



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

November 15, 2016

Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa, ON
K1A 0G5
Sent by email to: LegislativeReview-ExamenLegislatif@canada.ca

RE: Review of the Federal Financial Sector Framework

FAIR Canada is pleased to offer comments on the review of the financial sector legislative and regulatory framework being conducted by the Federal Ministry of Finance including the key trends identified in the Consultation Document and their implications for financial consumers and the Canadian financial services landscape.

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

1. Overview

- 1.1. FAIR Canada believes that in order for the Canadian financial services landscape to adequately protect financial consumers, be efficient and effective, and allow Canadians investors to have confidence in the financial services market, it must:
- Foster effective competition - some industries' business models seem to perpetuate a system of firms with ineffective competition on price and quality. This is the result of many inter-connected issues, including low financial literacy, conflicts of interest, fragmented regulation, and conflicted business models. The regulatory system must encourage effective competition that delivers the best possible advice to Canadians;
 - Have a regulatory regime that oversees whether the products being sold to consumers meet their needs and are in their best interests;
 - Include the basic principle that like products should be regulated in a like manner so that consumers have consistent expectations about the regulatory framework, and that they experience good outcomes;
 - Provide consistent treatment of consumers for their banking, insurance and securities

products, services and advice related thereto - consumers should receive a similar level of protection in respect of their investments and advice related to those investments regardless of which sector of the financial industry the product or sale originates from;

- Ensure strong, effective and consistent enforcement by each regulator as well as disciplinary and enforcement consistency across regulatory bodies so that regulatory activity by one regulator is appropriately applied by another;
- Implement a statutory best interest standard applicable whenever financial advice is provided to consumers; and
- Include an adequately funded and informed consumer voice that is part of the policy-making process. The voice of financial consumers needs to be heard and this means that financial consumers need a seat at the table. Proper representation in this way should be mandated and adequate funding to actively and properly represent consumer interests on financial matters should be made available. This is sorely lacking presently. There is a strong need for consumer representation to be hard-wired into the process in order to have an effective policy-making process.

2. Comments on Importance of Core Policy Objectives

- 2.1. Our comments will be guided by the three core policy objectives that the Government has determined will guide financial sector policy and frame the Government's review:
 - (i) stability (the sector is safe, sound and resilient in the face of stress);
 - (ii) efficiency (the sector provides competitively priced products and services, and passes efficiency gains to customers, accommodates innovation, and effectively contributes to economic growth); and
 - (iii) utility (the sector meets the financial needs of an array of consumers, including businesses, individuals and families, and the interests of consumers are protected).
- 2.2. In order to have a modern effective regulatory framework it is necessary for the above-noted policy objectives to be at the front and centre of the policy-making and decision making process. These objectives must be central to everything that regulators do. In particular, protecting consumers needs to be the central focus. Of critical importance to a modern financial services sector is a proactive regulatory framework. To achieve that it is necessary to ensure that the three policy objectives, and in particular that of adequate consumer protection, are kept uppermost in mind to guide policy-making, identification of risks, supervision, and any enforcement work.
- 2.3. As part of this, the financial services framework should be informed by the 10 principles in the OECD's G20 High Level Principles on Financial Consumer Protection, of which Canada is a signatory.¹ The Government should also pay close attention to the need for a strong policy and regulatory focus on financial consumer protection as set out in the Framework section of the

¹ OECD G20 High-Level Principles on Financial Consumer Protection (October 2011), <https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf>

OECD G20 High Level Principles document.²

3. Future of the Financial Services Sector –Trends

3.1. FAIR Canada believes the following trends will likely have significant impact on Canada's financial services sector and its regulatory framework:

- (i) The increasing complexity of financial products, product proliferation and increasing convergence between products offered in the insurance, securities and banking sectors.
- The increasing degree of product complexity³ and product proliferation makes it difficult for the average Canadian to be adequately informed about the different investment product options that are available.
 - Academic research has found that firms strategically use product complexity to make product returns more salient and to shroud risk, making more profit for them but at the expense of lower returns for those who invest in them.⁴
 - Canada has not been immune to the proliferation of complex products including complex exchange traded funds and structured products⁵.
 - Product options for older Canadians such as reverse mortgages and flexible annuity products need to be examined closely. Many of those interested who are interested in buying or who are sold these products will be vulnerable investors and these products are complex. There is therefore a heightened challenge to ensure that the consumer makes a sound financial decision and is adequately informed and understands all of their options. Aligned incentive structures and acting in the best interest of the consumer are essential when offering such products. We agree that the increasing complexity of financial products and services may be a challenge for many part of the Canadian population.

