



Canadian Foundation *for*  
Advancement *of* Investor Rights  
Fondation canadienne *pour* l'avancement  
*des* droits *des* investisseurs

June 9, 2017

Standing Committee on Finance  
Sixth Floor, 131 Queen Street  
House of Commons  
Ottawa ON K1A 0A6  
Canada

**RE: Consumer Protection and Oversight in Relation to Schedule I Banks**

---

FAIR Canada is pleased to offer its Brief to the Standing Committee on Finance regarding Consumer Protection and Oversight in Relation to Schedule I Banks. FAIR Canada believes it can assist the Standing Committee to understand the issues related to consumer protection at the banks, and can advise on steps the government can take to resolve these issues.

FAIR Canada is a national, charitable organization dedicated to putting financial consumers first. As a voice for Canadian financial consumers, FAIR Canada is committed to advocating for stronger consumer protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

**1. The Need for Consumer Protection at Banks**

- 1.1. FAIR Canada has been following the CBC Go Public investigation of improper sales practices at Canada's banks, and like many, is concerned with the allegations made by former bank employees. These allegations centre on front-line staff at banks, under pressure to sell customers products and services they do not need.
- 1.2. In addition, sales practices at the banks have led bank employees registered to sell investment products to violate their regulatory obligations. In some cases, employees revealed they have even broken the law to meet sales revenue targets. In another report, CBC Go Public found that, according to bank employees, doctoring documents and forging signatures is more common than people realize.<sup>1</sup>
- 1.3. **Poor recommendations and bad advice are not the result of a few bad apples in the system, but from compensation structures and firm-wide practices that place firms and representatives' interests ahead of the interests of Canadians.**
- 1.4. **The CBC Go Public media stories have been essential to shining light on the poor level of consumer**

---

<sup>1</sup> This is consistent with the latest enforcement report of the Mutual Fund Dealers Associations (MFDA), online: <<http://mfda.ca/wpcontent/uploads/EnfAR2016.pdf>> and notices from December 2016 by the Canadian Securities Administrators, online: <[http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa\\_20161215\\_33-318\\_incentives.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20161215_33-318_incentives.pdf)>, the Investment Industry Regulatory Organization of Canada, online: <[http://www.iiroc.ca/Documents/2016/4dd98e70-f053-4980-bc75-10ceb6f3940d\\_en.pdf](http://www.iiroc.ca/Documents/2016/4dd98e70-f053-4980-bc75-10ceb6f3940d_en.pdf)>, and MFDA online: <<http://mfda.ca/bulletin/review-of-compensation-incentives-and-conflicts-of-interest/>>

**protection in the financial services sector and highlighting the urgent need for reforms.** Thus far, concrete steps by regulators to address the problems have been lacking.

## **2. Increased Consumer Dependence on Banks for Accumulating Savings to Meet Their Retirement and other Financial Goals**

- 2.1. Banks have expanded their business model beyond providing everyday banking services, such as traditional mortgages, GICs and Canada Savings Bonds, and are increasingly offering a wide range of complex financial products.
- 2.2. Since the 1980s financial products have become more complex with “the lines between types of financial products [becoming] blurry”,<sup>2</sup> and there are an increasing number of different financial products available.<sup>3</sup> This makes it difficult for the average Canadian to be adequately informed about the different investment product options, with most Canadians finding the world of investing bewildering.
- 2.3. Firms have seized on this opportunity by marketing and advertising themselves as providing trusted advice, emphasizing the holistic and advisory nature of their services and de-emphasizing the transactional nature of the relationships. Salespersons have become “advisors”, “financial advisors” and “financial planners”.<sup>4</sup>
- 2.4. At the same time, Canadians have been forced to be increasingly self-reliant to fund their retirement needs given the decline of workplace pensions. Although many are not equipped to do so given low financial literacy levels, Canadians have been forced into the capital markets to look after their own retirement needs. Many Canadians do not understand the importance of costs on their ability to accumulate savings for their retirement and do not realize that the costs they are incurring are significantly impairing their returns over the long term.
- 2.5. Canadians often receive their “advice” from the bank branch. According to the 2012 Ipsos Canadian Financial Monitor, 87% of households holding investment funds, hold these products through a deposit-taker or insurer owned dealer, many of which are banks.
- 2.6. Banks hold a trusted position amongst Canadians because they are involved with Canadians’ savings, mortgages for their homes, their loans and their investments. **The banks are in a unique position to have a significant impact on the long-term financial security of Canadians.**

## **3. Regulatory Issues**

- 3.1. There has been little regulatory change to account for the increasing “holistic and advisory nature” of relationships between employees and customers.
- 3.2. Banking regulations focus on disclosure, consent and education, while the securities regulatory framework focuses on “suitability”. However, the 2008 financial crisis and behavioural economics findings make it clear that disclosure is an inadequate regulatory framework. International best

---

<sup>2</sup> Final Report of the Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives (1 November 2016), online: <<http://www.fin.gov.on.ca/en/consultations/fpfa/fpfa-final-report.html>> at 16-17 [Expert Report].

