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**Potential Policy Measures to Support a Strong and Growing Economy:
Positioning Canada's Financial Sector for the Future**
<http://www.fin.gc.ca/activty/consult/pssge-psefc-eng.pdf>

Kenmar Associates is an Ontario-based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com. Kenmar also publishes **the Fund OBSERVER** on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

We will limit our comments to the section *Improving the Protection of Bank Consumers*.

Banks are an essential service and most bank clients trust them completely but wind up paying more than they need to, or more than they should. Optional charges like overdraft protection and mortgage insurance are not always clearly labelled as optional, and many additional services and coverages are infrequently revealed to be optional unless probed directly by more sophisticated clients. The cumulative impact of such charges over time can impair retirement income security. This is an organizational culture issue that starts at the top. Canadians should not have to bank under a Caveat Emptor regime. Until bank corporate culture changes, the GOC/MOF needs to put in place laws, rules and regulations that will mitigate inappropriate marketing and sales practices.

By now we've all read about the scandal involving upselling and forgery by Canadian banks from several in-depth CBC reports. In some cases employees told CBC News they had increased lines of credit or overdraft protection to hit their sales revenue targets without informing the customer. To date, thousands of bank employees have contacted Go Public, describing stress-inducing pressure to increase sales. It is truly disturbing that such a horrible client and employee-abusing culture has been allowed to develop at Canadian banks.

Asked to comment on the CBC's GoPublic reporting, the FCAC's deputy commissioner Brigitte Goulard appeared on TV to say that the agency had been interested in looking at these sales practices "for a while" but had decided it was

going to launch a special investigation in April. A report can be expected by the end of the year. Asked by Radio Canada what would happen if a bank is found guilty of illegal actions in its sales practices, Goulard warned that her agency could impose a fine of up to \$500,000. In 2015-16, Toronto-Dominion Bank CEO Bharat Masrani was paid \$9.38 million in his first year as top executive so a fine of \$500K would equal only a few weeks compensation or a minute fraction of TD's quarterly profit. Not exactly a huge deterrent for a bank like TD. And she added, "If it's a serious violation, we could name the institution.". This is neither the transparency Canadians deserve nor the financial consumer protection they deserve.

According to FCAC Annual reports, its Compliance and Industry Relations Branch has imposed only a few small penalties on a handful of financial institutions. This has to change given the abuses that are glaringly apparent .**The FCAC Act needs to be modified so that the level of fines and sanctions are dramatically increased , the FCAC given a much expanded mandate and far stronger regulatory and sanction powers accompanied by increased transparency.**

In a statement, FCAC commissioner Lucie Tedesco expressed concern with recent allegations related to the sale of products and services by financial institutions to consumers without properly obtaining their prior express consent. "The law requires that, in order to provide consumers with new or expanded products or increase their credit limits, financial institutions obtain their customers' prior consent and disclose key information about the costs and charges of the products they are purchasing," she said. In many cases the consent, even when obtained, is not informed consent because of the complexity of the documentation and poor explanations provided by salespersons.

The real issue is **NOT** consent /cost disclosure but rather a complete lack of professional conduct rules for client-facing bank personnel. The absence of such rules and regulatory oversight creates an unbridled sales culture where client needs are subordinated to sales quotas placed on employees under threat of termination.

Contrast this with the U.S. Consumer Financial Protection Bureau (CFPB) <https://www.consumerfinance.gov/> .Its motto **We're on your side** is right there on the first page of their website. "We are the Consumer Financial Protection Bureau, a U.S. government agency that makes sure banks, lenders, and other financial companies treat you fairly." The site makes it easy to submit complaints, includes a searchable database of public complaints against companies and invites whistleblowers from within the industry to come forward. CFPB has the statutory ability to apply large fines on rule breaking banks as they have done with Wells Fargo. The FCAC is nowhere near this level of regulatory strength.

