

January 7, 2014

Jane Pearse , Director, Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
L'Esplanade Laurier
15th Floor, East Tower
140 O'Connor Street
Ottawa, ON K1A 0G5
Facsimile: [613-943-1334](tel:613-943-1334)
email code.consult@fin.gc.ca.

Consultation Questions at a Glance: Canada's Financial Consumer Protection Framework Consultation

http://www.fin.gc.ca/activty/consult/fcpf-cpcpsf_1-eng.asp

Kenmar Associates appreciates the opportunity to comment on the Financial Consumer Protection Framework Consultation.

Kenmar distribute the Fund OBSERVER to several thousand financial consumers every 2 weeks, run the blog canadianfundwatch.com and assist retail consumer complainants by acting as Intervenors on complaint cases. We are also active financial consumer advocates and routinely comment on consumer protection initiatives and proposals. As a result, we solicit and obtain a significant amount of financial consumer feedback.

Whether it's the high fees, unexplained prepayment mortgage provisions, abuses in the Exempt Market, mutual fund sales practices, inappropriate borrowing, broken dealer KYC/Suitability breakdowns, off book transactions, crummy IPO's, the evaporation of Nortel employees pension benefits or flawed redress systems there's serious retail financial consumer protection issues that need to be addressed and NOW. With low financial literacy, a misunderstanding about an advisor's fiduciary obligations, and asymmetric information, Canadian financial consumers are extremely vulnerable -their retirements savings in jeopardy. This is further complicated by a coincident decline in company defined benefit pension plans and a rapidly growing population of retirees/elderly.

The Canadian financial services main sectors. Banking, insurance and investments, have each developed financial products and services aimed at consumers as part of a broad wealth management growth strategy. The differentiation between these sectors have blurred over the years while regulation and consumer protection is still based on the 3 vertical chimneys. This has resulted in dramatically varying levels of financial consumer protection and many opportunities for regulatory arbitrage. A classic example is Segregated funds in the insurance sector and mutual funds in the investment sector. Another example is market-linked GIC's in the banking sector vs. index funds in the investment sector. Regulation is

further complicated because securities are regulated provincially and insurance industry regulation seems to us to be unclear and relatively ineffective. Recently it was determined that consumer complaints involving an investment portfolio containing a blend of insurance and investment products would have to be sent to two different ombudsman services for consideration, an absurd result .This makes an already complex complaint handling system almost impossible to navigate for Main Street. This too was further complicated in 2013 when the Ministry of Finance permitted federally regulated banks to purchase their own “independent” Dispute resolution service , which simultaneously put bank complainants in harm's way and weakened OBSI. If a new Framework would help prevent such anti- financial consumer initiatives being enacted, we heartily support it

The current Canadian banking regulatory framework , such as it is, focuses on prohibiting certain business practices of financial institutions such as tied selling and negative option billing that are not considered to be in the best interest of bank clients and requiring banks to have dedicated procedures and personnel in place to handle consumer complaints. However, it does not have market conduct standards prescribing how banking institutions are to treat clients in the comprehensive manner securities regulators do .What Codes there are, are voluntary and not subject to intense consumer comment and scrutiny. The system is built on a platform of thin ice firmly embedded in a foundation of quicksand.

Despite the changes in both the market and the financial services industry, the Canadian regulation of Financial Service Providers continues to be performed on an institutional basis. This mismatch between the market and the structure of regulation has produced an increasing number of circumstances where similar activities are regulated in very different manners, depending on the nature of the FSP offering the product or service.

While fraud plays a role in impairing consumer savings, the financial services industry employs more subtle ways, which are less about outright theft, but more about impairing people's life savings. High fee products, unsuitable investments, excessive borrowing and account churning take a heavy long term toll on nest eggs. For the first time in living memory, it seems likely that living standards for those over the age of 65 will begin to decline as compared to those who came before them.

The OECD warns poverty among seniors rising in Canada providing yet one more good reason to adopt a consumer protection Code and Framework.<http://www.theglobeandmail.com/report-on-business/top-business-stories/oecd-warns-poverty-among-seniors-rising-in-canada-points-to-public-pensions-gap/article15600342/> Report at <http://www.oecd.org/canada/OECD-PensionsAtAGlance-2013-Highlights-Canada.pdf>

RESPONSE TO CONSULTATION QUESTIONS

Response to Consultation Questions: Canada's Financial Consumer Protection Framework Consultation

This consultation paper seeks views from all Canadians on elements that could strengthen

Canada's financial consumer protection framework and seeks input on key policy issues. Respondents are encouraged to respond directly to the proposed questions highlighted in the consultation paper.

The federal government will provide a summary of views gained from this consultation process in summer 2014, and input from Canadians will be used in developing consumer protection policies. [We feel that in the interests of transparency, ALL Comment letters should be posted on the Finance website]

The Government of Canada is seeking views on three key areas, summarized as follows:

1. Establishing a Comprehensive Set of Principles for Consumer Protection

To achieve a framework that is more adaptable to changes in the financial marketplace, products and technology, the government is considering the merits of adopting standards or principles to anchor the financial consumer code.

