

2 CONSUMERS

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Proposed Consumer Code for Canada's Financial Sector

This submission may be posted in whole or in part on the website of the Department of Finance Canada with a view to contributing to the transparency and interactivity of the ongoing consultation process. Our bibliography provides links to highly relevant reference materials.

While we both have had careers in financial services, we are expressing our personal views, as consumers of financial services who have a keen interest in an effective supervisory framework for the protection of all Canadians from coast to coast to coast.

We believe that formal adoption of the proposed Consumer Code elements will give domestic legitimacy to the High-level Principles on financial consumer protectionⁱ that the G20 Leaders have endorsed. We welcome this initiative by the Government of Canada to protect consumersⁱⁱ in that *"integration of financial consumer protection policies into regulatory and supervisory frameworks contributes to strengthening financial stability."*ⁱⁱⁱ Moreover, we believe that participation by consumer and industry associations and concerned financial institutions in the development of the internationally-agreed High-level Principles has contributed to their acceptance. These Principles are fundamental. Together they form a comprehensive basis for financial consumer protection worldwide.

Comprehensiveness of Basic Principles

The G20/OECD Task Force on Financial Consumer Protection recently stated^{iv} that the High-level Principles are *"inter-connected, thereby reflecting a holistic but proportionate approach"* to the responsibility (duty of care) of financial institutions to consumers. Indeed, we note a strong interdependence among Principle 3 (Equitable and Fair Treatment of Consumers), Principle 4 (Disclosure and Transparency), Principle 6 (Responsible Business Conduct of Financial Services Providers and Authorized Agents), Principle 8 (Protection of Consumer Data and Privacy) and Principle 9 (Complaints Handling and Redress). We understand that Finance Canada's proposes that the set of principles underpinning the Consumer Code will be "comprehensive".

The enhancement of Canada's framework for market conduct regulation and supervision depends on all G20 High-level Principles being adopted. We believe that the coherence of the basic principles and their related implementation standards between jurisdictions and sectors will help:

- create a level-playing field in financial consumer protection;
- prevent regulatory arbitrage (a goal of the Financial Stability Board) ^v;
- facilitate reputation risk management and training, particularly in regard to international transactions and cross-border marketing and sales and within financial conglomerates;
- minimize the compliance burden that so concerns the private sector, including consumers, who ultimately pay the extra costs; and most important
- focus financial institutions' attention on how they can best serve their customers and the wider community.

Mark Carney, Chairman of the Financial Stability Board, has spoken about the importance of core values and connecting with clients. ^{vi} *"In the run-up to the crisis, banking became more about banks connecting with other banks. Clients were replaced by counterparties, and banking was increasingly transactional rather than relational...a top-down approach is insufficient. Employees need a sense of broader purpose, grounded in strong connections to their clients and their communities."* Like Mr. Carney, we believe that any organization that is committed first and foremost to treat customers with the highest standards of integrity and fairness will also foster a strong risk management culture.

In introducing his company's code of ethics, Kenneth Lay, former Chairman and CEO of Enron, wrote "it is absolutely essential that you fully comply with these policies in the future." ^{vii} Companies that stress compliance with policies and procedures alone without consistently promoting a customer-centric culture that emphasizes doing the right thing for its own sake may have "outcomes" that fail to meet expectations and that put consumers and other stakeholders at risk. For this reason, **we believe the mandate of financial regulators must not be restricted to compliance oversight only.**

Risk-based Market Conduct Regulation

It is unclear from the proposal to create a made-in-Canada consumer code ^{viii} whether a risk-based approach to market conduct regulation would be adopted to complement the existing literal compliance approach. [The current proposal simply states that *"the government is considering whether changes are needed to the legislative framework in order to **allow the FCAC to better supervise...**"* (Emphasis added)].

The Canadian Council of Insurance Regulators' 2008 report *An Approach to Risk-based Market Conduct Regulation* ^{ix} comments *"Most regulatory agencies that have adopted risk-based techniques have done so because they judge that risk-based methods are the best way to meet their mandate to supervise financial markets in the way that best accomplishes the goals of legislation and regulation and ensures confidence in the financial services sector."*

Risk-based market conduct regulation is a supervisory framework that assesses the performance and overall culture of regulated entities against clearly articulated "outcomes" or public policy goals expressed in terms of high-level principles. In 2013, Edward J. Waitzer, former Chairman of the Ontario Securities Commission, and Ian C. W. Russell, President and CEO of the Investment Industry Association of Canada, wrote *"A more coherent, concise rule-making process, firmly grounded in clear and accountable principles, may well free up firms and*

individual advisors to do the “right thing” rather than simply “comply.” As importantly, it may better enable regulators to anticipate and identify emerging issues and trends, rather than plugging holes in the proverbial dyke. It’s time for (market conduct) regulators to embrace this challenge and seek to better engage business over the moral and legal principles that should animate financial markets.”^x

Risk-based regulation is well established in the prudential regulation field in regard to financial soundness and solvency.

In sharp contrast to OSFI’s mandate,^{xi} the legislated mandate of the Financial Consumer Agency of Canada (FCAC) is currently restricted to supervising financial institutions to **determine** whether the institution is in **compliance** with the applicable “consumer provisions”.^{xii} **The federal market conduct regulator is not empowered to determine whether the business conduct and commercial practices of regulated entities are sound.**

While OSFI has a Supervisory Framework^{xiii} that describes a comprehensive risk-based supervisory methodology, FCAC has a Compliance Framework^{xiv} that outlines the various ways FCAC oversees compliance pursuant to the FCAC Act. Although it includes a Risk Assessment Model, this model is used internally by the FCAC to identify non-compliance related to the specified consumer provisions. The latest FCAC Annual Report (2012 - 2013)^{xv} points out that “education and compliance” are the dual mandate of the government agency.

