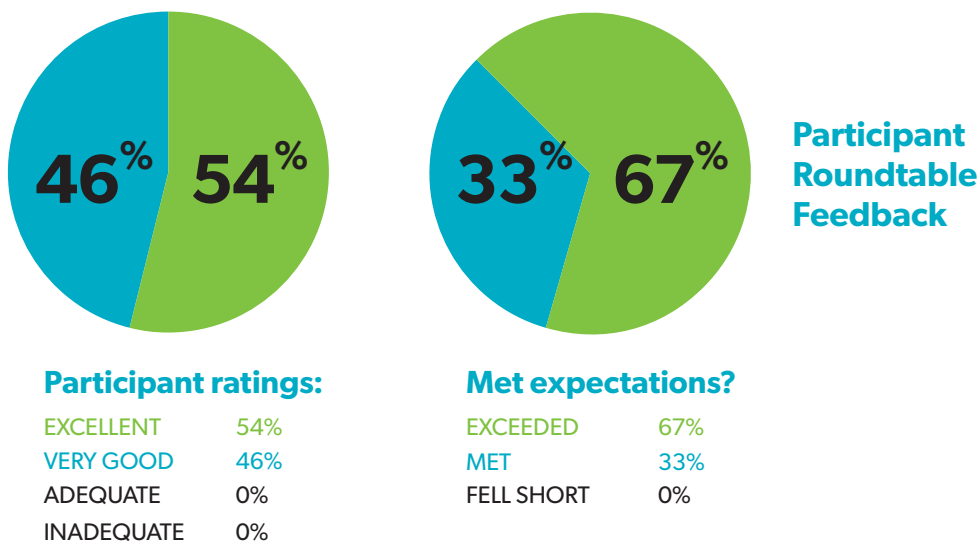
What's next – We will continue to advocate for a Best Interest Standard and we continue to await a definition of best interest from the OSC as noted in its 2017 Statement of Priorities. We will also continue to put our full support behind the OSC in this matter and, if necessary, will call on them to go it alone if at the end of the consultation period other commissions decide not to move ahead.

In our view the only way to define it is within the context of the client-advisor relationship – it should fundamentally bind advisors and dealers to act in the best interest of their clients. We are committed to being at the table with the OSC and providing our input as this foundational piece of regulatory work is being done.

Risk Profiling

In 2015, we released independent research conducted by PlanPlus Inc. on our behalf, *Current Practices for Risk Profiling in Canada and Review of Global Best Practices*. In commissioning this research, the Panel sought to contribute to advancing our collective understanding of an issue that is the very foundation of a successful investor-advisor experience – risk profiling. The research revealed that regulators offer little guidance on how firms and advisors should determine a risk profile, which is an essential part of the know-your-client process. Our researchers also found 83% of the risk profile questionnaires they reviewed were “not fit for purpose,” creating a dangerous gap in communication between the investment industry and the individuals it serves.

Since its release the research report has garnered acclaim and its findings have been widely disseminated to industry and regulatory leaders*. In 2016, we hosted a roundtable to encourage further dialogue on the research among investors, industry, and regulators. The Risk Profiling Roundtable was held on September 28th with the goal of gaining insights on the research and input on how best to move forward to create meaningful change.



What's next – The Panel will support academic, industry and regulatory efforts that lead to the improvements needed in the current know-your-client risk profiling process.

*Academy of Financial Services, October 15, 2016 (academic conference for peer review discussions). Canadian Institute of Financial Planners Conference, May 18th, 2016, Confederation of Financial Planners, Bangalore, India July 12th 2016, “A Review of Risk Profiling Practices”, Brayman, Grable; Financial Planning Association Conference Academic Track, September 15, 2016. Best Applied Research award at the Financial Planning Association 2016 Annual Conference.

The Common Regulator

The Panel has for the past two years urged the OSC to ensure that the new Capital Markets Regulatory Authority acts in the interest of Ontario investors – and to ensure that a best interest standard is part of the new regulatory regime as it extends across Canada. During 2016, we met with OSC staff working with the government on the revision of the Capital Markets Act and provided our concerns and input into their work. We have expressed our concerns on numerous occasions that the new regulator doesn't call for an investor advisory panel or an investor office and it does not address the issue of restitution – all are concerns we have expressed repeatedly in the past.