² OECD G20 High-Level Principles on Financial Consumer Protection (October 2011), at page 4, available online at: <http://www.oecd.org/daf/fin/financial-markets/48892010.pdf> “This renewed policy and regulatory focus on financial consumer protection results inter alia from the increased transfer of opportunities and risks to individuals and households in various segments of financial services, as well as the increased complexity of financial products and rapid technological change, all coming at a time when basic access to financial products and the level of financial literacy remain low in a number of jurisdictions. Rapid financial market development and innovation, unregulated or inadequately regulated and/or supervised financial service providers, and misaligned incentives for financial services providers can increase the risk that consumers face fraud, abuse and misconduct. In particular, low-income and less experienced consumers often face particular challenges in the market place....This calls for legal recognition of financial consumer protection, oversight bodies with necessary authority and resources to carry out their mission, fair treatment, proper disclosure, improved financial education, responsible business conduct by financial services providers and authorised agents, objective and adequate advice, protection of assets and data including from fraud and abuse, competitive frameworks, adequate complaints handling and redress mechanisms and policies which address, when relevant, sectoral and international specificities, technological developments and special needs of vulnerable groups....”

³ (2016), 39 OSCB 3947 at 3956.

⁴ Claire Célérier, Boris Vallée, “Catering to Investors Through Product Complexity” (2015) at page 33-34, online: http://www.hbs.edu/faculty/Publication%20Files/16-050_5e5fd8d5-652e-4a13-abe7-ffd1466ef691.pdf.

⁵ OSC Statement of Priorities for Fiscal 2011-2012 at page 4, online: http://osc.gov.on.ca/documents/en/Publications/sop_fiscal-2011-2012.pdf;

- (ii) Increasing technological change will impact how consumers buy (or are sold) financial products, how they will seek and obtain financial advice, and the speed and ease by which they may do so;
- (iii) Aging demographic;
- (iv) Low interest rate environment and low economic growth which leads to increased individual risk taking.
 - Low interest rates push investors to seek opportunities to achieve adequate yield on their investments or capital appreciation. This includes, especially, older Canadians who need sufficient returns for their retirement income. This can expose investors to investment risk including risks associated with increased use of leverage that “can have life-changing outcomes.”⁶ The result is consumers taking on more risk.⁷
 - Low interest rates for an extended period are said to “...distort investment decisions, leading to excessive risk taking and inefficient and ultimately unprofitable investments...Some of the symptoms of inefficient investment and asset price bubbles are already evident in Canada.”⁸
 - Low interest rates have provided Canadian consumers with an incentive to accumulate a record proportion of household debt compared with their income.⁹
- (v) Increasing demand for income-producing products;
- (vi) Increasing number of integrated financial services entities that sell products from all the regulatory sectors – banking, securities and insurance;
- (vii) Increasing debt levels of consumers;
- (viii) Increasing self-reliance in saving for retirement; and
- (ix) The age of retirement often not being chosen by the individual but forced upon them through circumstances beyond their control (with health being a major reason).¹⁰

4. Financial Sector – Realities

⁶ OSC Notice 11-775, Notice of Statement of Priorities for the Year Ended March 31, 2017 (June 9, 2016) (2016), 39 OSCB 5155 at page 5160.

⁷ Paul R. Masson, “The Dangers of an Extended Period of Low Interest Rates: Why the Bank of Canada Should Start Raising Them Now”, C.D. Howe Institute Commentary No. 381 (May 2013), at page 10; online: https://www.cdhowe.org/pdf/Commentary_381.pdf.