Exemplary Frameworks from Outside Canada

On the international scene many financial regulators responsible for market conduct (whether integrated or “twin peaks”) are operating under a broad mandate that supports risk-based/outcome-focused market conduct regulation. Exemplary frameworks from each of the five continents are worthy of examination. Our appendix briefly describes the framework of Ireland, South Africa, The Netherlands, Singapore, Australia, and the United States, where certain aspects are relevant to Canada. The approach to regulation varies between countries, (ranging from a simple “duty of care” in law and self-regulation to codes of corporate governance and of marketplace behaviour). All approaches, without exceptions, aim to set conduct of business regulatory directives to ensure customers are treated fairly with a view to strengthening public trust and consumer confidence in financial services. At this time, we have no preferences for a specific approach. The present consultation process must first run its course. However, we strongly believe that the framework being developed for Canada must be **flexible** to allow the FCAC to adjust quickly to a fast changing environment, and also **simple** to permit regulated entities of all sizes to establish internal customer-centric cultures. **Everything should be done to avoid creating a framework that could become a box-ticking exercise comprised of legal jargon.**

Fair Treatment of Customers Principle

Regarding the ten G20 High-level Principles on financial consumer protection, Finance Canada’s proposal for a Consumer Code indicates that *“These principles, which are designed to assist G20 member countries (Canada included) in enhancing their domestic financial consumer protection regimes, build on and complement policy developed by the World Bank and other international organizations, standard-setting bodies and individual jurisdictions.”* Given Canada’s representation on the Basel Committee on Banking Supervision (OSFI), the International Association of Insurance Supervisors (OSFI, Quebec AMF, and British Columbia FICOM), and the International Organization of Securities Commissions (Securities Commissions for Alberta, British Columbia, Ontario and Quebec AMF), we are puzzled by the lack of consistency in core

principles adopted by these three standard-setting bodies, particularly in regard to **G20 High-level Principle #3, Equitable and Fair Treatment of Consumers**. We would have thought that the Joint Forum,^{xvi} mandated to “*examine cross-sectoral gaps and conflicts in regulation and supervision*”, would have addressed and remedied the issue, briefly outlined below:

The International Organization of Securities Commissions (IOSCO) makes no mention of treating consumers fairly in its Objectives and Principles of Securities Regulation^{xvii} (updated in June 2010) for Market Intermediaries (Principles 29 to 32). They focus on minimum entry standards, capital requirements, compliance delivery, and systemic risk containment.

The Basel Committee on Banking Supervision (BCBS) updated its Core Principles for Effective Banking Supervision^{xviii} in September 2012. Principle 29: Abuse of financial services provides “*The supervisor determines that banks have adequate policies and processes, including strict customer due diligence (CDD) rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities.*” However, the focus of the essential criteria is on strict customer due diligence rules for anti-money laundering purposes rather than the fair treatment of customers.

The International Association of Insurance Supervisors (IAIS) adopted a revised set of Insurance Core Principles^{xix} in 2011. Insurance Core Principle 19 entitled Conduct of Business goes to the heart of the G20 High-level Principle #3. Standards are set regarding the needed **duty of care** and **customer culture**, product development, disclosure, advice giving, conflicts-of-interest management, and other fundamental standards such as privacy and complaints handling.

We very much welcome the establishment of the new International Financial Consumer Protection Organization^{xx} (FinCoNet) to promote, under the leadership of the Central Bank of Ireland, sound commercial practices and strong consumer protection through efficient and effective financial market conduct supervision in the fields of banking and credit. We are delighted by the fact that a senior official from Canada’s FCAC will serve on FinCoNet’s Governing Council as Vice Chair.

We would also like to point out that the Canadian Council of Insurance Regulators (CCIR) has an active committee^{xxi}, chaired by a senior official from Quebec’s Autorité des marchés financiers, to “*work with regulators to ensure that all the core principles are being met in Canada, particularly those concerning fair treatment of customers.*”

We raise our concerns about the cross-sectoral gap and conflict in regulation and supervision between banking, insurance and securities with the hope that a solution can be found through collaboration and cooperation among market conduct regulators, including the Canadian Securities Administrators (CSA) in the absence of a national securities commission. **Any lack of coherence in regard to the implementation of the G20 High-level Principles in Canada will be costly to all parties concerned and place consumers at risk of not being adequately protected against abuse.** With respect to lending, the “consumer provisions” of Canada’s Bank Act and Insurance Companies Act are quite similar. We see no reasons why they should be administered and enforced differently by the FCAC. **Regulatory arbitrage must be prevented.**

^{xxii}

In 2012, a senior official of the Financial Services Commission of Ontario, speaking on behalf of the CCIR on trends in insurance regulation, rightly presented the meaning of Fair Treatment of Customers “*as a formalization of the concern for their clients that most insurers and intermediaries have always shown and a reminder not to abandon that concern in stressful*

times.”^{xxiii} This state of affairs has direct implications on how a modern framework for the G20 High-level Principle #3 and connected principles could support the new Consumer Code without resorting to multiple added rules increasing the compliance burden and contributing to a “box ticking” mentality.

Corporate Governance

OSFI’s Assessment Criteria for **Board of Directors**^{xxiv} requires board members to:

- approve policies and practices for dealing with conflicts of interest (a key standard of the G20 High-level Principle # 6 - Responsible Business Conduct) and
- establish standards of ethical business conduct for the institution and obtain assurances that they are being adhered to. The indicators of Board performance include performing a comprehensive self-assessment against the responsibilities of the Board and promptly addressing matters identified.

In turn, an essential element of the OSFI Assessment Criteria for **Senior Management**^{xxv} is the extent to which management policies and practices promote sound corporate governance and ethical business conduct. The indicators of Senior Management performance include setting an appropriate “tone from the top”, performing duties in an ethical manner and expecting the same from individuals across the institution.

The OSFI Supervisory Framework includes in the definition of regulatory compliance risk any risk arising from an institution’s potential **non-conformance with ethical standards** (whether prescribed or not) in any jurisdiction in which it operates.^{xxvi}

OSFI’s 2003 Guideline E-13 on legislative (really regulatory) compliance management (LCM)^{xxvii} long pre-dates the 2008 financial crisis. Compliance is no longer what it was a decade ago and the antiquated LCM Guideline needs to be modernized with a new focus if an effective regulatory risk management process is to be established. Compliance is a lot more than *“providing a means by which the institution satisfies itself that it is in compliance with Governing Legislation and Other Legislation.”*

OSFI’s Corporate Governance Guideline^{xxviii} (updated January 2013) now provides that the Board should receive regular reports on any ineffectiveness or significant breaches of the institution’s code of conduct.