<sup>3</sup> OSC Statement of Priorities for Fiscal 2011-2012 at 4, online: <[http://osc.gov.on.ca/documents/en/Publications/sop\\_fiscal-2011-2012.pdf](http://osc.gov.on.ca/documents/en/Publications/sop_fiscal-2011-2012.pdf)>.

<sup>4</sup> Expert Report at 19.

practices and our obligations under the G20 High-Level Principles on Financial Consumer Protection require more.<sup>5</sup> Principle 6 of the G20 High-Level Principles states:

“Financial service 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...Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to **avoid such conflicts**...The remuneration structure for staff of both financial services providers and authorised agents should be designed...to **avoid conflicts of interest**...”<sup>6</sup>

- 3.3. FAIR Canada believes that a “best interest” standard is urgently needed for those engaged in providing financial advice to consumers.<sup>7</sup> Such a best interest standard should include acting fairly, honestly, with a duty of loyalty to the client and avoiding conflicts of interest, among other things.<sup>8</sup>
- 3.4. A best interest standard would combat the proliferation of harmful products, damaging sales practices and financial incentives not in the client’s best interest, and would remove structural conflicts of interest (including third-party embedded commissions).<sup>9</sup> For example, despite having low cost index funds in their suite of products, bank employees are incented to sell high fee fund-of-fund products. FAIR Canada has urged reform in this area.<sup>10</sup>
- 3.5. A best interest standard would be a significant step to ensuring that Canadians do not receive mis-selling and compromised advice, and would force banks to adapt their business practices so that employees no longer prioritize sales over the interest of the client.

#### 4. Consumer Dispute Resolution

- 4.1. The consumer complaint system related to banking is fragmented and complex, with consumers not necessarily pursuing their complaints or concerns. Many consumers do not know or understand the

---

<sup>5</sup> OECD G20 High-Level Principles on Financial Consumer Protection (October 2011), online:

<https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf> [High Level Principles].

<sup>6</sup> High Level Principles at 7. See also Update Report on the Work to Support the Implementation of the G20 High-Level Principles on Financial Consumer Protection: G20/OECD Task Force on Financial Consumer Protection, Principles 4, 6 and 9 (September 2013), at 4 and 12 to 17, online: <https://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>. These are regulatory, supervisory and self-regulatory measures and practices, which have been developed and are considered by the Task Force to effectively implement key aspects of the G20 High-Level Principles. They are also consistent with approaches developed by a broader range of jurisdictions.

<sup>7</sup> See FAIR Canada’s submission on a Best Interest Standard to the Canadian Securities Administrators (30 September 2016), online: <https://faircanada.ca/wp-content/uploads/2016/10/160930-Final-FAIR-Canada-Submission-33-404-Best-Interest.pdf> [FAIR Canada Best Interest Submission] and FAIR Canada, “Statutory Best Interest Standard Urgently Needed” (20 October 2016), online: <https://faircanada.ca/whats-new/statutory-best-interest-standard-urgently-needed/>.

<sup>8</sup> Ibid.

<sup>9</sup> Professor Douglas Cumming, “A Dissection of Mutual Fund Fees Fees, Flows and Performance” (8 February 2016), online: [https://www.securitiesadministrators.ca/uploadedFiles/General/pdfs/Dissection%20Fund%20Fees%20Flows\\_Feb%208%202016\\_en.pdf](https://www.securitiesadministrators.ca/uploadedFiles/General/pdfs/Dissection%20Fund%20Fees%20Flows_Feb%208%202016_en.pdf) and CSA Consultation 81-408, Consultation on the Option of Discontinuing Embedded Commissions (10 January 2017), online: [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_sn\\_20170110\\_81-408\\_consultation-discontinuing-embedded-commissions.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20170110_81-408_consultation-discontinuing-embedded-commissions.htm).