⁸ Paul R. Masson, “The Dangers of an Extended Period of Low Interest Rates: Why the Bank of Canada Should Start Raising Them Now”, C.D. Howe Institute Commentary No. 381 (May 2013), at page 2; online: https://www.cdhowe.org/pdf/Commentary_381.pdf.

⁹ Paul R. Masson, “The Dangers of an Extended Period of Low Interest Rates: Why the Bank of Canada Should Start Raising Them Now”, C.D. Howe Institute Commentary No. 381 (May 2013), at page 10; online: https://www.cdhowe.org/pdf/Commentary_381.pdf.

¹⁰ <http://www.theglobeandmail.com/globe-investor/personal-finance/retirement-rrsps/nearly-half-of-canadians-forced-to-retire-earlier-than-planned-poll-shows/article25219041/>

4.1. There are also the following current realities to be taken into account when assessing Canada's financial sector:

- (a) There is persistent low financial literacy in Canada.¹¹ Both the 2012 and the 2016 CSA Investor Index found that 4 out of 10 failed the general investment knowledge test included in the survey, answering fewer than four out of seven questions correctly.¹² Further, evidence suggests that "...[e]ven when people understand a financial or economic principle in theory, applying the principle to a real situation is difficult for them."¹³ Low financial literacy is a stubborn problem despite the many organizations and individuals who work diligently to improve it.
- (b) Asymmetry in knowledge and experience of financial consumers in relation to the financial firms and their financial services providers.
- (c) Heavy Reliance by Canadians on financial service providers for advice.
 - The relationship between financial service providers and clients is a spectrum ranging from unconditional confidence and trust to dealing with the financial service provider as a mere order taker. Having said that, typically, advice is a recommendation upon which investors place a great deal of reliance. Financial products are most often sold and not bought.
- (d) Consumer confusion as they think their "financial advisor" acts in the consumer's best interests but this is not the standard.
 - Evidence demonstrates that "[s]ome 7 out of 10 investors believe their advisor has a legal duty to put the client's best interest ahead of his or her own. They rely on their advisor to select the best investment for them and most believe the advisor will recommend what is best for the client even at the expense of their own commission."¹⁴ This is combined with the fact that "[i]nvestors have little or no idea about how advisors can get paid"¹⁵.

¹¹ (2016), 39 OSCB 3947 at 3956; (2012) 35 OSCB 9558 at 9580.

¹² Innovative Research Group, Inc., *2012 CSA Investor Index: Full Report* (October 16, 2012), at page 38, online: https://www.securities-administrators.ca/uploadedFiles/General/pdfs/2012%20CSA%20Investor%20Index%20-%20Public%20Report%20FINAL_EN.pdf; Innovative Research Group, Inc. Key Highlights CSA Investor Education Study 2016 (April 2016), at page 7, online: https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_2016_Survey_Key_Highlights_English.PDF (note: full report not made public).

¹³ The Brondesbury Group, *Benchmarking Investor Knowledge* (2011) prepared for the Investor Education Fund), at page 16 online: http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/Rpt_InvKnowl_Abridged_final%202011.pdf.

¹⁴ The Brondesbury Group, *Investor behaviour and beliefs: Advisor relationships and investor decision-making study* (2012) (prepared for the Investor Education Fund), at page 2, online: <http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>.

¹⁵ The Brondesbury Group, *Investor behaviour and beliefs: Advisor relationships and investor decision-making study* (2012) (prepared for the Investor Education Fund), at page 3, online: <http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>.