It is noteworthy that the US Federal Deposit Insurance Corporation has published Guidance on Implementing an Effective Ethics Program^{xxix} to assist members with their corporate codes of conduct. At present, no such guidance exists in Canada.

The “duty of care” every director and officer of a bank or insurance company has under Canada’s Bank Act^{xxx} and Insurance Companies Act^{xxxi} is toward the bank/company, not toward the customers. Indeed, these Canadian statutes provide that directors and officers shall act honestly and in good faith with a view to the **best interests of the bank/company**. In contrast, Ireland’s Consumer Protection Code 2012^{xxxii} (see our appendix) provides that regulated entities must act honestly, fairly and professionally, with due skill, care and diligence, in the **best interests of their customers** (i.e., a fiduciary duty). **Conflicting duties of care must be avoided for financial sector regulation to be effective as well as efficient.** Perhaps Canada’s duty of care could simply be a legal obligation (as in Australia) or a regulatory expectation (as in Singapore) to deliver fair treatment outcomes to customers. Non-bank financial institutions licensed to carry on business in Quebec are obliged under their governing

legislation to adhere to sound commercial practices, including acting fairly in dealings with customers.^{xxxiii}

Oversight of Voluntary Codes of Conduct

Most federally-regulated financial institutions (not all) do have a code of conduct. A growing number of them have updated their code in the recent past to **specifically address the Fair Treatment of Customers principle**.^{xxxiv} All these voluntary codes are publicly available on the Web.

In its February 3, 2014 country assessment Report on the Observance of Standards and Codes on Canada^{xxxv} in regard to banking, insurance and securities, the International Monetary Fund (IMF) found that OSFI has a comprehensive program for supervision of corporate governance. The IMF makes no recommendations for improvement. It noted, however, that OSFI looks both at compliance with minimum standards and at the effectiveness of corporate governance in practice, when assessing banks and insurers.

The FCAC monitors adherence to voluntary codes of conduct that are adopted by federally-regulated financial institutions and made public. At present, **compliance failure with a voluntary code cannot be enforced**. Unlike treatment of non-compliance with a legislated “consumer provision”, breaches of a voluntary code are not subject to administrative monetary penalties^{xxxvi} and do not form part of the financial entity’s compliance history.^{xxxvii} A binding national Consumer Code reflecting the values and principles voluntarily adopted by regulated entities to manage the risk of all risks, namely reputation risk, may solve the problem. There are many common themes found in the existing voluntary codes, such as treating customers fairly, managing conflicts of interest, protecting confidential information, processing complaints, disclosing and making customers aware and better informed. These themes mirror many of the G20 High-level Principles on financial consumer protection. Consequently, **a Consumer Code for Canada’s financial sector would not be expensive and burdensome to implement because it would formalize outcomes already adopted by a large number of industry participants**.

According to the results of the KPMG Integrity Survey 2013^{xxxviii}, 60 percent of respondents believe that a key driver of misconduct is the belief that the organization’s code of conduct is not being taken seriously.

In 2004, the US Federal Sentencing Guidelines for Organizational Defendants^{xxxix} was amended to make it explicit that firms are expected to, among other things, (a) promote a culture of ethical conduct, and (b) ensure that the board of directors and senior management are knowledgeable and exercise reasonable oversight over the ethics program.

Financial Consumer Agency of Canada

It is regrettable that the International Monetary Fund did not assess the FCAC’s performance, as it did OSFI’s supervision. This is a missed opportunity for improving the financial sector framework.

The FCAC oversees the Code of Conduct for Authorized Insurance Activities^{xl} of the Canadian Bankers Association. Yet, the federal market conduct regulator is not a member of the Canadian Council of Insurance Regulators (CCIR). In certain provinces the banks are required to hold a restricted insurance license for their insurance activities.^{xli} The Supreme Court of Canada has ruled that the distribution of insurance to Canadian consumers falls exclusively under the authority of the provinces^{xlii} Now that regulators themselves are regulated by international

standards, consistency of regulation, supervision and enforcement is doubly important for effective financial consumer protection.

Key findings of the International Monetary Fund (IMF) and their related recommendations for improving Canada's financial sector framework are worth highlighting.

The IMF found fragilities in the consistency and quality of OSFI's communication with relevant provincial regulators. A proactive approach to information sharing was recommended. The IMF was of the view that such an approach *"would be appropriate and fall within existing mandates."*
xliii

Noting favourably that the provincial authorities (CCIR members) are harmonizing their regimes governing conduct of business while ensuring adequate supervisory resources for effective supervision, the IMF also opined that *"it is essential that FSCO be equipped with adequate resources and financial capacity to deal with the size and diversity of the Ontario marketplace."*
xliv [In both cases, Canadian regulators responded positively to the findings].

Because provincial and territorial market conduct regulators rely on sound corporate governance (OSFI's competence) and adequate supervision of voluntary codes of conduct (FCAC's competence), effective cooperation between and among financial regulators is of paramount importance to achieve the objective of *"bolstering investor and consumer protection"* set by the G20 Leaders.^{xlv} **No customers of any financial institution (federal, provincial or foreign) doing business in Canada, either as a corporate entity or a branch, should be harmed by federal-provincial relations that are less than optimal in serving the best interests of consumers.**

Corporate Culture

We were unable to find any FCAC document referring to "corporate culture".