What's next – In 2017 we hope to engage directly with staff at the new Capital Markets Regulatory Authority to begin to provide an investor perspective into their important work. We will welcome any opportunity to engage with and discuss retail investor concerns with the new team, including its newly-appointed CEO. We will continue to make the case for an investor advisory panel, an investor office, and restitution.

The Future of the Investor Advisory Panel

During 2016, we took every possible opportunity to express our concerns to the OSC and other policymakers about the need for an Investor Advisory Panel at the new common regulator as we continue to bring the perspective of retail investors to the organization and its senior management. We know that robust stakeholder engagement ensures that all Canadians' voices are heard and included in public policymaking and in government decisions that affect all our lives.

What's next – the Panel will continue to discuss the role that consistent and ongoing stakeholder engagement around retail investor concerns could play in the regulation of Canadian capital markets on a national scale.

OBSI

During the year, we provided our views in conversation and in writing to Deborah Battell, the Independent Evaluator of the Ombudsman for Banking Services and Investments (OBSI) with respect to Investment-Related Complaints. The Panel has repeatedly expressed grave concerns over the industry's refusal to accept OBSI's findings and recommendations—concerns that are exacerbated by ongoing reports of incidents of firms "lowballing" OBSI compensation recommendations.

To address OBSI's challenges we made 6 core recommendations to the Independent Evaluator, including giving it power to provide binding decisions and ensuring that it is fulfilling its role as an arbiter, not a mediator.

As we stated clearly, "Unless regulators finally agree to give OBSI the powers it needs, it cannot give investors what they need and deserve: fair and independent resolution of their complaints."

What's next – Change in the form of binding arbitration is needed – immediately. Addressing OBSI's current failures will continue to be top of mind for the Panel and we will pursue this issue with the organization and regulators in the months ahead.

2017 – A Watershed Year

The year 2017 promises to be a monumental year for improvements in investor protection – but only if the OSC and other regulators agree to introduce a best interest standard and eliminate conflicted compensation. We remain concerned that the future of the common regulator is not clear with regard to investor engagement.

While the next 12 months could be a make or break year for investors, the question still remains – will regulators move forward and do the right thing across all jurisdictions? Or will the OSC have to go it alone? One thing is clear: the time has come to introduce a best interest standard, eliminate conflicted compensation and embedded commissions, and address issues like titles that make it more difficult for investors to understand what they are getting.

THE IAP in 2016

Consultation – External Organizations

- Deborah Battell, Independent Evaluator
- Sarah Bradley, Ombudsman & CEO, Ombudsman for Banking Services and Investments (OBSI)
- Shaun Devlin, Senior Vice-President, Member Regulation, Enforcement, Mutual Fund Dealers Association of Canada (MFDA)
- Neil Gross, Executive Director, FAIR Canada
- Andrew Kriegler, President and CEO, Investment Industry Regulatory Organization of Canada (IIROC)
- Wanda Morris, Vice President Advocacy & COO, CARP

Consultation – Ontario Securities Commission Staff

The IAP had frequent meetings with staff for general issues and issue-specific briefings. Staff briefings and discussions included the following topics:

- CSA's Oversight Review of IIROC
- Whistleblower Program Update
- CSA Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients*
- Investment Funds and Structured Products Update
- CSA Mutual Fund Risk Classification Methodology
- OBSI
- Audit Committee Disclosures
- NI 45-102 CSA Review of the Resale Regime
- Reducing Regulatory Burden Project
- CSA's Oversight Review of MFDA

The IAP met with the following OSC branches:

- Chief Accountant's Office
- Communications
- Compliance and Registrant Regulation
- Corporate Finance
- Enforcement
- Investment Funds and Structured Products
- Investor Office
- Market Regulation
- Strategy and Operations

Submissions and Letters

The IAP wrote a total of 12 submissions and comment letters.

