

# FAIR

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

## OPEN LETTER

March 31, 2017

President Louis Morisset  
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Sent via e-mail to: Louis.Morisset@lautorite.qc.ca

Dear Members of the Canadian Securities Administrators:

### **RE: Reports of Improper Sales Practices at Canada's Banks**

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FAIR Canada has been following the CBC Go Public investigation of improper sales practices at Canada's banks. Many of the employee revelations and subsequent consumer complaints deal with banking related issues – such as moving clients to higher fee bank accounts, and increasing consumers' credit limits on personal lines of credit and credit cards without their knowledge and consent. These complaints have led to questions about adequacy of the regulatory structure governing Canada's banking sector.<sup>1</sup> They also raise issues about what type of sales incentives and performance targets banks should be permitted to engage in – as such practices have led to consumer harm.

The Financial Consumer Agency of Canada, the federal market conduct regulator for federally regulated financial institutions announced it will be conducting an investigation.

However, what has received less attention, but is of at least equal importance, is how these sales practices have also led bank employees - who are registered to sell securities - to improperly recommend mutual funds or other securities that are under the regulatory jurisdiction of provincial securities regulators and the associated SRO's, the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Authority of Canada. The provincial securities regulators have not made any public statement that we are aware of to date.

#### *Need to Protect Consumers from Unsuitable Recommendations Driven by Poor Sales Performance Targets*

Securities regulators need to act to protect investors against performance targets, non-neutral grids, scorecards, sales targets and other compensation related practices which lead to consumers being placed in mutual funds or structured products that are not suitable for them, do not meet their needs or are sold without

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<sup>1</sup> See for example, <http://business.financialpost.com/news/economy/heft-of-canadas-bank-oversight-questioned-after-reports-of-customer-account-mis-selling-reported>

consumers being adequately informed about the risks and benefits (including costs, and charges embedded in the product). **FAIR Canada calls on securities regulators to discharge their compliance oversight and enforcement responsibilities to ensure that current regulatory requirements are being met and if not, that appropriate disciplinary and enforcement action is being taken.**

#### *Need to Act to Prohibit Conflicts of Interest that Harm Financial Consumers*

The CSA and the SROs have been reviewing or researching the issue of conflicts of interest for several years. Regulators need to act on a timely basis and take concrete steps to address the problems such compensation arrangements create. This is not about “legal” or “technical” conflicts but about concrete motivations, set from the top of the organization, that lead to encouraging behaviours that don’t meet the existing regulatory requirements and certainly don’t meet Canadian’s expectations from their banks and those who call themselves “financial advisors”. Compensation *does* drive behaviour.

Last December Canada’s securities regulators - the CSA, MFDA and IIROC - all issued notices relating to compensation related arrangements and incentive practices which listed all the various methods firms have derived to drive real life behaviours that may and do harm clients but that presumably increase profitability or meet the business goals of the firms. They indicated that the work is ongoing and that they may issue “further guidance and/or proposed regulation related to compensation arrangements and incentive practices”.<sup>2</sup>

**What Canadians need is strong regulatory action taken against practices that don’t meet current regulatory requirements. Moreover, securities regulators need to make it clear what practices and incentives are permissible and those that are not, in accordance with their mandate to protect investors.** It should not be left up to the firms to determine whether they will be able to continue to use them. These conflicts are an obvious root cause of poor outcomes for the investing public.

#### *Need for a Statutory Best Interest Standard*

The media attention that has been brought to these issues also makes it clear that Canadians expect to receive, and believe they are receiving, advice from the bank that is in their best interest. They believe that their “financial advisor” (whether called a “client advisor”, a “front line advisor” or a Vice-President of Wealth Management”) will provide them with professional, unbiased advice that is in their best interest.

**FAIR Canada fully supports reforms that will require individual registrants (aka “financial advisors”) and their firms to have a statutory duty to act in their client’s best interests. FAIR Canada calls on the regulators to move forward quickly with a best interest standard which prohibits conflicted remuneration and requires the avoidance of conflicts of interest.**

#### *Improving Proficiency and Restricting Titles*

Anyone engaged with consumers in the provision of financial advice **should be required to achieve a certain level of proficiency, have their activities regulated by a regulator, have restrictions on the use of titles**, and be subject to a statutory best interest duty regardless of the regulatory silo – banking, insurance or securities.

#### *Two main use of titles should be permitted – Advisor or Salesperson*

It is of critical importance that consumers have confidence that those who hold themselves out as financial **advisors** will provide professional objective advice in the consumer’s best interest including having processes and compensation structures that support this. Financial service providers that do not provide services in the best interest of consumers should immediately be required to call themselves financial product **salespersons**.

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<sup>2</sup> (2016), 39 OSCB 10115, CSA Staff Notice 33-318 Review of Practices Firms Use to Compensate and Provide Incentives to their Representatives, at 10115.

We call on securities regulators to let consumers know what actions the regulators are taking now to ensure that regulatory rules are adhered to and consumers are adequately protected.

Sincerely,



Ermanno Pascutto  
Chair



Marian Passmore  
Director of Policy and COO

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