The BCBS/OSFI Principles for the Sound Management of Operational Risk^{xlvi} provide *"The board of directors (of the bank) should take the lead in establishing the "tone at the top" which promotes a strong risk management culture. The board of directors and senior management should establish a corporate culture that is guided by strong risk management and that supports and provides appropriate standards and incentives for professional and responsible behaviour."*

A senior official from the Financial Services Commission of Ontario speaking on behalf of the Insurance Council of Insurance Regulators on trends in insurance regulation^{xlvii} said *"We expect insurers and intermediaries to be fair to consumers...This means that we expect industry participants to build cultures of sound commercial practices, based on integrity, strong governance and impeccable ethical conduct."*

The G20 High-level Principle #3 regarding the Fair Treatment of Consumers (FTC) is a cultural issue. **Senior management can only convert good intentions and high-minded statements into actual fair outcomes for customers by establishing, monitoring, reinforcing and maintaining the right corporate behaviours that are expected.** The International Association of Insurance Supervisors has identified a number of (non-prescribed) factors or "drivers" to help insurers with their efforts to embed the FTC into their corporate culture. They deal with leadership, strategy, decision making, internal controls, performance management, and reward.
xlviii

Many federally-regulated financial institutions have adopted integrity (doing the right thing) as a core value of their organization.^{xlix}

Warren Buffet has said *“In looking for people to hire, you look for three qualities: integrity, intelligence, and energy. And, if they don’t have the first, the other two will kill you.”*^l

John H. Walsh, Associate Director, Chief Counsel, US Securities and Exchange Commission, who played a key role in creating the SEC Office of Compliance Inspections and Examinations, has argued that a corporate culture that reinforces ethical behaviour is a key component of effectively managing (*reputation*) risk across the enterprise.^{li}

Training Programs

Training is essential in transforming corporate culture. Carlos Ghosn, Chairman and CEO of both Renault and Nissan, once said *“I think that the best training a top manager can be engaged in is management by example.”*^{lii} A commitment to training, specifically cultural and ethical training of staff at all levels, is critical for any organization that aims to embed fair treatment of customers in its DNA. In 2005, Julie Dickson^{liii} communicated basic principles associated with reputation risk management, highlighting the importance of training and how it OSFI would focus on training in its supervisory reviews. OSFI reported that a number of institutions have *“yet to implement comprehensive and ongoing training.”* OSFI also noted *“that, in some cases, training programs were weak in such areas as codes of conduct or conflict of interest.”*

OSFI specifically lists training programs among the documentation that it may review in assessing the quality of the Compliance function’s performance.^{liv}

Responsible business conduct is an item being considered by Finance Canada for enhanced protection of financial consumers. In its September 2013 Update Report on the work to support the implementation of the G20 High-level Principles, the G20/OECD Task Force on financial consumer protection identified “Staff Training” as an effective approach to responsible business conduct.^{lv}

An essential criterion of the 2012 Basel Core Principle 29 is that banking regulators determine that banks have adequate policies and processes to promote high ethical and professional standards and ongoing training programs for their staff.^{lvi} Insurance Core Principle 9 - Supervisory Review and Reporting^{lvii} requires insurance regulators to make a similar determination under their risk-based approach to supervision of insurers’ business conduct. Training standards as well as any changes that could materially impact the insurer’s treatment of its customers are among the information to be reported in a timely manner for evaluation purposes. It is worth noting that the Canadian Bankers Association Code of Conduct for Authorized Insurance Activities,^{lviii} overseen by the FCAC, indicates that banks are committed to providing continuing education to their representatives and to reviewing educational programs on an on-going basis to ensure relevance to marketplace developments.

Given that codes of conduct are essential to effectively manage reputation risk under prudential regulation as well as to adequately protect consumers under market/business conduct regulation, **we query who between OSFI and the FCAC is responsible for ensuring training programs are effective. We believe that in a “twin peaks” supervisory framework overregulation would be costly for all financial consumers.**

By way of comparison, the US Federal Sentencing Guidelines provide that organizations must take reasonable steps to communicate periodically and in a practical manner their business conduct and ethical standards by conducting effective training programs.^{lix}

Conclusion

As consumers, we believe that:

1. Reputation risk is the greatest risk any organization faces. How an organization behaves will ultimately determine the quality of its reputation.
2. Weak, ineffective or insincere corporate ethical leadership fosters a corporate culture that puts both the organization and the public at extreme risk.
3. Effective market conduct regulation consists of focusing corporate leaders' attention on consumer-centric outcomes and ensuring that values-based approaches are embedded in everything the organization does. While compliance will be assured, it is not the only or ultimate outcome.
4. Rules are necessary in any regime, but enforcement-focused regulation represents the failure of ideas and contributes to a work-to-rule mindset that defeats the very principles that bind stakeholders to each other.
5. Regulators need clear mandates and resources that allow them to be as effective as possible in achieving the desired outcomes.
6. Regulators need to have teeth, the courage to use them without hesitation when necessary and the wisdom to know when other measures will achieve better outcomes.

Like Canada, the central bank of Malaysia, Bank Negara Malaysia (BNM) has undertaken comprehensive changes to the conduct of business with a view to ensuring financial consumers are treated fairly. BNM's effectiveness is being enhanced with strengthened enforcement tools and the development and implementation of a supervisory framework (as opposed to a compliance framework) specific to market conduct activities.^{lx} According to the BNM,

“Business practices that promote positive consumer outcomes not only serve to protect individual consumers from excessive risks, but also protect individual institutions from losses that can threaten their safety and soundness.”

In our view, this is a win-win-win situation for consumers, regulated firms and market conduct regulators (whether integrated or “twin peaks”) in the financial services industry.

We remain at your disposal should there be a need for clarification or further information.

Original signed by

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XXXX, Ontario

Consumer

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XXXX, Ontario

Consumer

Appendix

Exemplary frameworks of risk-based market conduct regulation worthy of examination

Ireland - The mandate of the Irish Central Bank (an integrated regulator overseeing both financial soundness and business conduct regulation) is contained in the Central Bank Reform Act 2010^{lxi}, which sets out as objectives of the Bank the “*stability of the financial system overall and the proper and effective regulation of financial service providers and markets, while ensuring that the best interests of consumers of financial services are protected.*” Ireland’s substantially overhauled Consumer Protection Code^{lxii} came into effect on January 1, 2012. The stated twelve General Principles do set a duty of care to protect the best interests of consumers [which, at present, is non-existent in federal Canadian financial institution laws]. One innovative aspect of the comprehensive Irish Code is that firms are mandated to offer consumers only products and services which are suitable to their needs. Regulated entities are required to comply with both the letter and the spirit of the Code.