Should the government adopt a set of principles to govern financial consumer protection that would be applicable even where specific regulations have not been enacted? Absolutely-they can serve as a benchmark, guidepost and a basis for enforcement/complaints. It could also include a Bill of Rights modeled on that of the NASAA Investor *Bill of Rights* <http://www.nasaa.org/2715/investor-bill-of-rights/>

If so, how should a set of principles be administered? Under the Federal dept. or agency responsible for financial consumer protection, likely the Financial Consumer Agency of Canada (FCAC). It should however not report to Finance; it should report to a ministry not connected to the financial services industry .The FCAC currently has few of the powers that a Consumer Protection Agency should have. The FCAC does not appear to have the resources and/or the appetite to take a tough stance on consumer protection issues. The FCAC complaint system is open loop with no feedback to consumers on the status of their complaints. The major thrust of its activities has been in promoting financial capability and providing consumer information primarily for banking with little emphasis on insurance. According to FCAC Annual reports, its Compliance and Industry Relations Branch has imposed only a few small penalties on a handful of financial institutions. Even so, the FCAC is a natural platform on which to create an agency with a much expanded mandate and far stronger regulatory powers. See *New watchdog kept on a short leash* <http://investorvoice.ca/PI/78A.htm>

As in the United States, the best form for a strengthened consumer protection agency remains to be determined. .Among the functions recommended for a CFPA by the Stern White Paper (http://govtpolicyrecs.stern.nyu.edu/docs/whitepapers_ebook_chapter_18.pdf 2009) are: to require that financial services providers include an easily understood "plain vanilla" option among their products; to insure that any default options are prudently chosen; and to award a CFPA "seal of approval" to financial products deemed worthy. To deal with products that are thought to be harmful, the White Paper recommends that a Protection Agency have the authority to prohibit their sale, but only after extensive testing and an analysis of the experience of consumers with the allegedly harmful products.

We believe an effective regulatory agency should meet the following criteria: It should be independent, well resourced and have effective regulatory power on consumer protection matters over every financial institution, product and provider. It should have consumer protection as an explicit regulatory objective with full authority to investigate, halt and remedy violations of consumer protection law, including where necessary the right to define specific practices or products as unfair, deceptive or illegal. It should be able to require clear and accessible information, fair contract terms and charges, responsible marketing, effective systems of complaint and redress, and effective competition. Over the last several years we have seen movements towards this goal in a number of countries. And no matter how near or far they are from achieving this goal, consumer advocacy organizations will continue to call for and support the establishment of effective independent regulators to ensure that the financial services marketplace is safe for consumers. The Small Investor Protection Association www.sipa.ca has made similar proposals.

What should be included in a set of principles that would form the basis for financial consumer protection? Institutions should act fairly and honestly and not provide incomplete, misleading or deceptive information to clients. Complaint handling should be per ISO 10003 and be robust, professional and independent. A Federally legislated Ombudsman service is required to cover banking, investment and insurance sectors. The current Government created ECB system used for banking complaints should be unwound as quickly as possible as it is anti-consumer. Governments should also provide collective redress mechanisms (systemic issues), in order to reduce the demand for multiple individual proceedings. Insolvency procedures should be reformed so that the rank of creditors is changed to put depositors at the top. A key principle is that insolvency of a financial institution should be covered by a reasonable amount of insurance...CDIC insurance coverage should be increased to \$1 million for banks and not be limited to deposits and GIC's. This is consistent with the securities industry. A review needs to be held for insurance companies equivalent program.

Another principle should be related to TSX listings- consumers need to be confident that listed companies are real. In 2011, we witnessed the collapse of Sino-Forest – the largest timber company trading on our markets at the time, which had a market capitalization of \$6-billion reduced to nothing overnight. Sino-Forest snuck onto the TSX by way of a reverse takeover in the mid-'90s and was only exposed 15 years later by the short-selling firm Muddy Waters as nothing more than a shell – that it did not actually own the forests in China in claimed to. And yet for its entire existence, the company's accountants and underwriters were blind to this, as were regulators. Such breakdowns shake public confidence in public markets.

What elements should be set out under each principle to ensure that the principles are meaningful, measurable and fair to consumers and financial institutions?

2. Possible Enhancements to Existing Regime

In the context of developing a comprehensive consumer code, the government is interested in hearing from Canadians with respect to enhancing protection for

consumers, including:

a) Addressing the Needs of Seniors and Vulnerable Canadians

Some Canadians may face particular challenges in accessing financial services and in assessing the most appropriate financial products for their needs. Geography, cultural and financial literacy or capacity to process information may pose obstacles to some groups. [Financial literacy is not a panacea as noted by Carleton University professor Saul Schwartz *Can Financial Education Improve Financial Literacy and Retirement Planning?* <http://www.irpp.org/assets/research/faces-of-aging/can-financial-education-improve-financial-literacy-and-retirement-planning/IRPP-Study-no12.pdf> :" Danger lurks, however, when financial education is viewed as a *substitute* for, rather than a *complement* to, these other policies. Willis argues that "[a] society that believes that financial...education will solve consumer financial problems has an all-too-convenient excuse not to engage in the difficult task of finding better...public policies" (2008,272). This is not to say that developing financial capability is unimportant — innovative efforts to help Canadians understand the need for retirement planning, to avoid the many perils of the financial services market and to take an active part in policy debates should be encouraged. Such efforts are necessary but far from sufficient."]

What are the unique challenges faced by vulnerable populations? Literacy, physical/cognitive disabilities associated with aging, financial competence , limited access to the internet and understanding complex contracts and financial products .See **Securities regulators and the protection of seniors** <http://faircanada.ca/wp-content/uploads/2013/08/130820-KK-protection-of-seniors.pdf> , **Top**

10 Ways to Stop Elder Financial Abuse Noting the increasing incidents of elder financial abuse, the Certified Financial Planner Board of Standards has released a free guide to help seniors protect themselves from fraud. The [32-page guide](#), written by CFP Board consumer advocate Eleanor Blayney, describes 10 common situations in which older Americans are vulnerable to financial abuse and provides warning signs of such abuse and advice for guarding against it. **Financial Self Defense for Seniors**

http://cfp.net/docs/publications/financial_self_defense_guide_for_seniors.pdf?sfvrsn=2

How should the consumer code address these challenges?

b) Responsibility of Financial Institutions to Consumers

The existing consumer protection regime is detailed and prescriptive in nature and does not contain a general expectation for the degree of responsibility financial institutions should have to consumers. This can lead to uncertainty regarding financial institutions' obligations to consumers when new products or services are developed, including an assessment of the risks these products or services may pose to consumers.