1. [November 16, 2016](#) – Progress on the Cooperative Capital Markets Regulatory System
2. [October 25, 2016](#) – OSC's 2016 Annual Report
3. [September 30, 2016](#) – CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients
4. [August 10, 2016](#) – Comments on the Independent Evaluation of OBSI's Investment Mandate
5. [August 8, 2016](#) – Comments on IIROC's New Strategic Plan
6. [June 7, 2016](#) – Proposed Amendments to MFDA Rule 2.3
7. [May 2, 2016](#) – Ontario Securities Commission Notice 11-774 – Statement of Priorities
8. [April 20, 2016](#) – 2015 Annual Report of the Ontario Securities Commission Investor Advisory Panel
9. [March 31, 2016](#) – IIROC White Paper
10. [March 8, 2016](#) – MFDA Bulletin: Report on Charges and Compensation – Consultation Regarding Cost Reporting for Investment Funds
11. [February 19, 2016](#) – CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts and ETF Facts
12. [February 18, 2016](#) – Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints

Risk Profiling Roundtable

On September 28, 2016, the IAP and Investor Office jointly organized a roundtable to explore the findings of the independent research commissioned by the IAP on the current practices in the Canadian marketplace that are used to determine a client's risk profile. Led by an independent facilitator, the roundtable saw active discussion from 26 participants from the financial services industry, academia, law, government, regulatory and investor advocacy organizations. A facilitator's report of the roundtable was issued in January 2017.

External Engagements

- December 7, 2016 - OBSI Semi-Annual Staff Meeting. – IAP, Chair, Ursula Menke, addressed OBSI staff
- December 6, 2016 - OSC Roundtable on Proposed Best Interest Standard and Targeted Reforms to Enhance the Client-Registrant Relationship – IAP Chair, Ursula Menke, participated on a panel

About the IAP

The Investor Advisory Panel (the Panel) is an independent advisory panel to the Ontario Securities Commission.

Our Mandate

Our mandate is to solicit and represent the views of investors on the Commission's policy and rule making initiatives. In order to fulfill our mandate, the Panel:

- Advise and comment in writing on proposed rules, policies, concept papers and discussion drafts, including the Commission's annual Statement of Priorities;
- Consider views representative of a broad range of investors through consultation with and input from investors and organizations representing investors in formulating its advice and written submissions to the Commission;
- Bring forward for the Commission's consideration policy issues that may emerge as a result of the Panel's investor consultation activities and comments on the potential implications for investors posed by those issues; and
- Advise and comment in writing on the effectiveness of the investor protection initiatives implemented by the Commission.

Our Membership

The Panel is comprised of 7 members appointed by the Chair of the Commission following a public application process and on the advice of a selection committee consisting of two Commissioners and a Vice-Chair. Members of the Panel are appointed for terms of up to two years, with possible reappointment for one additional term. (See Appendix A for Bios of panel members)

How we Operate

The Panel meets monthly, either in person or by conference call. During the 2016 calendar year, we met 10 times. We maintain frequent contact between meetings to develop our written submissions and to share and exchange views on developments in securities law and other relevant matters. During our meetings, we discuss upcoming submissions and plans for future outreach, research and consultation.

Our work plan is set to a large extent by the Commission's priorities and current developments in the investment industry. Our meeting agendas often will focus on specific Commission initiatives, including its annual Statement of Priorities and business plan, policy and rule proposals, and ongoing or under-development investor protection initiatives.

Independent

The Panel conducts its activities without direction or influence from the Commission.

The OSC Investor Office serves as the general liaison between the Panel and the Commission and serves as Secretary to the Panel. The Office provides administrative support to Panel activities and facilitates Panel requests for staff briefings or research information conducted by, or available to, the Commission on specific policy and rule making initiatives.

Transparency

Transparency of our work is important. We provide regular reporting through our Investor Advisory Panel website (www.osc.gov.on.ca), through our published reports, submissions, letters to the Commission and our Annual Report. We publish all meeting agendas on our website.

Consultations

To assist us in fulfilling our mandate, we regularly consult with organizations and financial and legal experts, industry associations, and investor advocacy bodies.