South Africa - In line with international developments, and building on the February 2011 proposals of National Treasury to enhance consumer protection^{lxiii} (published in Treasury’s policy position for financial sector regulation in “A Safer Financial Sector to Serve South Africa Better” called the “Red Book”), the government of South Africa opted to shift to “twin peaks” regulation - prudential regulation under the South African Reserve Bank, and market conduct regulation (including banking conduct) under the Financial Services Board. Implementing the treating customers fairly (TCF) outcomes will be a key component of the Board’s enhanced market conduct mandate. Not all elements of the TCF regulatory and supervisory framework require legislative amendment. A number of elements can be, and are being, rolled out within the existing regulatory framework. The approach seeks to ensure that fair treatment of customers is embedded within the culture of financial firms. Subsequent to its March 2011 TCF Roadmap^{lxiv}, the Board has developed, in consultation with parties concerned, Assessing Your TCF Readiness^{lxv} to help regulated entities with their self-assessments. These guidance documents [worth considering for Canadianization] are voluntarily supporting risk-based market conduct regulation. The South African model is not intended to be as prescriptive as the British TCF model pursued by the Financial Conduct Authority of the United Kingdom which has detailed requirements relating to firm’s day-to-day business in addition to high level standards.^{lxvi}

The Netherlands - Supervision of the entire financial system in the Netherlands is laid down in an act of parliament, the Financial Supervision Act.^{lxvii} It explains what requirements financial institutions (banks and insurance firms included) must satisfy and how supervision is organized. Supervision is exercised by two government agencies. Whereas the Dutch Central Bank (De Nederlandsche Bank) is responsible for prudential supervision, Authority for the Financial Markets (AFM) supervises the conduct of the entire financial market sector: savings, investments, insurance and loans. The AFM has been mandated to strengthen consumers’ and businesses’ confidence in the financial markets, both nationally and internationally. The Banking

Code ^{lxviii} came into effect on January 1, 2010. It was drawn up by the Netherlands Bankers' Association (NVB) in response to the April 2009 advisory report entitled Restoring Trust ^{lxix}. The report's recommendations from chapters 1 and 2 have been used as the basis for the Banking Code. Of particular interest to Canada is Section 3.2.2 *"Maintaining a continued focus on its clients' interests is a necessary precondition for the continuity of the bank. Without prejudice to the principle formulated in 3.2.1 (taking clients' interests into account in all actions of the bank), the executive board shall ensure that the bank always treats its clients with due care. The executive board shall see to it that the duty of care for the client is embedded in the bank's culture."* The Dutch principles of the Banking Code are mirrored in the December 2011 Insurer Governance Principles ^{lxx}. *[It is worthy of note that Principle 1 of the June 2013 Sound Commercial Practices Guideline ^{lxxi} of Quebec's Autorité des marchés financiers (AMF) is to the same effect. It simply states as a regulatory outcome "The AMF expects that the fair treatment of consumers is a core component of governance and corporate culture of financial institution." The Quebec Guideline does not apply to banks.]*

Singapore - The Monetary Authority of Singapore (MAS) is the country's central bank. This integrated financial regulator oversees banks, insurers, securities firms and financial advisors among other financial services providers. Pursuant to its governing legislation, namely the Monetary Authority of Singapore Act ^{lxxii}, MAS' principal objective in regard to market conduct is not restricted to compliance. It is to foster a sound and reputable financial centre and to promote financial stability. MAS' Guidelines on Fair Dealing - Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers ^{lxxiii} promote fair treatment of customers by financial institutions in their conduct of business. While the Guidelines have been written with retail customers and investment products in mind, financial institutions are strongly encouraged to apply the principles in the Guidelines to other customers and products. The Guidelines set out five fair dealing outcomes and explain why each outcome is important. They also list key issues, provide illustrations of good and poor practices, and (as is the case in South Africa) set out self-assessment questions for the Board and Senior Management. Fair Dealing Outcome 1 is self-explanatory, universal and consistently adopted by governments around the world. It reads as follows *"Customers have confidence that they deal with financial institutions where fair dealing is central to the corporate culture."* *[Canada's financial consumers are expecting nothing less.]*

Australia - The legislative objectives of the Australian Securities and Investments Commission (ASIC), Australia's market conduct regulator of deposit taking, credit, investments, insurance and annuities, are detailed in its governing legislation, the ASIC Act ^{lxxiv}. This law requires ASIC to promote confident and informed participation by consumers in the financial system and to improve the performance of the financial system and the entities within it. ASIC relies on the firms' good corporate governance and their responsibility to manage reputation risk effectively. *[This reliance is of fundamental importance to the FCAC in Canada and to all members of the Canadian Council of Insurance Regulators.]* Financial services licensees in Australia, banks included, are subject to a legislated duty of care. They are obligated under Section 912A of the Corporations Act ^{lxxv} to do all things necessary to ensure that financial services are marketed and sold efficiently, honestly and fairly. ASIC has indicated that this duty of care colours all licensee requirements under the Act. Other legal obligations require licensees, for instance, to (a) adequately manage conflicts of interest, and (b) take reasonable steps to ensure that their representatives (employees and agents) comply with applicable laws and rules. ASIC's Regulatory Guide 121 ^{lxxvi} - *Doing financial services business in Australia* - is a very useful document to understand Australia's implementation of the Fair Treatment of Customers

principle and related risk-based market conduct regulation. Licensees dealing with retail clients are required to have a dispute resolution system and professional indemnity (errors and omissions) insurance, and to train and supervise their representatives. Moreover, industry codes of practices and conduct also mandate the fair treatment of customers, imposing both general fairness obligations as well as mandating specific obligations which are consistent with fair treatment.