Would it be useful to have in legislation a broad standard of responsibility for financial institutions to consumers and, if so, what level of care should consumers expect from financial institutions? If the institution provides personalized financial advice it

should be required to act in the Best interests of clients. All media Ads and disclosure documents should be clear and should not be deceptive or misleading and be written in plain language.

How should this standard be administered or enforced? This standard should be enforced by the FCAC based on published set of Codes and principles. Enforcement is a key pillar of financial consumer protection but IMET has not provided the required outcomes. IMET should be scrapped and replaced with a new financial crime unit separate from the RCMP, to investigate major White collar crime and frauds by banks and insurance companies, leaving securities related issues to securities regulators but with close coordination. The "new" FCAC should be called the FCPAC - The Financial Consumer Protection Agency of Canada- it could be quite effective.

• **How should financial institutions' business practices be evaluated to ensure that they are meeting their responsibilities to consumers?**

c) Supervisory Powers for Accountability and Enforcement

The FCAC was established to strengthen oversight of consumer issues and expand consumer education in the financial sector. The supervisory agency plays an important role in consumer protection using its administration and enforcement powers. The government is considering whether changes are needed to the legislative framework in order to allow the FCAC to better supervise and enforce consumer protection provisions.

What tools and authorities will the FCAC need in order to effectively supervise and enforce the implementation of a principles-based financial consumer protection framework? We do not believe a principles based regime alone can do the job. It must be supplemented by some prescriptive rules. The rule on PPN's is an example. Further, we do not believe that a principles-based regime can work effectively unless there is the prospect of serious consequences for a breach of the principles. This implies no-nonsense enforcement, a quality not evident in Canada as demonstrated by the infamous Bre-X fiasco that cost Canadians billions, easily the world's biggest mining scandal.

Although Canadian banks came through the 2007-2008 financial crisis relatively well, retail financial consumers were exposed. At least 60 investment funds had exposure to non-bank Asset-Backed Commercial Paper vehicles, with the vast majority of it in retail money market funds. Of these 60 funds, 24 were supposedly safer money market funds. The funds' total exposure was \$1.27 billion, with the money market funds accounting for \$1.14 billion of that total. The National Bank Corporate Cash Management Fund had the largest reported exposure with \$288.6 million of its \$760.7 million in total assets invested in the affected issues. The funds with the four largest dollar exposures were all National Bank funds. If the bank had not stepped in and volunteered to bail out the funds, investors would have taken a haircut. There are many consumer protection lessons to be learned from this fiasco.

Diane Urquhart, who led the valiant fight for retail investor restitution says in her **Statement on ABCP CCAA Restructuring Plan Decision of the Supreme Court of Canada**

http://www.investorvoice.ca/ABCP/Urquhart_Statement.htm “The retail owners worked hard to accomplish this settlement of just getting their own money back, with the assistance of the Co-Counsel appointed to represent them in the CCAA court-administered CCAA process. The Federal and Provincial governments were not helpful to this group of Canadians getting their money back. In fact, many retail ABCP owners were shocked to learn that our governments actually facilitated the sale of this flawed money market product into the unsophisticated retail marketplace through multiple law and regulation changes, blind enforcement and exemptive relief decisions that allowed the securities dealers and banks to side-step investor protection laws that Canadians fought years to achieve.

There is now urgent need for reform of our securities regulation and securities crime policing structures in Canada. Plus, we must proceed to make amendments in various securities and banking laws and regulations to prevent a similar crisis in the money market ever again. Given that the ABCP CCAA Restructuring Plan denied the rights of corporations, governments, pension funds and individuals to sue the securities dealers for negligence and civil fraud, we will have to amend the Companies Creditors Arrangement Act to explicitly restrict the right of judges to approve debt restructuring plans that deny the right of creditors to sue solvent third parties who exposed Canadians to harm...”

Enforcement power is key .The FCAC should be renamed the Financial Consumer Protection Agency of Canada and given the powers necessary to live up to its billing.

Should consumers have greater access to recourse, beyond the FCAC, in the federal consumer protection framework? If the FCAC is suitably empowered, it should be the sole Agency. Keep things simple for Main Street.

d) Innovation

Banking products and services have evolved significantly over the last few decades as financial systems have grown and the number and variety of financial products in the marketplace has expanded. Digital innovation has also led to an increase in consumer choice for accessing financial products and services.

How should the consumer protection framework accommodate emerging technologies and financial products? Technologies need to be tested as being safe and secure for use i.e. mobile transactions and consumer safeguards in place in the event of a breakdown. Financial products should be evaluated, analyzed and tested before release to consumers. The results should be retained for a period of not less than 10 years. Reliance on third parties like rating agencies should not prevent actions against distributors of toxic products.

e) Disclosure About Financial Products and Services

The government has used disclosure requirements as a key tool to provide Canadians with information to make responsible financial decisions. In an effort to be comprehensive and enable consumers to make responsible financial decisions, the government is seeking views on what key information elements are needed and what are the most effective forms of disclosure to help consumers to understand and compare products.

A research paper *Limits of Disclosure*

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2168427 by Steven M. Davidoff and Claire A. Hill points out that disclosure has its limits. One big focus of attention, criticism, and proposals for reform in the aftermath of the 2008 financial crisis has been securities disclosure. But most of the criticisms of disclosure relate to retail investors. The securities at issue in the crisis were mostly sold to sophisticated institutions. Whatever retail investors' shortcomings may be, we would expect sophisticated investors to make well-informed investment decisions. But many sophisticated investors appear to have made investment decisions without making much use of the disclosure. We discuss another example where disclosure did not work as intended: executive compensation. The theory behind more expansive executive compensation disclosures was that shareholders might react to the disclosures with outrage and action, and companies, anticipating shareholder reaction, would curtail their compensation pre-emptively. But it was apparently not the reality and instead compensation spiraled higher.