<sup>10</sup> FAIR Canada’s letter dated April 12, 2013 to the Canadian Securities Administrators Re Canadian Securities Administrators (“CSA”) Discussion Paper and Request for Comment 81-407 Mutual Fund Fees, online: <http://faircanada.ca/wp-content/uploads/2013/04/FAIR-Canada-comments-re-Mutual-Fund-Fees.pdf> and September 23, 2011 Open Letter to the Honourable Jim Flaherty, then Minister of Finance re Price Differences between Canadian and U.S. Mutual Funds, online: <http://faircanada.ca/wp-content/uploads/2011/09/110923-FAIR-Canada-letter-re-Price-Differences-between-Cdn-and-US-Mutual-Funds.pdf>.

nature of their problem, or the process that must be followed in order to make a complaint – this is not surprising because the process is extremely complex and depends on whether the financial product and service technically belongs to banking, insurance or securities.

- 4.2. There are different ombudservices depending on which financial services sector is involved – the Ombudservice for Banking Services and Investments (“OBSI”) for securities investments, the Ombudservice for Life and Health Insurance (“OLHI”) for insurance, and either OBSI or ADR Chambers Banking Ombuds Office (“ADRBO”) for banking complaints.
- 4.3. FAIR Canada believes the Government should reconsider the decision made by the federal government in 2012 to allow multiple external dispute resolution bodies to exist for banking complaints. **Banks should not be permitted to hire and pay their external dispute resolution provider. We refer the Government to our submission on the matter for a detailed explanation of why this is not the public interest.**<sup>11</sup>
- 4.4. FAIR Canada recommends that government and regulators reform the process of consumer redress through ombudservices so that consumers obtain resolution of their complaint through a binding decision, if the consumer accepts the recommendation. This will improve compliance by firms and their individual registrants with the standard of conduct and accompanying rules, while allowing consumers to resolve their complaints effectively and efficiently.<sup>12</sup> **FAIR Canada urges the Government to be a leader in this regard and develop a body that has the power to implement binding decisions.**
- 4.5. In addition, internal dispute resolution procedures at financial institutions should not be permitted to call themselves “ombudsman” since they do not meet the criteria to be an ombudsman. This causes confusion for consumers in their ability to access the true ombudservices that currently exist.
- 4.6. FAIR Canada recommends that consumers be provided with clear information about their complaint procedures from the financial institution and that banks not be permitted to confuse the complaint process by calling those responsible for complaints at the banks “ombudsman”. This is inherently misleading and confusing.
- 4.7. FAIR Canada recommends greater compliance with requirements to report complaint data and transparency on complaint data.<sup>13</sup>

## 5. The FCAC

- 5.1. **FAIR Canada recommends that the powers, resources, and processes of the Financial Consumer Agency of Canada be reviewed so that it has the necessary structure, resources, legislative mandates and processes to carry out its mandate and ensure effective compliance and enforcement over those it regulates, and ensure adequate consumer protection. Changes should be made to ensure it is a strong market conduct regulator. The U.S.’s Consumer Financial Protection Bureau should be reviewed as a model.**

---

<sup>11</sup> FAIR Canada letter (13 August 2012), online: <<http://faircanada.ca/wp-content/uploads/2011/01/120813-final-banking-complaints-submission-FINAL.pdf>>.

<sup>12</sup> FAIR Canada’s submission to Ms. Deborah Battel, Independent Reviewer of OBSI, (26 February 2016), online: <[http://faircanada.ca/wp-content/uploads/2016/02/160226-FAIR-Canada-submission-independent-evaluation-of-obsi\\_final-2.pdf](http://faircanada.ca/wp-content/uploads/2016/02/160226-FAIR-Canada-submission-independent-evaluation-of-obsi_final-2.pdf)>.

<sup>13</sup> We believe firms are not all in compliance with their existing regulatory obligations to publish information regarding complaints in accordance with the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations, section 4.

- 5.2. Something is awry if the employee allegations are true and these poor sales practices and compensation structures have been permitted to flourish while the FCAC believes it "...continued to solidify itself as Canada's financial consumer watchdog – ready for any challenge on the road ahead."<sup>14</sup> How could it characterize market conduct among federally regulated financial entities as strong, "with no major or systemic concerns"?

We are pleased that the Government is undertaking this review as a first step to ensure Canadians receive adequate consumer protection. We would be pleased to be of further assistance.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. We also would welcome the call for more public hearings in the fall. Feel free to contact Marian Passmore at 416-214-3441/[marian.passmore@faircanada.ca](mailto:marian.passmore@faircanada.ca) or Ermanno Pascutto at [ermanno.pascutto@faircanada.ca](mailto:ermanno.pascutto@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights

---

<sup>14</sup> Financial Consumer Agency of Canada 2015-2016 Annual Report, online: <<https://www.canada.ca/content/dam/fcac-acfc/documents/corporate/planning/annual-reports/FCAC-annual-report-2015-16.pdf>>.