United States - In July 2010, Congress passed and President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ^{lxxvii} (a voluminous piece of legislation). The Act created the Consumer Financial Protection Bureau (CFPB) with the authority to • write rules, supervise companies and enforce federal consumer financial protection laws • restrict unfair, deceptive, or abusive acts or practices • take consumer complaints • promote financial education • research consumer behavior • and monitor (in a proactive way) financial services for risks to consumers. The CFPB's public commitment to achieve the globally-accepted Fair Treatment of Consumers principle (i.e., G20 High-level Principle #3) for all Americans has been widely broadcasted by Richard Cordray, CFPB Director, who said in a two-minute video available on the CFPB website ^{lxxviii}:

“Consumers deserve to have someone who will stand on their side, who will protect them against fraud, and who will ensure that they are treated fairly. The new Consumer Bureau was created to make sure that these things are achieved for all Americans. The good news is that we have already got started. Overtime, we’ll judge the success of our efforts by whether consumers have been treated more fairly, and with more clarity and candor in the financial marketplace.”

One of the goals of the CFPB articulated in its Strategic Plan ^{lxxix} for the years 2013-2017 is to prevent financial harm to consumers while promoting good practices that benefit them. Pursuant to the Handbook of the Financial Sector Assessment Program ^{lxxx} administered jointly by the International Monetary Fund and the World Bank, financial regulators around the globe are expected to effectively perform proactive conduct of business supervision. This particular goal is a clear indication that going forward the CFPB will keep a focus on the “whole picture”: how firms formulate strategy; how they may increase risk of detriment to consumers; how they choose and develop product lines; and how they take products to market. Focusing on product development, distribution governance and firms’ behaviour, rather than point-of-sale issues and themes arising from complaints will allow the recently created US market conduct regulator to proactively identify risks and act before they crystallize. [\[Canadian financial consumers could benefit from a similar initiative.\]](#)

Canada - In its December 3, 2013 News Release about a new consumer code, the federal government declares “A strong financial system is one in which consumers are confident that their interests are well protected by a high-quality regulatory framework.” ^{lxxxi} **The expectation of all consumers of financial services is now set on a regulatory framework that will be superior to what is now in place. From a consumer’s perspective, quality will be assessed not by the components of the new framework, but by what the customers will get out of it.**

Bibliography

Links to highly relevant materials are provided for reference purposes

ⁱ G20 High-level Principles on financial consumer protection, October 2011 - <http://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

ⁱⁱ In this submission “consumers” means retail consumers, rather than high-net worth individuals or institutions (which have the means, background and access to professional advice that most retail consumers lack)

ⁱⁱⁱ G20 November 2011 Summit in Cannes, France, Final Declaration, paragraph 33 - <http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html>

^{iv} G20/OECD Task Force on Financial Consumer Protection September 2013 Update Report on the work to support the implementation of the G20 High-Level Principles on Financial Consumer Protection, page 4 - <http://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>

^v Report of the Financial Stability Board to G20 Leaders, August 30, 2013, Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability, pages 3, 8 and 9 - https://www.g20.org/sites/default/files/g20_resources/library/FSB_Overview_Progress_Report.pdf

^{vi} Remarks of Mark Carney presented at the 7th Annual Thomas d’Aquino Lecture on Leadership - Lawrence National Centre for Policy and Management - Richard Ivey School of Business - Western University, London, Ontario, February 25, 2013 - <http://www.bankofcanada.ca/2013/02/publications/speeches/rebuilding-trust-global-banking/>

^{vii} Enron Corporation, Code of Ethics, July 1, 2000, pages 2 and 12 - <http://i.cdn.turner.com/dr/teg/tsg/release/sites/default/files/assets/enroncodemanual.pdf>

^{viii} Canada’s Financial Consumer Protection Framework: Consultation Paper, December 3, 2013, bottom of Section 4.3 regarding Supervisory Powers - <http://www.fin.gc.ca/activty/consult/fcpf-cpcpsf-eng.asp>

^{ix} An Approach to Risk-based Market Conduct Regulation, final report of the Canadian Council of Insurance Regulators, October 2008, page 5 - http://www.ccir-ccrra.org/en/init/rbmc/Approach_to_RbMC_FinalDoc_Oct10.pdf

^x Article entitled Regulate outcomes, not rules, published in the Financial Post on November 11, 2013 - <http://opinion.financialpost.com/2013/11/11/regulate-outcomes-not-rules/>

^{xi} Office of the Superintendent of Financial Institutions Act (OSFI Act), Clause 4(2)(a) - <http://laws-lois.justice.gc.ca/eng/acts/O-2.7/>

^{xii} Financial Consumer Protection of Canada Act (FCAC Act), Clause 3(2)(a) - <http://laws-lois.justice.gc.ca/eng/acts/F-11.1/index.html>

^{xiii} OSFI Supervisory Framework for Financial Institutions updated in 2010 - <http://www.osfi-bsif.gc.ca/Eng/Docs/sframew.pdf>

^{xiv} FCAC Compliance Framework updated in 2011 - <http://www.fcac-acfc.gc.ca/Eng/resources/complianceFramework/Pages/home-accueil.aspx#text>

^{xv} 2012- 2013 Annual Report of the Financial Agency of Canada, page 30 - <http://www.fcac-acfc.gc.ca/Eng/about/planning/annualReports/Pages/2012-13-AR-RA.aspx>

^{xvi} Mandate of the Joint Forum - <http://www.bis.org/bcbs/jfmandate.htm>

^{xvii} IOSCO's Objectives and Principles of Securities Regulation, June 2010, Principles 29 to 32 - Market Intermediaries - <http://www.compliance-exchange.com/governance/library/ioscoprinciples2010.pdf>

^{xviii} BCBS' Core Principles for Effective Banking Supervision, September 2012, Core Principle 29 - Abuse of financial services - <http://www.bis.org/publ/bcbs230.pdf>

^{xix} IAIS' Insurance Core Principles, Standards, Guidance and Assessment Methodology, October 2011, Insurance Core Principle 19 - Conduct of Business - <http://www.iaisweb.org/ICP-on-line-tool-689>

^{xx} International Financial Consumer Protection Organization (FinCoNet), Press Release, November 21, 2013 - [http://www.centralbank.ie/press-area/press-releases/Pages/NewInternationalFinancialConsumerProtectionOrganisation\(FinCoNet\)Established.aspx](http://www.centralbank.ie/press-area/press-releases/Pages/NewInternationalFinancialConsumerProtectionOrganisation(FinCoNet)Established.aspx)