In contrast , the FCAC clearly has a number of shortcomings. Read *The FCAC & The Canadian Banking "Scandal": how could they not see it coming?* <http://blog.moneymanagedproperly.com/?s=fcac&submit=Search> This article provides a number of excellent enhancement ideas. Another document worth reading is *Consumer Financial Protection Agency: Is There a Need?* http://govtpolicyrecs.stern.nyu.edu/docs/whitepapers_ebook_chapter_18.pdf

Kenmar recommend that the Bank Act be amended and the FCAC establish conduct rules for all client- facing bank employees.

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 and sales, and effective systems of complaint and redress. Over the last several years we have seen movements towards this goal in a number of countries.

As outraged Canadians react, many abused clients will file their complaints with the bank. They will likely end up with the bank's "internal ombudsman" which in reality is neither independent nor a true Ombudsman. Consumers won't be warned that, unlike independent OBSI, the complaint will not stop the statute of limitations time clock. If a client doesn't accept their response, they'll then be referred to their own fully paid for "independent" for-profit firm, ADR Chambers banking ombudsman (ADRBO) which clearly is not independent of the bank (applies only to TD and RBC). See this report from the Consumers Council of Canada of what they think of this type of conflicted dispute resolution service. *Canada's banking dispute resolution system*

http://www.consumerscouncil.com/site/consumers_council_of_canada/assets/pdf/c_cbankingdisputeresolution.pdf For-profit "Ombudsman" services should be prohibited. **So one immediate reform would be for the GOC to require all banking complaints be sent to OBSI.** Better yet, OBSI should be made into a statutory Ombudsman service as is the case in the UK and elsewhere.

We have found many cases where the bank has tried to encourage and nudge complainants towards using their so-called "internal Ombudsman" rather than file a complaint with OBSI. Their complaint brochures suggests it's a smart move but doesn't warn about the downsides and risks. Canadian banks should be prohibited from using a two-stage complaint process. It causes confusion, consumes valuable statute of limitation clock time (often unknown to victims) and deters many complainants from proceeding by exhausting their will, energy and patience. The bank should investigate complaints fully the first time and not pass responsibility back to the complainant to come back to an internal Ombudsman if they are dissatisfied with an initial response. This process is inherently prone to misuse, in particular because it effectively gives the banks an incentive to deal with complaints to a lower than satisfactory standard at the first stage on the basis that only a relatively small number of consumers will take their complaint further and the dealer then has a second chance to rectify (or not) any shortcomings in the original complaint handling. The strategy works...for the big banks not consumers. **We strongly recommend that the GOC prohibit two-stage complaint handling as the UK FSA has done.**

Kenmar observe close ties between branch personnel and other bank affiliates and related parties. Branch personnel can recommend loans for investment purposes or refer clients to the bank's affiliated investment dealers. These referrals may not be in the best interests of clients. A quick look at the BNS referral disclosure document http://www.scotiabank.com/ca/common/pdf/scotiamcleod/Referral-Disclosures-82014612_eng_0211.pdf presents so many bear traps for the unsuspecting retail bank client it is hard to imagine he/she would escape unscathed. Banking consumers are expecting trusted advice on their life savings and it is the duty of the GOC to provide them a safe environment for doing so. **We recommend the GOC examine methods of ensuring that such referrals must be made in the best interests of consumers.**

Banks now are financial advice givers and investment-like product sellers. Take Index-linked GIC's for example, Index-linked GIC's appeal to seniors and retirees. A quick look at the applicable rules may give a client the impression that he/she can profit substantially with little risk. However, the referenced link depends on a formula or set of rules that is buried in the fine print. Unsophisticated trusting consumers don't know there must be a catch somewhere. It turns out that the catch is in the "method of calculation" that it takes some hard digging to find. Most consumers end up breaking even after 5-7 years. In January, 2014 ATB announced they would stop selling index linked GIC's because they were fundamentally unsuitable for retail financial consumers.