The two examples, taken together, serve to elucidate our broader point: underlying the rationale for disclosure are common sense views about how people make decisions — views that turn out to be importantly incomplete. This does not argue for making considerably less use of disclosure. But it does sound some cautionary notes. The strong allure of the disclosure solution is unfortunate, although perhaps unavoidable. The admittedly nebulous bottom line is this: disclosure is too often a convenient path for policymakers and many others looking to take action and hold onto comforting beliefs in the face of a bad outcome. Disclosure's limits reveal yet again the need for a nuanced view of human nature that can better inform policy decisions.``

What key information do consumers need and how should it most effectively be presented to allow consumers to make informed financial decisions? We like disclosure in plain language like the Fund Facts (for mutual funds) used by securities regulators. This includes the character of the product, fees, risks, liquidity constraints, and T&C's in plain language. Those providing personalized advice should be competent, licensed and act in the Best interests of clients .Misleading titles and designations should be prohibited. A National Advisors Act may be needed to professionalize the advice industry.

Are there particular products or circumstances in which disclosure is not sufficient to provide consumers with the information needed to make responsible financial decisions? What enhancements to disclosure would provide Canadians with information to make responsible financial decisions? Yes, market linked GIC's, Universal life policies

f) Access to Financial Services

The government continues to be committed to facilitating affordable access to basic banking services for all Canadians.

How could the code ensure reasonable access to basic banking services for all Canadians? By including statutory provisions mandating such access.

Are there examples where access to financial services is difficult or constrained? How could these situations be addressed in the consumer code? Access appears to be adequate although improvement is always possible

g) Comprehensiveness

The financial consumer code should comprehensively protect consumers of financial products and services. In addition to addressing the elements described above, the government seeks views on any other elements that could be considered in order to achieve the objective of a comprehensive consumer code.

- **What needs to be included in order to achieve the objective of a comprehensive financial consumer code?** The insurance sector must be included. All insurers are subject to market conduct regulation by the province in which they carry on business. Consumer advocates have real doubts as to the efficacy of this oversight. The industry sponsored and funded Ombudsman for Life and Health Insurance operates without any Government or Regulatory oversight.

3) Continuing the Conversation: Engagement

By working together we can continue to position Canada as a leader in financial services regulation, including financial literacy, financial inclusion and financial consumer protection policy. To do so will require the active engagement of all stakeholders, including individual Canadians, financial institutions and consumer groups. **See Involving Consumers in Securities Regulation**

<http://www.lse.ac.uk/collections/law/staff%20publications%20full%20text/black/Involving%20Consumers%20in%20Securities%20Regulation%20-%20Taskforce%20report.pdf>

We are strong believers in financial competency but recognize its limitations in a world of complex structured products and associated legalistic Terms and Conditions of sale.

Should the government consider mechanisms for enhancing engagement among stakeholders in regulatory, supervisory and compliance processes related to consumer protection? Yes, public posting of all consultations /comments received would improve transparency of key issues. The use of funded Advisory panels such as the OSC's highly successful Investor Advisory Panel. Such a Panel should be an immediate priority. {I am a member of this Panel]

Creative ways are needed to engage elderly financial consumers- print, TV, radio, user-friendly website dealing with seniors issues including tools and educational resources, email ALERTS, forms design , Town Halls, speaking engagements, Community Outreach, Social media/webinars, DVD'sParticipation by seniors on regulator advisory Panels would also be a particularly effective tool in accessing the concerns of the elderly. A partnership with CARP might lead to better informed decisions and outcomes of regulatory initiatives. For banking and insurance, market codes and rules of conduct are required similar to those of IIROC and the MFDA.

How could consumers and consumer groups best contribute to these processes, and

what might their role be? The 150-page study, *The Scorpion and the Frog (2001)*, was commissioned by the Consumers Council of Canada with the financial assistance of the Office of Consumer Affairs, Industry Canada. It makes 40 detailed recommendations from the perspective of the consumer, covering all aspects of banking and financial services, including regulation, accountability and compliance, consumer education, privacy and consumer redress. It also includes the idea of an independent Consumer Advisory Council on Financial Affairs with statutory authority to represent the consumer, possibly along the lines of the Financial Services Consumer Panel established by the UK's Financial Services Authority. The full document can be found at

http://www.investorvoice.ca/Research/CCC_ScorpionandFrog_Mar01.pdf Despite being written in 2001, many of its ideas and suggestions are applicable today. 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** <http://www.oecd.org/daf/fin/financial-education/G20EffectiveApproachesFCP.pdf>

The National Seniors Council was established to advise the Government of Canada on all matters related to the well-being and quality of life of seniors. Perhaps it could be tasked to survey what actions financial institutions are taking to protect seniors and prepare a Best Practices Guide?

It's imperative that Governments, regulators and the financial services industry implement fundamental reforms without undue delay. With a background of high Government and personal debt levels, threats to CPP and Medicare and underfunded corporate pension plans, continued deterioration of personal savings /investments could lead to a drain on Social Benefit coffers and even social disorder. The OCUPY movement is an indicator of what is to come. The time for reform is NOW.

Permission is granted for public posting (which we presume will happen given the material Public interest nature involved).

If there are any questions, please do not hesitate to contact me.

