



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

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Competition Bureau
Place du Portage I
50 Victoria Street, Room C-114
Gatineau, Quebec
K1A 0C9

Sent Electronically

RE: Competition Bureau Review of Technology-led Innovation and Emerging Services in the Canadian Financial Services Sector – Draft Report

FAIR Canada is pleased to offer its comments on the draft report relating to the Competition Bureau's review of technology-led innovation and emerging services in the Canadian financial services sector (the "Draft Report" or "Report"). Given the short time provided for comment and FAIR Canada's limited resources, our comments will be restricted to the Report's recommendations relating to equity crowdfunding and investment dealing and advice.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Introduction

- 1.1. FAIR Canada commends the Competition Bureau for examining the impact of FinTech on the competitive landscape for financial services and for exploring ways to encourage greater competition and innovation. FinTech presents potential benefits and opportunities for consumers (more empowerment through the use of open data, greater transparency and disintermediation, and lower cost investor options), but may also present risks to investor protection that should be examined and addressed.
- 1.2. FAIR Canada encourages the Competition Bureau, given its clear expertise, to work collaboratively with securities regulators so that Canadian financial consumers and investors are served by an investment industry that has effective competition in the interests of consumers. We refer the Competition Bureau to CSA Consultation Paper 81-408 – Consultation on the Option of Discontinuing Embedded Commissions and CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Dealers, Advisers and Representatives, as well as our responses to those Consultation Papers¹.

¹ See CSA Consultation 81-408, online at http://www.osc.gov.on.ca/documents/en/Securities-Category8/sn_20170110_81-408_consultation-discontinuing-embedded-commissions.pdf, FAIR Canada's submission re CSA Consultation 81-408, online at http://faircanada.ca/wp-content/uploads/2017/06/170609-FAIR-Canada-submission-re-81-408_final.pdf,

- 1.3. In addition, FAIR Canada encourages the Competition Bureau to incorporate behavioural insights and behavioural economic findings into its review and analyze the degree of effective competition in the interests of consumers in the investment industry, including with the advent of FinTech firms. For example, investment firms, including FinTech firms, may take advantage of or unwittingly accentuate the behavioural biases of financial consumers. FAIR Canada encourages the Competition Bureau to keep on top of issues affecting – or that may affect – financial consumers adversely in the area of FinTech in order to further inform policy development and investor protections.²
- 1.4. Finally, FAIR Canada encourages the Competition Bureau and regulators to examine what role they can play in fostering the use of FinTech for the benefit of financial consumers. Regulators and government themselves can use FinTech to benefit their own activities. For example, they can obtain a greater amount of data, the ability to access and process data, and thereby improve their compliance, surveillance tools and enforcement programs.

2. Supporting the Growth of FinTech

(i) Investment Advice

- 2.1. FAIR Canada believes that the expansion of financial technology brings opportunities for better financial consumer experiences, particularly in areas such as investment advice. We agree that robo-advisors can be beneficial for consumers seeking basic advice, and with their “set-and-forget” portfolio management through an on-line experience, can be a lower-cost alternative for investors.
- 2.2. FAIR Canada supports increased transparency of prices and services in the area of investment advice. For example, we recommend that securities regulators require that the types of advice options, services and investments available at a dealer be disclosed in plain language on the main page of the dealer’s website so that consumers can easily comparison shop. The price and type of many investment products and services are currently too opaque – we agree with the Competition Bureau that both price and services offered need to be easily comparable.³
- 2.3. We believe that fundamental reforms are needed to have fair and efficient markets, and adequate investor protection in the area of investment advice. We refer you to our submissions on CSA Consultation Paper 81-408 and CSA Consultation Paper 33-404 for our position in detail. Disclosure is not an adequate remedy to the investor protection concerns that exist in obtaining investment products and advice and CRM2 disclosure will not remedy the lack of effective competition that exists, for several reasons set out in our submissions – not least of which is that CRM2 disclosure does not work effectively when provided by integrated firms since the embedded commissions are not required to be separately disclosed.
- 2.4. FAIR Canada strongly supports the need for regulators to implement a statutory requirement that investment firms and their representatives act in the best interest of their clients, and that embedded

CSA Consultation 33-404, online at http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.pdf and FAIR Canada’s submission, online at <http://faircanada.ca/wp-content/uploads/2017/11/160930-Final-FAIR-Canada-Submission-Regulatory-Best-Interest-REVISED.pdf>.

