Panel #4: Harmed Investor, Speedy Recovery: Industry-Funded Investor Compensation Funds

This panel discussed the role of industry funded compensation funds for wronged investors, as well as their benefits and limitations as compared to private suits and other means of recovery. Specifically, the panellists analyzed whether the Canadian Capital Markets Regulator (CCMR), Ontario or all CSA jurisdictions should establish a financial services compensation fund for investors who are defrauded by registrants.

Panellists:

Robert Pouliot, Director of Canadian Foundation for Advancement of Investor Rights, **Louise Gauthier**, Senior Director of Distribution Policies and Compensation at *Autorité des marchés financiers* (AMF),
Mark Neale, CEO of UK's Financial Services Compensation Scheme (by video-link), and
Shayne Kukulowicz, Partner at Cassels Brock & Blackwell LLP.

Moderator:
Gil Lan, Associate Professor at Ryerson University Ted Rogers School of Management

Mr. Pouliot argued that Canada needs multiple indemnity funds that should provide payments to investors wronged through negligence, as "it is far more costly and makes less noise than fraud." Thus, indemnity funds should cover for both fraud and negligence. He also called for the experiences in Quebec and the United Kingdom to be examined and then expanded in other Canadian provinces.

Ms. Gauthier provided further insight into Quebec's experience with the AMF Financial Services Compensation Fund. Ms. Gauthier noted that since 1999 when the fund was first created, there have been 1500 claims for a total of $52M distributed. Among the claims, there were twenty-six serial frauds, which accounted for 85% of all claims that were made. Since 2011, after the AMF began to register investment fund managers, there have been only 350 claims and 78 have been accepted. From the AMF's consultation, one major recommendation that the AMF made was to allow claims against firms and representatives that are contributing to the fund, but for products that are not within covered in their licences.

Mr. Neale spoke about the experience of investor compensation funds in the UK. The funds protect investors of a failed business where there is a civil liability Such situations would include misselling as well as fraud. Although costs associated with the funds are high, Mr. Neale noted that compensation averages £150-200M annually. Mr. Neale argued that without this form of recovery, many investors would not get compensated for their losses from independent investment advisors, because these advisors tend to be underfunded for the risks that they take through their professional indemnity insurance. The trigger for compensation through the fund is insolvency – if there is liability of the firm to the consumer whether through misselling (unsuitable advice) or through fraud. Causation issues can arise and must be addressed.

As counsel to approximately 1200 investors in the First Leaside case, Mr. Kukulowicz provided insight into the ability of investors to recover when a dealer becomes insolvent with related fraudulent activity. He argued that while a financial services compensation fund should be created, insolvency should be its trigger. Absent insolvency, there are civil and regulatory remedies. He noted that the Canadian Investor Protection Fund's coverage is narrow and it does not adequately address the situation of fraud and insolvency.