



# Registered Deposit Brokers Association

55 Cedar Point Drive, Suite 614, Barrie, ON L4N 5R7

(705) 730-7599 PHONE

1-866-261-6263 TOLL-FREE

[headoffice@rdba.ca](mailto:headoffice@rdba.ca)

E-MAIL

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## RDBA Submission

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Department of Finance Consultation Paper: Canada's Financial Consumer Protection Framework - issued December 2013

### 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.

By adopting a set of principles the government would in effect be creating specific regulations over and above that which already exists, adding yet another layer of compliance to an already overburdened industry. This is not necessary. FRFIs are already regulated by OSFI, FINTRAC and CDIC. The investment industry already has principles in place through IIROC, MFDA and provincial securities agencies. Insurance generally has another set of principles or regulations. This is already very complex for the public to understand; especially when there are differences from one regulator to another.

Administering existing principals or regulations is already accomplished by licensing or oversight through an SRO and/or by membership in a professional standards organization. Those principals are then stated by the selling firm on their website and/or sales brochures; along with the Deposit Type Instrument Regulations (disclosure). If a financial advisor is not licensed or is not a member in good standing of an SRO or Professional Standards organization, customers then have a choice of not dealing with an advisor or firm that does not espouse or subscribe to investment principals. FCAC should concentrate on their mandate which is the consumer and focus on education of the consumer to those points.

### 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.

KYC/AML ID requirements should only be enforced at the retail bank branch level on account opening. Once an account is opened, having met the KYC requirements, no further requirement should be needed for a financial transaction involving that account.

The RDBA Client Information & Consent Form (CICF) serves the same function as account opening information for a deposit broker's client however the money is already in the financial system when the DB administers an investment, so the KYC/AML requirements have already been met. There is a cleared cheque with these investments. It is the limited Power of Attorney function in the CICF form that is its true value in the Deposit Broker world and should be all that is needed for subsequent investments with FI's.

A primary concern of the RDBA members and many of the investing public, centre's on seniors that no longer have valid ID in the form of a passport or drivers license. With the aging population, this problem is a valid concern to which we need to find a viable solution. It becomes extremely difficult for an investor in this situation to invest with a new FI and it even creates problems for them to re-investment with existing FIs that require re-identification. As the baby boom sector ages, this problem is going to grow without a viable solution.

## **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.

The Financial Institution is the manufacturer of the product. Creating a product does not put a consumer at risk; however reputational risk would govern most product creations and thereby constitute a level of care already embedded in the process. Only when the product is purchased by the consumer does risk come in to play, so it should be the combined duty of the seller to inform the consumer of the risk associated with the product and as important, the duty of the consumer to ask what the risk of the product is and protect h/self accordingly i.e. buyer beware. Improved consumer financial literacy or financial awareness is rarely, if ever, achieved through ever increasing disclosure content

## **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.

Oversight of consumer issues and consumer education are only partially accomplished by legislating and enforcing standards on FI's. The other half of the equation is accomplished by educating consumers on the dangers of buying

a product they don't understand and by forcing sellers to state at the point of sale to a client that they could lose money on the investment being purchased if indeed, the investment can decrease in value. Financial services are businesses that create products for sale. It is the Consumers that buy the products; the FCAC should be helping them to make the right choices by educating them.

#### **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.

FRFIs have traditionally driven the market for product and technology innovation; along with their third party providers. As there is a significant risk component to new technologies, we would see this under OSFI's responsibilities.

#### **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.

For deposit products, we believe that the new DTI Regulations provide for detailed disclosure and this is currently enforced through OSFI and SROs.

#### **f) Access to Financial Services**

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

There already exists requirement to provide access to account/cheque cashing facilities. Credit access is a process of risk evaluation and therefore cannot reasonably guaranteed access to credit where the risk is prohibitive.

We would welcome and support new FRFIs entering the marketplace.

#### **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.

We currently have extensive requirements and regulation through the Bank Act or Provincial Securities Legislation. Practices such as:

- Predatory Sales Practices – Protection: Bank Act, IIROC
- Tied Selling – Protection: Bank Act
- Improper and proper Disclosure – Protection: Bank Act
- Question of CDIC Coverage – Protection: Bank Act
- Management Expense Ratios on Mutual funds – Protection: MFDA, Provincial Securities Associations
- Proper Investment Allocation – Protection: IIROC, Provincial Securities Associations

These are already covered and have oversight through existing legislation.

### 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.

- **Should the government consider mechanisms for enhancing engagement among stakeholders in regulatory, supervisory and compliance processes related to consumer protection?**
- **How could consumers and consumer groups best contribute to these processes, and what might their role be?**

Consumer protections are already built in to the Bank Act and Provincial Legislation covering Equities and Mutual Funds and licensing of sales reps. Ongoing compliance assessments by regulators already insure that those protections are enforced. The real issue is to educate consumers and consumer groups about those protections and about exercising discretion in financial transactions. That is where the FCAC should focus its efforts leaving Financial Institutions and Financial Sales firms' oversight to OSFI, IIROC, MFDA and RDBA.

With regard to enhancing engagement among stakeholders, we would suggest a working group of appropriate stakeholders, meeting on an annual or bi-annual basis, to identify opportunities and solutions.

The RDBA is also recommending a review of CDIC limits, towards increasing them. The \$100,000 limit has not kept pace with the size of deposits and investments that many Canadians have, especially for seniors that have been investing for many years. Additionally, in the case where one spouse passes away and their investments are transferred to the remaining spouse, adequate insurance coverage becomes a challenge.

Submitted

Brian L. Smith  
 President and CEO  
 The Registered deposit Brokers Association  
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