Yours truly,

Ken Kivenko P.Eng.
President, Kenmar Associates
(416)-244-5803
kenkiv@sympatico.ca

REFERENCES

The references and research listed below were used in developing our recommendations:

1. Bank regulators leave Earl Jones victims to fend for themselves

The Earl Jones victims were originally seeking about \$40 million from RBC, but

said they felt inclined to take the bank's first offer of \$17 million. The victims - whose average age is 73 - were not inclined to wait through the duration of a possibly-lengthy trial, so they have expressed satisfaction with the relatively-speedy settlement. "After four years, at this time of the year, it couldn't come at a better time for people," said Kevin Curran, a spokesman for the victims. "They didn't expect the cheques until March or April, so this is a surprise for everyone. I'm happy that it's over, and I'm equally happy that hopefully this provides some degree of closure for people." Those receiving cheques will get about 45 cents on the dollar for their losses, an amount the victims say they are happy with. As part of the initial deal between the victims and their lawyers, of that \$17 million, lawyers are going to be getting about \$5 million. The victims say the deal is quite fair because they think they wouldn't have gotten this sum of money without the lawyers to begin with. Read more: <http://montreal.ctvnews.ca/earl-jones-victims-to-receive-settlement-cheques-1.1605064#ixzz2oM6VvVov>

2. The ABCP crisis in Canada

<http://www.expertpanel.ca/documents/research-studies/The%2520ABCP%2520Crisis%2520in%2520Canada%2520-%2520Chant.English.pdf> [During the peak of the 2008 financial crisis, the Bank of

Canada, along with the Canada Mortgage and Housing Corporation and the US Federal Reserve provided up to \$114 billion of liquidity support to Canadian banks. Of this amount, \$69 billion was part of the CMHC mortgage insurance program, a facility set up in 1954.]

3. ABCP: A made in Canada crisis

<http://www.canada.com/nationalpost/financialpost/story.html?id=3f92dc01-2dce-41a1-8035-358121a6725a>

4. Manulife's regulatory balancing act

<http://www.nationalpost.com/news/story.html?id=2501881>

While the Bank Act contains penalty provisions and sanctions to address violations of its terms, generally the OSFI has other tools to ensure that banks comply with banking laws and regulations. OSFI has the authority to enter into binding compliance agreements to ensure that violations are not repeated. The Superintendent may also remove directors and officers who are found to be unfit to hold their positions. The Superintendent has also been given the power to issue administrative monetary penalties in respect of violations of certain provisions of the Bank Act. These monetary penalties may be imposed if the Superintendent believes, on the balance of probabilities, that a violation has taken place. In practice, the OSFI uses 'moral suasion', including the threat of using its formal powers, to effectively regulate banks to make any changes that the OSFI feels are necessary or appropriate. Because Canada does not have a history of initiating enforcement actions, there is very little public disclosure of the actions taken by regulators to encourage compliance with the requirements of the Bank Act and Regulations. Financial consumer advocates question whether moral suasion is a sufficient approach to contain the Big banks and insurance companies business practices.

5. The Pension Fund Advantage: Are Canadians Overpaying Their Mutual

Funds? By Rob Bauer Maastricht University and Luc Kicken ,October 1, 2008
Rotman International Journal of Pension Management, Vol. 1, No. 1, Fall 2008

Abstract: The institutional structure through which individuals accumulate retirement savings is an important issue. Ideally, it is expert and low-cost. This article compares the cost-effectiveness of the pension fund structure with the mutual fund structure. The authors hypothesize that the pension fund structure provides investment management services at lower cost because most mutual funds are conflicted between providing good financial results for their clients and good financial results for their shareholders. Specifically portfolios of Canadian pension funds with those of a sample of Canadian fixed income mutual funds. They find an average performance differential of 1.8 per cent comparing the investment performance of a sample of domestic funds in favor of pension funds. **This performance gap is approximately equal to the average cost differential between the two approaches.** They conclude that high mutual fund fees significantly reduce the net returns of mutual fund investors.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1290645

6. CSA 2012 Investor Index The *Investor Index* also shows that the overall investment knowledge of Canadians is low, with 40 % of Canadians failing a general investment knowledge test. According to the findings, 57 % of Canadians say they are confident when it comes to making investment decisions. Yet most Canadians have unrealistic expectations of market returns. When asked what they think the annual rate of return on the average investment portfolio is today, only 12 % of Canadians gave a realistic estimate, while 29 % provided an unrealistic estimate and 59 % explicitly chose not to hazard a guess. Nearly half of Canadians (49 %) say they have a financial advisory, up from 46 % in 2009 and 42 % in 2006. However, 60 % of those with a financial advisory have not ever completed any form of background check on their advisory. Thirty-one per cent of Canadians say they have a formal written financial plan, up from 25 % in 2009. Although more Canadians have a financial plan, they are reviewing it less frequently (78 % say they reviewed their plan in the past 12 months, down from 83 % in 2009). <http://www.securities-administrators.ca/investortools.aspx?id=1011>

7. Risks to Customers from Financial Incentives

<http://www.fsa.gov.uk/static/pubs/guidance/gc12-11.pdf> [UK FSA] This is an excellent UK regulator document demonstrating how incentives distort advice. After extensive research the FSA found that:

- Most firms did not properly identify how their incentive schemes might encourage staff to mis-sell. This suggests they had not sufficiently thought about the risks to their customers or had turned a blind eye to them.
- Many firms did not understand their own incentive schemes because they were so complex, making it harder to control them.
- Firms did not have enough information about their incentive schemes to

understand and manage the risks.

- Most firms relied too much on routine monitoring, rather than risk-based monitoring, such as performing more checks on staff with high sales volumes.
- Some firms had sales managers with a clear conflict- of- interest that was not properly managed.
- Many firms had links to sales quality₁ built into their incentive schemes that were ineffective.
- Some firms had not done enough to control the risk of potential mis-selling in face-to-face situations.

Such results have caused the FSA to essentially ban commissions.

8. Investor behavior and beliefs: Advisory relationships and investor decision-making study OSC Investor Education Fund

<http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf> “. In summary, advisers are the key influence in investor decision-making. Investors rely upon their advisory for planning and asset mix advice, as well as advice on what specific investments to buy. Other sources of information are secondary to the advisory’s opinion.