^{xxi} CCIR Insurance Core Principles Implementation Committee (ICPic) - <http://www.ccir-ccrra.org/en/init/ICPic/ICPic.asp>

^{xxii} The prevention of regulatory arbitrage is a goal of the Financial Stability Board - Report of the Financial Stability Board to G20 Leaders, August 30, 2013, Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability, pages 3, 8 and 9 - https://www.g20.org/sites/default/files/g20_resources/library/FSB_Overview_Progress_Report.pdf

^{xxiii} Speech by Grant Swanson, Financial Services Commission of Ontario (FSCO), June 5, 2012, Trends in Insurance Regulation, Fair Treatment of Customers - http://www.ccir-ccrra.org/en/about/CAILBA_Grant_Swanson_2012.pdf

^{xxiv} OSFI Assessment Criteria for Board of Directors, Criteria 2.2 (l) and (m) - http://www.osfi-bsif.gc.ca/eng/docs/09-board_of_directors.pdf

^{xxv} OSFI Assessment Criteria for Senior Management, Criteria 5.10 - http://www.osfi-bsif.gc.ca/eng/docs/10-senior_management.pdf

^{xxvi} Ibid. Appendix A, Inherent Risk Categories at page 13

^{xxvii} OSFI Guideline E-13, Legislative Compliance Management, March 2003 - http://www.osfi-bsif.gc.ca/Eng/Docs/E13_2003_Final.pdf

^{xxviii} OSFI's Corporate Governance Guideline, January 2013, page 8 - http://www.osfi-bsif.gc.ca/Eng/Docs/CG_Guideline.pdf

^{xxix} US Federal Insurance Deposit Corporation, Guidance on Implementing an Effective Ethics Program, Corporate Codes of Conduct, October 21, 2005 - <http://www.fdic.gov/news/news/financial/2005/fil10505.html>

^{xxx} Bank Act, Subsection 158(1)(a)

^{xxxii} Insurance Companies Act, Subsection 166(1)(a)

^{xxxiii} Ireland's Consumer Protection Code, General Principles 1 and 2, Section 2.1 to 2.12, page 6 - <http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>

^{xxxiiii} Section 222.2 of Quebec's Act respecting insurance, R.S.Q. c. A-32 - <http://www.canlii.org/en/qc/laws/stat/cqlr-c-a-32/85244/cqlr-c-a-32.html#history>

^{xxxv} For example, the TD Bank Group January 2014 Code of Conduct and Ethics for Employees and Directors commits to conducting its affairs to the highest standards of fairness. Scotiabank Guidelines for Business Conduct has made it a principle to treat customers fairly. RBC Code of Conduct bases client relationships on respect and fairness. Great-West Life, London Life and Canada Life in their joint January 2013 Code of Business Conduct and Ethics for Directors, Officers and Employees commit together to fair dealing with all clients. The Code of Business Conduct of Sun Life Financial also makes a commitment to fairness. Manulife Financial Code of Business Conduct and Ethics makes fairness in interactions with customers a critical issue. Standard Life of Canada commits to place fair treatment of its customers at the heart of its culture according to its March 2011 Code of Business Conduct.

TD Bank Group - <http://www.td.com/document/PDF/governance/td-governance-code-ethics.pdf>

Scotiabank - http://www.scotiabank.com/ca/en/files/11/09/Guidelines_for_Business_Conduct.pdf

RBC - http://www.rbc.com/governance/_assets-custom/pdf/RBCCodeOfConduct.pdf

Great-West life, London Life and Canada Life - http://www.greatwestlife.com/web5/groups/corporate/@public/documents/web_content/s7_030796.pdf

Sun Life Financial - http://cdn.sunlife.com/static/global/files/Code%20of%20business%20conduct/page_code_of_business_conduct.pdf

Manulife Financial - <http://www.manulife.com/public/files/201/1/CodeofBusinessConductandEthics2010.pdf>

Standard Life of Canada - <http://www.standardlife.ca/en/pdf/corporate/1065.pdf>

^{xxxvi} IMF Report on the Observance of Standards and Codes on Canada, February 3, 2014 - <http://www.imf.org/external/pubs/ft/scr/2014/cr1430.pdf>

^{xxxvii} FCAC Act, AMP, Violations, Section 20 - <http://laws-lois.justice.gc.ca/eng/acts/F-11.1/page-9.html#docCont>

^{xxxviii} FCAC Compliance Framework, Compliance Triage - <http://www.fcac-acfc.gc.ca/Eng/resources/complianceFramework/Pages/home-accueil.aspx>

^{xxxix} KPMG Forensic's Integrity Survey 2013 - <https://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/Documents/kpmg-integrity-survey-2013.pdf>

^{xl} US Federal Sentencing Guidelines for Organizational Defendants, Section 8B2.1 - <http://www.ucdmc.ucdavis.edu/compliance/pdf/ussg.pdf>

^{xl} CBA Code of Conduct for Authorized Insurance Activities - http://www.cba.ca/contents/files/misc/vol_20090000_authorizedinsuranceactivities_en.pdf

^{xli} For example, Saskatchewan Regulations 32/2010 - <http://www.insurancecouncils.sk.ca/download%20files/RIA%20Regs.pdf>

^{xlii} Canadian Western Bank v. Alberta, [2007] 2 S.C.R. - <http://scc-csc.lexum.com/scc-csc/scc-csc/en/2362/1/document.do>

^{xliii} Ibid. Paragraph 13, pages 7 and 8

^{xliv} Ibid. Paragraph 45, page 26

^{xlvi} G20 initial Summit in Washington D.C., November 15, 2008, Leaders Declaration, Paragraph 9, third bullet - <http://www.g20.utoronto.ca/2008/2008declaration1115.html>

^{xlvi} BCBS/OSFI Principles for the Sound Management of Operational Risk, August 2, 2011, Principle 1, page 2 - <http://www.osfi-bsif.gc.ca/Eng/Docs/bcbssnd.pdf>

^{xlvii} Ibid. Speech by Grant Swanson, Financial Services Commission of Ontario (FSCO), June 5, 2012, Trends in Insurance Regulation, Fair Treatment of Customers