Appendix A: Member Bios

Connie Craddock

As the former Vice-President of Public Affairs at the Investment Industry Regulatory Organization of Canada (IIROC), Ms. Craddock has considerable experience with issues related to Canadian investors. Ms. Craddock also has experience in consulting and communications in both corporate and government settings.

Since retiring from IIROC, Ms. Craddock joined the Board of Gilda's Club, a non-profit organization dedicated to helping individuals touched by cancer.

Ms. Craddock has a Master's Degree from Concordia University and Degrees from McGill University and Université de Montréal.

Letty Dewar

Mrs. Dewar has been active in the financial industry since 1984, and has a thorough understanding of the mutual funds sector and capital markets. Her experience includes financial planning, Group RSP product design, compliance and operations. She served as Chief Compliance Officer for a major mutual fund company. Subsequently she was the Chief Operations Officer for a portfolio management group that managed approximately \$19 billion of mutual fund assets.

Since her retirement, Mrs. Dewar sits on the CFA Society Toronto's Portfolio Management Committee (Chair September 2014-16). She is a member of the CFA Institute, the CFA Society Toronto and the Genesis Club of Toronto.

Mrs. Dewar holds the CFA designation, a M.B.A. from York University and a Bachelor of Commerce degree from the University of Toronto.

Harold Geller

Harold Geller is a leader in Financial Loss Recovery Group of McBride Bond Christian LLP and an expert on legal issues affecting financial advisors. Mr. Geller assists investors with the analysis of claims and where appropriate, the prosecution and settlement of claims in the civil courts and the Ombudsman for Banking Services and Investments (OBSI). Mr. Geller is a well known consumer's advocate with respect to investor issues as well as a financial industry commentator and a continuing education provider.

Mr. Geller was a 14 year elected member of the Canadian Bar Association (Ontario) and received his L.L.B. from Dalhousie University. He currently sits on the Canadian Bar Association's Elder Law Executive Committee.

Ken Kivenko

As a renowned investor advocate, Mr. Kivenko brings extensive experience of research and advocacy in retail investor issues. He is the president and owner of Kenmar which assists investors with dispute resolution. He has also established a well-used web-site [www. canadianfundwatch.com](http://www.canadianfundwatch.com).

Mr. Kivenko holds a Bachelor of Science in Engineering Electronics and a Diploma in Management from McGill University and is a Fellow in the American Society for Quality Control, a Member of the Association of Engineers of Ontario, and is the Chair of the Advisory Committee of the Small Investor Protection Association.

Alison Knight

Alison Knight has demonstrated a career-long commitment to consumer advocacy and stakeholder engagement. Ms. Knight is a life member and former board member of the Consumers Council of Canada. She has served on the boards of numerous professional, regulatory and non-profit organizations and held senior executive positions with companies in the financial services sector.

Ms. Knight received her Bachelor of Commerce degree from Queen's University and is a Fellow of the Institute of Chartered Professional Accountants of Ontario.

Ursula Menke - Chair

Ursula Menke brings more than 30 years of public and private sector experience in finance, management, law, regulatory matters, operations and corporate governance. Most recently she was Commissioner of the Financial Consumer Agency of Canada (FCAC). As a Commissioner of the FCAC, Ms. Menke examined matters relating to federal consumer protection laws and focused on building a competitive marketplace by protecting and informing consumers of financial products and services.

Ms. Menke received her Bachelor of Science and Bachelor of Civil Law degrees from McGill University. She also earned a teaching diploma from the University of Alberta.

Louise Tardif

Ms. Tardif was an investment advisor for 22 years until her retirement in 2008 from National Bank Financial, where she was also manager of their Ottawa branch. She currently sits on several boards including the Board of Trustee of OP Trust, a pension plan with over \$16 billion in assets. Ms. Tardif also chairs the board of the Youth Services Bureau of Ottawa and just ended a mandate as a Governor of the University of Ottawa where she chaired the Finance and Treasury Committee.

Ms. Tardif has a Bachelor of Commerce and a M.A. in Religious Study from the University of Ottawa. She is currently a PhD. candidate at the same institution.