Investors trust their advisory to provide advice that benefits the client first. This trust is underpinned by a belief that their advisory has a legal responsibility to ‘put the client’s best interest first’. With this as a foundation of investor belief, investors find little reason to be concerned about fees, and perhaps as a result, fewer than half of advisers disclose what they are paid..”. Another troublesome finding is that disclosure of trailing commissions declines as the age of the investor increases. Some 40% of 20-39 year old agree that trailing commissions were disclosed versus 24% for age 40-59 and just 18% for those age 60+. This suggests to us that a seniors vulnerability issue has developed.

The elderly are the fastest growing segment of our society and they are also the financial backbone to our country's economy. They are living longer and need to save more than ever before. Many don't have Defined Benefit pensions or indeed, any Company pension plan, to fall back on. We as a society do not always recognize the conditions applicable to this vulnerable population. Conditions such as physical and mental health issues such as stroke, Alzheimer's, isolationism, and other issues still exist in spite of our best efforts to protect our seniors. These conditions put them at risk to exploitation through undue influence by financial institutions.

9. DISCLOSURE IS NECESSARY BUT INSUFFICIENT The mutual fund industry argues that investor education, not regulation, is the way to salvation. This is a diversion. Indeed, a paper by Professor Lauren Willis *Against Financial Literacy Education* argues against too much emphasis on education. The

professor believes the day of the informed investor is implausible, given the velocity of change in the financial marketplace, the gulf between current consumer skills and those needed to understand today's complex non-standardized financial products, the persistence of biases in financial decision making, and the disparity between educators and financial services firms in resources with which to reach consumers. The search for effective financial literacy education should be replaced, the author states, by a search for policies more conducive to good consumer financial outcomes.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105384

10. Advisor Risk

<https://docs.google.com/viewer?a=v&pid=forums&srcid=MDQyNjM4MzIyMTkzMjczODgyNDABMTQxNTYxNzExMTMwMjcyMzE2NzEBV2IUMEYtb1ZrejBKATQBAXYy>

Trailer commissions are embedded in the management fee rather than shown separately. Many retail investors mistakenly believe there is no cost to buying or owning a mutual fund. They don't grasp the significance of distribution costs on Rep recommendations. Dealer Representatives aren't required to disclose all forms of their compensation, such as trailer commissions, that they earn from clients' fund investments. If mutual fund costs aren't mentioned to clients, they don't become a factor in a client's decision-making. This creates a risk for unsuspecting clients. [Costs deter only one of six investors from buying, according to an Investor Education Fund survey which is a major financial competency problem in itself.]

11. The Changing State of Retirement in Canada – Fidelity (Oct., 2007)

http://m.twmg.net/state_of_retirement_cda.pdf A survey of more than 2200 households shows that Canadians are on track to replace only 50% of their per-retirement income. To maintain a comfortable lifestyle they may need as much as 80% of per-retirement income. That's one reason that investing fees and clarity on risk are so important. They can mean the difference between a happy retirement and a very stressful one.

12. BAD advice on taxation adds to investor risk C D Howe Institute-Richard Shilling ton, "Poverty traps: Means testing and modest income seniors", Backgrounder No.65, April, 2003 (a damning indictment of the current retirement savings system in Canada because of GIS claw backs & minimum annual withdrawals in Riff's and their negative impact on lower income people's Rasp's) http://www.cdhowe.org/pdf/backgrounder_65.pdf "Millions of Canadians accept the homogenous advice of governments and the financial community and put billions into Raps. However, for many lower-income Canadians Raps are a terrible investment. They are victims of a fraud, however unintentional. Only when more Canadians are aware of the perverse treatment of lower-income citizens' savings will Ottawa be forced to develop measures that reward, rather than punish, their savings efforts." The point here is that mutual fund investing

carries many forms of risk and that is why we ask for stronger conflict-of-interest disclosure in FF.

13. Financial Knowledge and Rationality of Canadian Investors by Cecile Carpenter, Jean-Marc Surat: SSRN "...Canadian investors' financial knowledge is limited. On average, they obtain a mediocre knowledge score; only 5% score above 66%. The vast majority of respondents scored between 40% and 57%. Significant gaps were noted regarding knowledge of risk and return of asset categories. Knowledge of past returns of the main asset categories is abnormally low, particularly for equity, an area where all of the respondents are involved. Mediocre knowledge of the performance of categories and of the concept of risk premium calls into question investors' financial planning ability. One out of five investors is unaware that the return of a small growth company comes not from dividends, but rather from a capital gain. One-third of investors are certain that they will receive future dividends from a company that usually pays them. Almost 30% of respondents are unaware that stock inducements are greatly influenced by the returns of the largest capitalization stocks. Three-quarters of investors do not systematically compare the return on their portfolio with that of a stock market index.

Half of the investors do not clearly grasp the link between lack of liquidity and share value. Many investors do not know that if they invest in the stocks of small companies listed on the TSX Venture Exchange, they might lose all their capital. The risks associated with shareholding are largely underestimated

....."http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038930

14. Strengthening Investor Protection in Ontario - Speaking with Ontarian. The study, conducted on behalf of the independent OSC Investor Advisory Panel and the Investor Education Fund (IEF), explores the views of more than 2,000 Ontario investors regarding their relationships with their financial advisers and how they perceive and use investment product information and advice. Highlights of the study include:

- *While investors generally trust the advice of their financial advisers, two things highlight the skepticism that many investors feel. Only 20% of investors strongly agree that they generally trust their financial advisory's advice and 25% strongly agree (39% agree- 64% overall) that how a financial advisory is paid impacts the recommendations that they receive. Advisers need to give their clients greater assurance that their best interest is being served.*
- *There is strong support for a statutory best interest duty: 93% agree that it is needed (with 59% strongly agreeing that it is needed).*
- *Investors want strengthened regulation of financial advisers, including clearer professional standards on use of the title, rigorous educational*

requirements and ethics training, and stricter regulatory enforcement of the rules.