^{xlviii} Ibid. IAIS Insurance Core Principle (ICP) 19, Standard 19.2, Guidance 19.2.5, page 278 of 399

^{xlix} See, for example, the voluntary codes of conduct of BMO Financial Group, CIBC, National Bank, Foresters Life, Assurant Life, and Transamerica Life Canada (AEGON). Links are provided below:

BMO Financial Group Code of Business Conduct and Ethics - http://www.bmo.com/pdf/2013_FirstPrinciples%20EN.pdf

CIBC, Code of Conduct, November 2013 - <https://www.cibc.com/ca/pdf/about/code-of-conduct-en.pdf>

National Bank, Code of Conduct and Ethics - http://www.nbc.ca/bnc/files/bncpdf/en/2/voluntary_codes.pdf

Foresters Life, Code of Ethics, Updated 2013 - <http://www.foresters.com/CA-EN/About/Corporate-Governance/Documents/20131217%20-%20Foresters%20Code%20of%20Ethics.pdf>

Assurant Life, Code of Ethics - http://ir.assurant.com/files/doc_downloads/corp_governance/AIZ_WebDoc_3506.pdf

Transamerica Life Canada (AEGON), Code of Conduct - <http://www.transamerica.ca/en/CompanyInfo/Documents/AEGON%20Global%20Code%20of%20Conduct.pdf>

ⁱ Quotes from Warren Buffett - http://www.goodreads.com/author/quotes/756.Warren_Buffett

This quote supports OSFI Guideline E-17 which requires each federally-regulated financial institution to develop a written policy for assessing the suitability and integrity of its “responsible persons”.

OSFI Guideline E-17 Background Checks on Directors and Senior Management, February 2008 - http://www.osfi-bsif.gc.ca/Eng/Docs/E17_final.pdf

ⁱⁱ At the 2008 annual Compliance Section conference of the Canadian Life and Health Insurance Association in Quebec City

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- ^{lii} Quotes from Carlos Ghosn - <http://thoughtjoy.com/carlos-ghosn>
- ^{liii} OSFI's Review of Reputation Risk Practices - Principles, Observations and Next Steps, June 2005 - http://www.osfi-bsif.gc.ca/Eng/fi-if/in-ai/Pages/rep_risk.aspx
- ^{liv} OSFI Assessment Criteria for Compliance, Compliance Performance, bottom of page 3 - <http://www.osfi-bsif.gc.ca/Eng/Docs/13-Compliance.pdf>
- ^{lv} Ibid. Paragraph 2.1.3, page 14
- ^{lvi} Ibid. Policies and processes, page 64, and Training, paragraph 9(d), pages 66 and 67
- ^{lvii} IAIS Insurance Core Principle 9 - Supervisory Review and Reporting, Principle 9, Standard 9.4, Guidance 9.4.3 - http://www.iaisweb.org/index.cfm?pageID=689&icpAction=listlcps&icp_id=14&showStandard=1&showGuidance=1&showIntroGuidance=1
- ^{lviii} Ibid. CBA Code of Conduct for Authorized Insurance Activities, page 1
- ^{lix} Ibid. US Federal Sentencing Guidelines for Organizational Defendants, Effective Compliance and Ethics Program, Subsection 8B2.1(b)(4)(A)
- ^{lx} Market Conduct and Consumer Empowerment 2012, Bank Negara Malaysia, page 118 - <http://www.bnm.gov.my/files/publication/fsps/en/2012/cp04.pdf>
- ^{lxi} Ireland's Central Bank Reform Act 2010, Schedule 1, Item 24 - <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0023.pdf>
- ^{lxii} Ireland's Consumer Protection Code, General Principles, Section 2.1 to 2.12 - <http://www.centralbank.ie/regulation/processes/consumer-protection-code/documents/consumer%20protection%20code%202012.pdf>
- ^{lxiii} A Safer Financial Sector to Serve South Africa Better, South Africa's National Treasury, February 23, 2011 - <http://www.treasury.gov.za/documents/national%20budget/2011/A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf>
- ^{lxiv} The Roadmap, Treating Customers Fairly, South Africa's Financial Services Board, March 31, 2011 - <https://www.fsb.co.za/feedback/Documents/Treating%20Customers%20Fairly%20-%20The%20Roadmap%202011.pdf>
- ^{lxv} Assessing Your Treating Customers Fairly Readiness, How to use the FSB's self-assessment tool, South Africa's Financial Services Board, August 2012 - <https://www.fsb.co.za/feedback/Documents/Completing%20the%20self-assessment.pdf>
- ^{lxvi} UK Financial Conduct Authority Handbook, January 2014 - <http://fshandbook.info/FS/html/FCA/>
- ^{lxvii} Act on Financial Supervision (unofficial English translation), The Netherlands - http://www.toezicht.dnb.nl/en/binaries/dnb_tcm51-217291.pdf
- ^{lxviii} Banking Code of The Netherlands, September 9, 2009, Section 3.2.2 - <http://www.triodos.com/downloads/about-triodos-bank/corporate-governance/dutch-banking-code.pdf>

^{lxix} "Restoring Trust": the report of the Advisory Committee on the Future of Banks in The Netherlands (Maas Committee), April 7, 2009 - [http://www.newsletter-nautadutilh.com/EN/xzine/corporate/rapport_van_de_adviescommissie_toekomst_banken_\(commissie_maas\)/_report_of_the_advisory_committee_on_the_future_of_banks_\(maas_committee\)/restoring_trust_the_report_of_the_advisory_committee_on_the_future_of_banks_in_the_netherlands_\(maas_committee\).html?cid=4&xzine_id=4242&aid=10982](http://www.newsletter-nautadutilh.com/EN/xzine/corporate/rapport_van_de_adviescommissie_toekomst_banken_(commissie_maas)/_report_of_the_advisory_committee_on_the_future_of_banks_(maas_committee)/restoring_trust_the_report_of_the_advisory_committee_on_the_future_of_banks_in_the_netherlands_(maas_committee).html?cid=4&xzine_id=4242&aid=10982)

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