FAIR Canadian Foundation *for* Advancement *of* Investor Rights
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PIAC PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

BACKGROUNDER on the Financial Consumer Agency of Canada Domestic Bank Sales Practices Review

FCAC confirms banks "mis-selling" products to consumers

TORONTO, March 20, 2018

The Financial Consumer Agency of Canada (FCAC) has published a report on its review of domestic banks' retail sales practices (the "Report"). The Report, which follows 9 months of investigation, finds that the banks do not prioritize financial consumer protection, fairness and product suitability and as a result there is an increased risk of mis-selling to consumers and of bank employees breaching market conduct obligations.

The FCAC News Release identifies the following as key findings in the Report:

- Retail banking culture is predominantly focused on selling products and services, increasing the risk that consumers' interests are not always given the appropriate priority.
- Banks' financial and non-financial incentives, sales targets and scorecards may increase the risk of mis-selling and breaches of market conduct obligations.
- Certain products, business practices and distribution channels present a higher sales practices risk.
- Governance frameworks do not manage sales practices risk effectively.
- Controls to mitigate the risks associated with sales practices are underdeveloped.

FAIR Canada and the Public Interest Advocacy Centre's (PIAC's) Key Observations from the Report include:

- Compensation structures (sales practices) and firm-wide practices place employees' and banks' interests ahead of the interests of Canadians.

- Legislative and regulatory requirements for banks are inadequate. The Report defines "mis-selling" as the sale of financial products or services that are unsuitable for the consumer; sales that are made without taking reasonable account of the consumer's financial goals, needs and circumstances; and sales where consumers are provided with incomplete, unclear or misleading information. Mis-selling, according to the Report, does not amount to a violation of a market conduct obligation. In other words, the rules are inadequate.

- There is inadequate protection for Canadians at banks and reforms are needed. FAIR Canada and PIAC call for a best interest standard so Canadians get the advice they expect and deserve. We believe that a best interest standard is urgently needed for those engaged in providing financial advice to consumers. 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. As part of a best interest standard, banks would be required to avoid financial and non-financial incentives, targets, scorecards or performance measures that puts Canadians at risk of harm.

- A best interest standard would lead banks to adapt their business practices so that employees no longer prioritize sales over the interest of the client.

- The Report notes that branch and call centre channels have shifted their focus to other kinds of services including "providing financial advice and sales-related customer service". The fact that these institutions purport to provide "advice" warrants a higher standard of conduct.

- FAIR Canada and PIAC are disappointed that the Report does not provide any specifics as to how many Canadians were harmed or what percentage of products sold were done in a manner that was wrongful or unsuitable for consumers. There is no support for their key finding that they "did not find widespread mis-selling."

- Although Canadians may conduct millions of routine deposit, withdrawal and payment transactions through banks, when they seek to make important financial decisions, such as obtaining a credit card, obtaining a line of credit, taking out a mortgage, or purchasing various types of complex investments such as market linked GICs, PPNs, Structured Products or Mutual Funds, they are at serious risk of being ill-advised, misinformed and mis-sold these products. This demonstrates inadequate consumer protection and has serious consequences for Canadians' financial well-being.

- The Report should have greater emphasis on what the risks mean for the financial well-being of Canadians.

Consumer Complaints

- The FCAC found "Weaknesses in policies, procedures and systems for handling complaints limit the ability of banks to adequately monitor, identify and report complaints to management, boards and FCAC."

- FAIR Canada and PIAC call for a complete overhaul of the internal bank oversight, management and reporting and handling of consumer complaints.

- Banks should be required to follow the FCAC Internal Guidelines for internal complaints and the Internal Guidelines need to be reformed so that consumers do not have to complain at two separate levels at their bank. In addition, consumers should have the right to go the external complaints body if they have not obtained a resolution of their complaint at the bank within 90 days. They should not have to wait for a 90 day letter from the bank (which may not be forthcoming in a timely manner).

- FAIR Canada and PIAC also call for major reform to the consumer complaint handling system. The Minister of Finance should work towards having one, national, statutory ombudservice for financial services complaints that can issue binding decisions.

- Finally, we are concerned about the robustness and rigour of the proposed enhancements to the FCAC's supervisory and enforcement functions set forth at page 24 of the Report.

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