- (e) Consumers are unaware of the importance of costs when making investment decisions and don't know about the costs they are paying.
- Costs are an important determinant of long-term returns from collective investments such as mutual funds.¹⁶ Indeed, "...[p]revious analysis by Morningstar and others has looked at this question and found that expenses can be a good predictor of future fund performance."¹⁷ At the same time, a significant number of investors do not know the importance of costs,¹⁸ nor do a significant number of investors know about their advisor's compensation.¹⁹
- (f) Many consumers do not know how to articulate their complaint when a problem with their financial service provider arises. They are not able to determine the nature of the problem – for example, whether the problem arises because of “suitability” issues, that the know-your-client process was not followed properly, that a needs analysis was not completed or that it was due to “churning”. All they know is that something is awry and that likely they have lost money as a result.
- (g) Many consumers do not know or understand the process that must be followed in order to make a complaint, what their options are, and what limitation period their potential claim is subject to by law. This is not surprising because the process is extremely complex.
- What process the consumer must follow depends on whether the financial product and service was from the banking, insurance or securities sector (although all of these may be purchased from one integrated financial services entity). They also will have different regulators that they may wish to contact in order to alert the regulator to their problems and possible wrongdoing. The relevant regulator will depend on who regulates the firm and what product that was sold. Finally, there are different ombudservices depending on which financial services sector is involved – the

¹⁶ See the Securities and Exchange Commission's Calculating Mutual Fund Fees and Expenses (October 8, 2010), online: <http://www.sec.gov/investor/tools/mfcc/mfcc-int.htm>. See also the OSC's Get Smart About Money Mutual Fund Fee Calculator at http://getsmarteraboutmoney.ca/en/tools_and_calculators/calculators/Pages/mutual-fund-fee-calculator.aspx#.V-KyGK2NDdA. See also John Bogle's comments in *Lower fees: Slice your way to a more fruitful portfolio* (June 15, 2012) Globe and Mail online: <http://www.theglobeandmail.com/globe-investor/personal-finance/lower-fees-slice-your-way-to-a-more-fruitful-portfolio/article4280020/>.

¹⁷ Frequently Asked Questions about the Dissection of Mutual Fund Fees, Flows and Performance Report (2016), at page 8, online: http://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20160209_81-407_faq-dissection-mutual-fund-fees.pdf, citing Morningstar, online: <http://news.morningstar.com/articlenet/article.aspx?id=347327>.

¹⁸ The Brondesbury Group, *Investor behavior and beliefs: Advisor relationships and investor decision-making study* (2012) (Prepared for the Investor Education Fund), at page 2 found that cost of buying a factor for 2 out of 10 investors, online: <http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>.

¹⁹ The Brondesbury Group, *Investor behavior and beliefs: Advisor relationships and investor decision-making study* (2012) (Prepared for the Investor Education Fund), at page 2 found that investors have little or no idea about how advisors can get paid, online: <http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf>. The 2015 National Smarter Investor Study found that 1 in 4 report they have never discussed compensation with their advisor, BCSC Investright, *National Smarter Investor Study Public Opinion Research* (November 2015), at page 22, online: <https://www.investright.org/uploadedFiles/news/research/Smarter%20Investor%20Study%20FULL%20REPORT.pdf>.

Ombudservice for Banking Services and Investments (“OBSI”) for securities investments, the Ombudservice for Life and Health Insurance (“OLHI”) for insurance (although it has significant gaps in its mandate as it does not cover managing general agencies or individual life agents²⁰); and either OBSI or ADR Chambers Banking Ombuds Office (“ADRBO”) for banking complaints.