<http://www.atb.com/learn/articles/pages/article.aspx?aid=330> If there were clear sales practice rules and robust advice standards, such products would be revealed as essentially products that skim off returns for the benefit of the bank. As things stand today, such complex products can be sold by a teller posing as a trusted advisor. **Tighter rules regarding bank sales practices and advisor proficiency are required , matched with robust, timely FCAC enforcement.**

A recent CBC GO PUBLIC article <http://www.cbc.ca/news/business/financial-industry-employees-forge-documents-more-often-than-you-d-think-1.4138212> *Document forgery in financial industry more common than you'd think, past employees say* revealed that mis-selling and up-selling is aided by large scale document adulteration. A former CIBC representative is quoted as **saying '85% of sales staff' in her workplace forged documents**, encouraged by her manager. This kind of culture is exactly the opposite of that portrayed by bank marketing materials and senior executive proclamations. The voices of thousands of Canadians cannot be ignored by the GOC. This is a very serious issue and needs rectification without undue delay.

At the end of June, The Office of the Superintendent of Financial Institutions (OSFI) issued [Advisory 2017-01](#), which sets out how OSFI interprets and administers (a) the *Bank Act* restrictions on the use of the words "bank", "banker" and "banking", and (b) the exception to these restrictions that applies where the use of the words is not in relation to a financial services business. **We urge the MOF to apply great caution in applying any rules that would impair the business of credit unions in Canada.** Credit Unions are client- friendly, trusted, flexible and act as a viable competitor to the Big Banks. **Since terminology is important to OSFI, we**

recommend OSFI/MOF prohibit banks from using the term "ombudsman" as it deceives and confuses complainants. Internal bank "ombudsman" are not independent, transparent, regulated or subject to independent audit and oversight. **OBSI should be the sole Ombudsman for banking as it is for securities.**

Another area of banking consumer protection involves employee compensation practices. It is well known that what gets rewarded gets done. **We highly recommend that the GOC/FCAC conduct a sweep of prevailing incentives (financial and non - financial) for client-facing bank employees to determine the extent such incentives skew the recommendations of client-facing staff to the detriment of financial consumers. Depending on the findings , appropriate protective measures should be put in place to mitigate these conflicts-of-interest.** These measures should not be limited to conflict-of-interest disclosures.

There has been widespread public discourse about the overall aging of the Canadian population. The first "baby boomers" (generally defined in Canada as those born between 1947 and 1966) turned 65 in 2012 and demographic studies indicate that nearly one in four Canadians will be 65 or older by the year 2036.² The 2011 Census counted just under 5 million Canadians as being aged 65 and older (almost 15% of the population). In addition, Canadians are living longer than ever before, with average life expectancy for males born in 2012 at 80 and for females 84, according to a 2014 World Health Organization Report.

Seniors seeking financial guidance and banking services for their retirement years thus represent a significantly increasing proportion of bank and this trend will continue for the foreseeable future. Dealing with retail clients who are seniors gives rise to issues and considerations of which banking industry participants providing retail advisory and banking services should be cognizant. A 2014 report *CANADA'S INVESTMENT INDUSTRY: PROTECTING SENIOR INVESTORS - Compliance, Supervisory and Other Practices When Serving Senior Investors* issued by IIAC intended for the investment industry identifies many issues that have General applicability to banking. These include cognitive issues, issues regarding POA's and legal issues related to protection against elder abuse. The Report can be found at http://iiac.ca/wp-content/uploads/Canadas-Investment-Industry-Protecting-Senior-Investors_March-18-2014.pdf **The GOC should ensure that Canadian banks have implemented the programs necessary to address this major demographic change.**

We therefore call on the Government of Canada to use its consultation findings as an opportunity to:

- introduce a robust Financial Consumer Code,
- give the FCAC the mandate and resources it needs to act as a real banking regulator (like the U.S. CFPB),
- Prohibit two-stage complaint handling,
- make OBSI the sole Ombuds service for all Canadian banks under Federal jurisdiction , and

- require banks to institute safeguards to protect seniors/vulnerable consumers.

Such actions are well past due and will help Canada comply with G20 HIGHLEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION:

<http://www.oecd.org/daf/fin/financial-markets/48892010.pdf> .

We thank the Minister of Finance for the opportunity to provide these comments.

We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Do not hesitate to contact us if there are any questions regarding our Comment letter.

Permission is granted for public posting.

Sincerely,
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