- *An investor/adviser power imbalance exists for most but is particularly problematic for those who lack confidence in their financial literacy. This places advisers in a powerful position. The majority (58%) rely on their financial advisory as their main source of information. More than four in ten do not know how their advisory is being paid.*

Source: http://www.osc.gov.on.ca/en/Investors_nr_20130318_iap-adviser-investor-relationship.htm

15. There has never been a time when bank clients face so many threats. Advisor compensation is near the top of the list .See **TD puts the squeeze onif your "advisor is not making \$2000 to \$2500 (per day) in sales commissions, they are being told "achieve or leave"** <http://www.investmentexecutive.com/-/lower-producing-advisors-under-fire?redirect=%2Fsearch> “..Instead, the new grids also could lead to bad trading decisions, says one bank-owned brokerage executive who asked not to be named. Advisers who may be close to hitting the next pay scale, the executive says, could start to display behavior that's not in the best interest of clients or the industry in order to reach that target.” Also see **TD Models Advisor Pay Plan** – the REAL reason it does not want to get rid of embedded commissions and introduce best interest standards....

“We now have aligned ‘pay for performance’ to strategy,” states the compensation document. “We want your practice, on average, over time, to grow faster and be more productive and profitable than our competition.”

<http://blog.moneymanagedproperly.com/?p=2967> It is no wonder complaints are on the rise with retirees bearing a disproportionate amount of the trouble. As banks pursue “wealth management” strategies the relationship between banking and investments becomes closer and closer ire. Home Equity loans to make investments

16. A Framework for market Regulation in Canada (Feb. 2009)

<http://www.bcsc.bc.ca/uploadedFiles/Paper.PDF>

17. FAIR Canada Report on Financial Scandals in Canada

The 2011 FAIR Canada report entitled [“A Decade of Financial Scandals”](#) called for government and regulatory action to improve prevention, detection and prosecution of financial fraud and to better compensate victims of investment frauds. “The Canadian regulatory system is complex and fragmented. There are thirteen provincial and territorial securities regulators and two national SRO. In addition, there are many other provincial and federal regulators involved,” said Overmanned Prosciutto, Executive Director of FAIR Canada. “When it comes to investigation and prosecution of financial fraud, the complexity and fragmentation is far worse. With this bewildering array of regulators, investigation agencies and prosecutors, no one agency has ultimate responsibility for combating investment fraud.”

FAIR made wide-ranging recommendations calling on the Federal and Provincial Governments and regulators to take coordinated action to combat financial fraud”. According to Mr. Prosciutto. “Financial fraud has affected some 10% of Canadians and the system is simply not effective at protecting consumers, punishing fraudsters, or compensating

victims."<http://faircanada.ca/top-news/fair-canada-releases-report-on-financial-scandals/>

18. Canadian market-timing victims say they deserve bigger payout - G&M

The scandal exposed a number of weaknesses in the regulation of mutual funds as well as enforcement. The class action seeks to recover far more than the regulators ordered to be repaid to mutual fund unit holders. Investor advocates were also incensed that no fines were levied, no one was held accountable for the scandal and another 15 fund companies were left off the hook.

<http://www.theglobeandmail.com/globe-investor/funds-and-etfs/canadian-market-timing-victims-say-they-deserve-bigger-payout/article793325/#dashboard/follows/>

19. Consumer: Insurance Bill of Rights: Publication 440-0930 (State of Oregon)

<http://www.cbs.state.or.us/ins/publications/consumer/0930.pdf>

20. Canadian Association of Airline Passengers (CAAP Airline Passenger Bill of Rights)

http://www.piac.ca/transport/summary_of_bill_of_rights/

21. "Vital Watchdog vs. Paper Tiger: What kind of ombudsman do you want to be?":

Andre Marin - Forum of Canadian Ombudsman

<http://www.ombudsmanforum.ca/en/?p=400>

"I wasn't keen on the idea of being unemployed and neither were my staff, so we set about the important task of putting our Office back on the map. We dramatically reorganized our resources and decided to concentrate them in ways that would do the most good for the greatest number of people. Of course we would still deal with the problems of individuals, helping them with their issues one at a time. But we would also tackle the major systemic problems within government that frustrate thousands of people day after day, year after year. This way, we could deliver lasting change for huge numbers of people – and give the taxpayers a much bigger bang for their 10 million bucks as well."

22. In the WSW's "Financial scammers increasingly target elderly Americans" E. S. Browning reports that "People 60 years and older made up 26% of all fraud complaints tracked by the Federal Trade Commission in 2012, the highest of any age group. In 2008, the level was just 10%, the lowest of any adult age group...Only 10% of such frauds are reported, investigators estimate. Older people often fear losing their independence if their children find out."

23. Mobile Payments and Consumer Protection in Canada

http://www.fcac-acfc.gc.ca/Eng/resources/researchSurveys/Documents/FCAC_Mobile_Payments_Consumer_Protection_accessible_EN.pdf

24. Consumers and Mobile Financial Services 2013 (US Federal Reserve)

<http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf>

25. Consumer Financial Protection Agency: Is there a need?

http://govtpolicyrecs.stern.nyu.edu/docs/whitepapers_ebook_chapter_18.pdf

26. Report on consumer protection in online and Mobile payments

<http://www.oecd-ilibrary.org/docserver/download/5k9490gwp7f3.pdf?Expires=1388850832&id=id&accname=guest&checksum=9F0A54A4AD3788B948C98A45C604D59C>

27. Consumer Protection in the Financial Services Sector: THE UNFINISHED AGENDA

<http://www.parl.gc.ca/Content/SEN/Committee/391/bank/rep/rep02jun06-e.pdf> (2006)

28. Federal Consumer Complaints Regulations Need Major Reform - FAIR Canada

<http://faircanada.ca/top-news/federal-consumer-complaints-need-major-reform/>

29. Canadian Association of Airline Passengers (CAAP Airline Passenger Bill of Rights)

http://www.piac.ca/transport/summary_of_bill_of_rights/

30. NASAA MODEL RULE ON THE USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS Adopted March 20, 2008

<http://www.nasaa.org/wpcontent/>

[uploads/2011/07/3-Senior_Model_Rule_Adopter](http://www.nasaa.org/wpcontent/uploads/2011/07/3-Senior_Model_Rule_Adopter) "The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analysis or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business
..."