5. **FAIR Canada’s Recommendations**

- 5.1. Consistent high market conduct standards need to be set across the regulatory silos of insurance, securities and banking as consumers do not distinguish between the different entities of the bank selling them a mortgage, a security (such as a mutual fund), a GIC, a segregated fund (insurance product) or an auto loan.
- 5.2. In order to best serve Canadians, the regulatory and business environment in the overall financial services industry must foster effective competition. Some industries’ business models seem to perpetuate a system of firms with ineffective competition on price and quality to consumers. This is the result of many inter-connected issues, including low financial literacy, conflicts of interest, fragmented regulation, and conflicted business models. Canadians must be provided with the information they need to make rational, informed decisions. However, the regulatory system also must encourage effective competition that delivers the best possible advice to Canadians. Absent a fair and well-functioning regulatory system, efforts at improving financial literacy will have little real effect.
- 5.3. The Government should investigate the extent to which increased industry concentration noted in the Consultation Document may or may not impact effective competition.
- 5.4. In designing both a regulatory system and a financial literacy strategy, regulators must recognize and anticipate cognitive biases. Regulators around the world are grappling with the fact that, even if an acceptable level of financial literacy can be reached, there are psychological or behavioural factors that impact decision-making that may impede good outcomes. Regulators must recognize and appreciate these biases and design initiatives (both educational and otherwise) that take these factors into account and attempt to facilitate better decision-making. The financial industry incorporates findings about consumer behaviour into marketing, advertising materials and payment options. Regulators and educators must also incorporate findings about consumer behaviour into their regulations, content, and delivery in order to support better financial outcomes for financial consumers, including vulnerable Canadians.
- 5.5. FAIR Canada believes that while there is a considerable amount of valuable content provided by various independent, not-for-profit financial education organizations, the fragmented approach may cause confusion for Canadian financial consumers. A single unbiased, independent source of financial information may better serve financial literacy efforts.
- 5.6. Incentive structures at financial institutions should encourage their employees to act in the long term interests of financial consumers (which will also be in the long term interests of the firm)

²⁰ FAIR Canada’s comments on Preliminary Position Paper on the Review of the Mandate of FSCO, December 14, 2015, at page 7, available online at http://faircanada.ca/wp-content/uploads/2015/12/151214-Final-Letter-to-Expert-Panel-on-Preliminary-Panel-Recommendations_signed1.pdf.

rather than incent the sale of products which do not adequately meet their needs or that may be suitable for the consumer but are not the best choice for the consumer.

Need for a Statutory Best Interest Standard

5.7. Canadians deserve to be provided with advice that is objective and conflicts of interest need to be avoided. FAIR Canada supports the implementation of a statutory best interest standard that would be applicable whenever financial advice is provided to consumers regardless of which sector of the financial industry the financial service provider operates in and what type of financial product, if any, is recommended or sold to the consumer.²¹

5.8. Principle 6 of the G20 High Level Principles on Financial Consumer Protection states (Canada is a signatory):

“Financial services providers and authorised agents should have as an objective, **to work in the best interest of their customers** and be responsible for upholding financial consumer protection...Where the potential for conflicts of interest arise, financial services providers and authorised agents should endeavour to avoid such conflicts. When such conflicts cannot be avoided, financial services providers and authorised agents should ensure proper disclosure, have in place internal mechanisms to manage such conflicts, or decline to provide the product, advice or service.

The remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage responsible business conduct, fair treatment of consumers and **to avoid conflicts of interest...**” [emphasis added].

5.9. In 2013, an updated report to support implementing the G20 Principles was issued²² which sets out effective approaches²³ to achieving Principle 6 including how to work in the best interest of investors and how to design remuneration structures. The Task Force makes it clear that disclosure is not an adequate solution to ensure effective financial consumer protection and a range of measures are needed to ensure responsible business conduct.²⁴

5.10. Regulators and governments need to take the further step of being clear as to what is acceptable and what is not so as to prevent misaligned incentives which are currently pervasive throughout the financial services sector. Compensation drives behaviour. Therefore, getting rid of conflicted remuneration would eliminate many sources of conflicts of interest in the relationship between

²¹ FAIR Canada letter to CSA dated September 30, 2014 re Consultation Document 33-404; available online at <http://faircanada.ca/wp-content/uploads/2016/10/160930-Final-FAIR-Canada-Submission-33-404-Best-Interest.pdf>; summary available at <https://faircanada.ca/whats-new/statutory-best-interest-standard-urgently-needed/>.

²² 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, Principles 4, 6 and 9 (September 2013), OECD: <https://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>.

²³ These are regulatory, supervisory and self regulatory measures and practices which have been developed and are considered by the Task Force to effectively implement the key aspects of the G20 High-Level Principles and are consistent with approaches developed by a broader range of jurisdictions. See the 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, Principles 4, 6 and 9 (September 2013), OECD at page 4; online: <https://www.oecd.org/g20/topics/financial-sector-reform/G20EffectiveApproachesFCP.pdf>.