² International Organization of Securities Commissions, IOSCO Research Report on Financial Technologies (FINTECH), online at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD554.pdf>.

³ Draft Report at 43.

commissions and other forms of conflicted compensation be eliminated.⁴ A best interest standard and the elimination of embedded commissions will work harmoniously to not only better protect investors, but support FinTech firms in the area of financial advice by accelerating further innovation and competition. FAIR Canada encourages the Competition Bureau to consider as a recommendation the advantages of creating a best interest standard and eliminating embedded commissions and other forms of conflicted compensation structures, in order to better protect consumers and support the overall growth of financial technology in the investment advice industry.

(ii) Switching Investment Firms

2.5. FAIR Canada encourages securities regulators and the Competition Bureau to examine the adequacy of existing rules and the regulatory framework for financial consumers who wish to switch investment firms, and examine technological impediments and the behavioural factors that impede switching. In addition, FAIR Canada encourages securities regulators to examine whether a prospectus should be receipted if it specifies that the security must be held by an affiliated dealer and cannot be transferred in-kind to another dealer.

(iii) FAIR Canada Supportive of Open Banking

2.6. FAIR Canada in principle supports open banking, which should result in increased transparency for financial institutions and increased information and control of finances for financial consumers. Open banking provides an opportunity for the development of innovative technologies and platforms that would improve the financial consumer experience, such as tools encouraging increased financial management and the disclosure of financial products that could better benefit consumers. FAIR Canada supports open banking with the caveat that financial consumers would have to provide fully informed consent, with appropriate privacy and cybersecurity safeguards being applied.

3. Concerns with FinTech: Crowdfunding as a Case Study

3.1. As we mentioned earlier in this submission, financial technology is not necessarily good for competition or for financial consumers. While financial technology offers many potential benefits for financial consumers and competition, this should not always be assumed to be the case. A clear example of this is equity crowdfunding.

3.2. FAIR Canada questions the Competition Bureau's assumption in the Draft Report that equity crowdfunding is a desirable development. FAIR Canada also disagrees with the statement in the Draft Report that the exemptions related to equity crowdfunding may "create additional hurdles for FinTech lenders who later wish to gain broader access to markets and attract different types of investors outside their existing exemption category."

3.3. As FAIR Canada has stated before, equity crowdfunding poses great harm to investors – it is risky and can

⁴ See FAIR Canada submission to CSA on Proposed Best Interest Standard and Targeted Reforms, online at <https://faircanada.ca/submissions/fair-canada-comments-on-proposed-best-interest-standard-and-proposed-targeted-reforms/> and FAIR Canada submission to CSA on the Option of Discontinuing Embedded Commissions, online at <https://faircanada.ca/submissions/consultation-81-408/>.

undermine investor confidence in the Canadian capital markets.⁵ Lowering investor protections can result in an increase in fraud, which may hurt legitimate businesses by increasing the cost of capital while making it easy for fraudsters to make off with investors' funds. Please see our submissions on equity crowdfunding for details of our position.⁶

- 3.4. Equity crowdfunding is an example of when FinTech may not result in good outcomes for financial consumers. FAIR Canada recognizes that FinTech can provide many potential benefits to the markets and for financial consumers in the future. However, the benefits of FinTech should never be assumed and should always be encouraged with an eye to ensuring fair and efficient markets and adequate investor protection.

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. Feel free to contact Frank Allen at 416-341-3443/frank.allen@faircanada.ca, Marian Passmore at [416-214-3441](tel:416-214-3441)/marian.passmore@faircanada.ca or Samreen Beg at [416-214-3442](tel:416-214-3442)/samreen.beg@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

⁵ See FAIR Canada submission to CSA on Crowdfunding, online at <https://faircanada.ca/submissions/csa-crowdfunding-and-start-up-exemptions/>.

⁶ We have written several submissions on equity crowdfunding which are available online at https://faircanada.ca/fca_submissioncategory/crowdfunding/.