31. PROTECTING SENIOR INVESTORS: REPORT OF EXAMINATIONS OF SECURITIES FIRMS PROVIDING "FREE LUNCH" SALES SEMINARS

<http://www.sec.gov/spotlight/seniors/freelunchreport.pdf>

The report's key findings include:

- 100% of the "seminars" were instead sales presentations.

While many sales seminars were advertised as "educational," "workshops," and "nothing will be sold," they were intended to result in the attendees' opening new accounts and, ultimately, in the sales of investment products, if not at the seminar itself, then in follow-up contacts with the attendees.

- 59% reflected weak supervisory practices by firms.

While some exams found effective supervisory practices, many examinations found indications that firms had poorly supervised these sales seminars, including failure to review seminar presentations or materials as required.

- 50% featured exaggerated or misleading advertising claims.

Examples included "Immediately add \$100,000 to your net worth," "How to receive a 13.3% return," and "How \$100K can pay 1 Million Dollars to Your Heirs."

- 23% involved possibly unsuitable recommendations.

In 25 of the 110 examinations, examiners found indications that unsuitable recommendations were made, for example, a risky investment recommended to an investor with a "conservative" investment objective, or an illiquid investment recommended to an investor with a short-term need for cash.

- 13% appeared to be fraudulent and have been referred to the most appropriate regulator for possible enforcement or disciplinary action.

Examiners found indications of possible fraudulent practices in 14 examinations that involved apparent serious misrepresentations of risk and return, possible liquidation of accounts without the customer's knowledge or consent, and possible sales of fictitious investments.

32. Regulatory effectiveness of State regulators re Brokers and Advisors

<http://www.sec.gov/comments/4-606/4606-2789.pdf>

33. Financial abuse of the elderly: Protecting the vulnerable

http://www.stjohns.edu/download.axd/3e61b9dafa254b4db02730635d0920f7.pdf?d=100616_catalno_FinancialAbuse

34. Dishonest Advisors Continue to Prey on Investors in Canada: FAIR Canada

<http://faircanada.ca/top-news/dishonest-advisors-continue-to-prey-on-investors-in-canada/>

Canada needs to prevent dishonest securities registrants from continuing to sell investments or advise the public. Given the fragmented system of financial services industry regulation in Canada, registrants who are disciplined for misconduct are all too often able to avoid proper sanctioning and evade bars to selling investments. Time and again, former registrants simply move platforms to sell in the exempt market (where individuals and firms are not required to register in certain western provinces) or, for example, sell insurance despite having been found to have been dishonest or otherwise not of sufficient integrity to deal with investors.

The inability to collect fines detracts from the credibility of the self-regulatory system which plays an important regulatory role in the Canadian securities industry. It also undermines securities regulation more broadly, particularly when the investing public hears of egregious cases where an individual who is the subject of a successful disciplinary action is able to dodge their punishment by simply walking away. Furthermore, the SRO or securities commission's disciplinary action does not, in and of itself, prevent these individuals from continuing to harm investors due to regulatory arbitrage and other factors. [In December 2006, the CSA SRO Oversight Project Committee "unanimously support[ed]... the granting of the authority to file disciplinary decisions with the courts" for jurisdictions where these powers are not already in place. Not only would such power enable the SROs to pursue individuals, it would also give SROs more leverage in settlement discussions and add a measure of deterrence/ investor protection (maybe even restitution!). What is preventing CSA members and provincial governments from implementing the CSA Committee's common sense recommendations? The CSA SRO Oversight Report is at

http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20061208_24-303_oversightproject.pdf]

35. Suitability & Fiduciary duty: moneymangedproperly blog

<http://www.moneymangedproperly.com/newsletters/Suitability,%20Minimum%20Standards%20&%20Fiduciary%20duty.doc>

37. Financial Regulation: An agenda for reform

<http://www.milkeninstitute.org/publications/mirsp/15-25.mr41.pdf>

38. A new look at reporting fraud: By exchange

<http://www.fma.org/Istanbul/Papers/ANewLookatReportingFraudByExchange>. In 2011, Douglas Cumming of the Schulich School of Business at York University and Sofia Johan at the University of Tilburg, produced a study comparing reported cases of fraud in the capital markets of Canada, the US and UK. In all, they looked at 4,190 cases of improper conduct at publicly traded firms over a six-year period ending in 2011. What they found is that while financial fraud would be committed at 7 per cent of Canadian publicly traded companies, a grand total of 0.3 per cent of TSX listings were subject to fraud litigation each year between 2005 and 2011. That compares with 1.9 per cent of NYSE listed companies and 4.5 per cent of Nasdaq firms. Canadian securities regulators, they found, are 8.9 per cent less likely to detect financial fraud in the markets than the SEC. “When you compare Canada and the U.K. to the United States, the results are quite shocking,” Cumming was quoted as saying, “with about 10 times less reporting or litigating of corporate fraud or fraud involving corporate shares in Canada. Yet it is unlikely that the incidence of corporate fraud in Canada is that much different than in the United States.”

39. Royal Bank exec blasts Canada's archaic securities laws... | St. Catharines Standard (2007)

<http://www.stcatharinesstandard.ca/2007/09/11/royal-bank-exec-blasts-canadas-archaic-securities-laws>