²⁴ Update Report, at page 4 and 12 to 17.

the financial services sector and the financial consumer and would be more likely to allow advice to be provided in the manner consistent with the interests of the client. It would also simplify compliance and its oversight.

- 5.11. All existing regulators need to coordinate to provide harmonization of regulatory standards so that consumers receive adequate and consistent levels of protection regardless of which regulator oversees the activity. Harmonization should be towards the highest standard and not be a race to the bottom. The standard that is expected by consumers of their financial institutions is one of acting in the consumer's best interest.
- 5.12. FAIR Canada believes that the financial sector framework can support financial firms to best serve the evolving needs and interests of consumers by aligning their incentives with that of consumers. By acting in the best interests of consumers, the financial services firms will also be acting in their own long-term interests and will ensure market efficiency and effectiveness for those they ultimately serve – the Canadian public.
- 5.13. In FAIR Canada's view, it is critical that those Canadians who are without pension coverage and who are forced to rely on their own savings (through such vehicles as RRSPs and TFSAs) must be afforded greater protection than they have now for their investment decisions. These individuals must be accorded a similar standard of care - a fiduciary duty - as those who have retirement pension plans. Better protection for financial consumers who are saving for their retirement, along with more effective competition, will result in better outcomes for retirees and for the public as a whole.

Need for Effective, Consumer Representation in Policy-Making

- 5.14. As noted in the OECD's G20 Principles document, "[i]n order to ensure effective and proportionate financial consumer protection regimes, it is important that all stakeholders participate in the policy making process."²⁵
- 5.15. In order to have effective stakeholder engagement so as to improve the effectiveness of the modernized financial services framework, there needs to be built into the federal financial sector a sufficiently resourced, independent, consumer voice in order to improve the ability to meet the three policy objectives.
- 5.16. Currently, investors and consumers lack real involvement in the financial services policy-making process. Consumers are not provided with the structures or resources to have a proactive voice in bringing to a regulator's attention issues likely to be of significance to investors and consumers (and therefore highly relevant to the regulator's mandate).
- 5.17. FAIR Canada recommends that this could be achieved through:
 - (i) The federal financial services landscape, including a Financial Consumer Advisory Board, would allow consumer groups and other public interest groups to have a seat at the table and adequate funding so as to actively represent consumer interests on financial services matters. The Financial Consumer Advisory Board could also play an important

²⁵ OECD G20 High Level Principles, <https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf> at page 4.

cross-sector role (insurance, pensions, securities, banking, pay day loans, consumer credit reporting agencies, mortgage brokers and lenders, etc) across the regulatory spectrum in identifying and addressing consumer protection concerns including regulatory gaps and gray areas.

- (ii) Including consumer advisory panels as part of the regulatory structure for banking, insurance and securities. Such panels should be modeled on that of the United Kingdom's Financial Services Consumer Panel.²⁶ Financial services regulators often struggle to obtain consumer input into the policy-making process; such panels would be invaluable.²⁷

Consumer Redress a Necessary Component of an Effective Framework

- 5.18. Steps should be taken to have a single, national, statutory ombudservice in Canada with the power to make binding decisions. This is vital to the integrity of our financial services market and the protection of Canadian consumers.
- 5.19. Permitting complexity in the complaint resolution framework by having multiple external dispute resolution bodies tilts the playing field in favour of the financial industry and creates undue barriers for consumers to try to resolve their complaint.
- 5.20. Multiple external dispute resolution bodies is contrary to the G20 High-Level Principles on Financial Consumer Protection and in particular Principle 9 (such a system should be "...accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers."). In addition, we stress that if the system is fragmented and complex, and the products themselves are poorly understood, consumers will be less likely to be able to pursue a complaint or concern that they have.
- 5.21. FAIR Canada believes the Government should reconsider the decision made in 2012 to allow for multiple external dispute resolution bodies to exist for banking complaints that are not resolved by a bank to the satisfaction of the consumer. Banks should not be permitted to choose their external dispute resolution provider. We refer the Government to our submission for a detailed explanation of why this is not in accordance with the three policy objectives of stability, efficiency and utility.²⁸
- 5.22. In addition, internal dispute resolution procedures at financial institutions should not be permitted to call themselves "ombudsman" since they do not meet the criteria to be an ombudsman. This causes confusion for consumers in their ability to access the true ombudservices that currently exist. This measure has been a recommendation by the past three

²⁶ See the Terms of Reference of the U.K.'s Financial Services Consumer Panel in its latest annual report, available online here: https://www.fs-cp.org.uk/sites/default/files/fscp_annual_report_2014-2015_final.pdf at page 44.

²⁷ In addition, the Standing Committee on Government Agencies, Report on Agencies, Boards and Commissions reviewing the Ontario Securities Commission, in 2010 recommended "that the Commission establish an investor advisory body, based on the financial services consumer panel in the United Kingdom."²⁷ And that "...the Ministry of Finance take the steps necessary to create an investor representative on the Commission's board of directors."²⁷ The same should hold for the insurance, and banking sectors.

²⁸ <http://faircanada.ca/wp-content/uploads/2011/01/120813-final-banking-complaints-submission-FINAL.pdf>.

independent reviews conducted in respect of OBSI.

- 5.23. FAIR Canada recommends that the Government review the disclosure provided by financial institutions about their own complaint procedures and their right to escalate their complaint to the external complaints body or to complain to the FCAC and determine the following: whether this is (a) easy to find in print or on the financial institution's website (b) easy to understand and (c) comprehensive. In not, the Government should consider revising its regulatory requirements.
- 5.24. FAIR Canada recommends that FCAC ensure that all financial institutions comply with their existing regulatory obligations to publish information regarding complaints in accordance with the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations, section 4.
- 5.25. The Government should review the ombudservice currently provided for insurance complaints (the Ombudservice for Life and Health Insurance or "OLHI") as this service has gaps in coverage and other problems identified by past independent reviewers and other commentators that urgently need addressing.²⁹
- 5.26. FAIR Canada recommends that the government and regulators reform the process of consumer redress through ombudservices so that consumers obtain a resolution of their complaint through instituting binding decision-making authority, if the consumer accepts the recommendation. This reform will improve compliance by firms and their individual registrants with the standard of conduct and accompanying rules while allowing consumers to resolve their complaints effectively and efficiently.³⁰
- 5.27. The power to implement binding decisions is an essential component of a well-functioning regulatory system. FAIR Canada believes that a robust regulatory framework is not achievable if the rules in place allow firms to disregard their obligations to compensate consumers or offer the consumer less because they have to "take it or get nothing". In order for our financial services system to work, effective consumer redress is required, and this must include binding decision making as part of the dispute resolution system. FAIR Canada urges the Government to be a leader in this regard and develop a body that has the power to implement binding decisions.
- 5.28. Until such time as there is a single, national, statutory ombudservice, FAIR Canada calls on governments and regulators to facilitate reforms of the consumer complaint and compensation process to provide a single point of entry for a financial consumer's complaint so they do not have to navigate on their own through the regulatory labyrinth in order to have their complaint addressed. The individual's complaint should be guided to the appropriate place for resolution by intake staff trained specifically for this purpose.
- 5.29. Finally, consumers who have suffered losses through fraud should be compensated in a manner similar to that used in Quebec with the Fonds d'indemnisation des services financiers or the

²⁹ FAIR Canada's comments on Preliminary Position Paper on the Review of the Mandate of FSCO, December 14, 2015, at page 7, available online at http://faircanada.ca/wp-content/uploads/2015/12/151214-Final-Letter-to-Expert-Panel-on-Preliminary-Panel-Recommendations_signed1.pdf.

³⁰ See FAIR Canada's submission to Ms. Deborah Battel, Independent Reviewer of OBSI, Feb 26, 2016, online: http://faircanada.ca/wp-content/uploads/2016/02/160226-FAIR-Canada-submission-independent-evaluation-of-obsi_final-2.pdf.

UK's Financial Services Compensation Scheme. Recent high profile cases involving fraud and related insolvency have not resulted in investors receiving meaningful compensation through existing mechanisms such as the courts or through CIPF coverage.³¹

- 5.30. FAIR Canada therefore recommends that the government and regulators consider establishing a fund to compensate victims of fraud when dealing with any licensed or registered financial service provider

User-Friendly, Comprehensive Central Registry Needed

- 5.31. A public education campaign is needed to emphasize the importance of dealing only with financial service providers who are registered or licensed and the importance of checking registration before investing or transacting with them. Correspondingly, a user-friendly, comprehensive system for checking registration must be made available to the public.
- 5.32. A single, free, comprehensive central registry must be created and maintained with adequate resources to provide a one-stop source of information for consumers regarding the licensing and registration status, credentials and disciplinary history of individuals and firms. The current process of conducting a background check is simply too complicated. It requires searching multiple databases and, even if every step is meticulously followed, will not necessarily lead to comprehensive³² or understandable results. This is highlighted by a recent report by Advisor.ca.³³ It is imperative regulators and governments provide the necessary funding to provide a check registration system that is not a patchwork of old technologies but that functions in a robust manner and ideally allows consumers to use it very easily, even on their mobile devices.
- 5.33. FAIR Canada urges all regulators, police and governments to make it a top priority (including providing necessary funding and resources) to develop a new system that actually works – one that is comprehensive, is easy to navigate, and produces easy to understand results for consumers. Such a tool could be a real weapon in the fight against investment fraud.

Effective Enforcement

- 5.34. To ensure effective enforcement, transparency and accountability mechanisms need to be built into the system. Regulators should track and make public data on consumer complaints (including fraud complaints), the number of investigations from those complaints and the number of proceedings commenced and concluded. Emphasis should be placed on transparency

³¹ The recent First Leaside case highlights the fact that investors thought that CIPF coverage would be available, but found it was not. See the appeal decisions of the CIPF Appeal Committees, available online at <http://www.cipf.ca/public/cipfcoverage/FirstLeasideSecuritiesIncr/Appealcommitteedecisions.aspx>. See also the following media article <http://www.investmentexecutive.com/-/contingency-fund-needed-to-cover-investors-losses-some-argue?redirect=%2Fsearch>.

³² For example, the CSA's Check Registration site only deals with securities registrants, does not include criminal sanctions as part of the person's disciplinary history, and appears not to be consistent with respect to terms and conditions (for example, historical terms and conditions that are imposed as a result of a Director's decision or a Commission order in Ontario are included in the database, but you have to contact the British Columbia Securities Commission for this information in BC).

³³ The article brings to light a multitude of problems with verifying registration and disciplinary history, including the problem that disciplinary decisions are missing from the CSA database in nearly one-fifth of currently disciplined dual licensed registrants: <http://www.advisor.ca/news/industry-news/how-to-stop-banned-reps-from-selling-insurance-207501>.

as to the number and types of complaints received, the number of whistleblower tips obtained, the number of investigations pursued and the number of enforcement outcomes obtained (with and without financial payments). Structures that put an emphasis on meaningful disclosure and transparency of the enforcement process should lead to better accountability and better enforcement generally.

- 5.35. FAIR Canada recommends that there be strong and effective enforcement and disciplinary and enforcement consistency so that regulatory activity by one regulator is appropriately applied by another. In particular, all financial service providers must be subject to an intergovernmental licensing system and automatic reciprocal enforcement of disciplinary orders by all financial services regulators. Disciplinary action against an individual and/or a firm by any financial services regulator (in any province, territory or federally) should automatically result in equivalent disciplinary action by all other financial services regulators against that individual and/or firm.
- 5.36. FAIR Canada refers the Government to FAIR Canada's recent report "A Canadian Strategy to Combat Investment Fraud"³⁴ and our comments on the Cooperative Capital Markets Regulatory System with respect to enforcement and combating fraud³⁵.
- 5.37. FAIR Canada recommends that the framework consider the adoption of a whistleblower policy with provisions respecting confidentiality, anti-retaliation and financial compensation. These three components are necessary to the success of a whistleblower program. We refer the Government to our submission to the Ontario Securities Commission on their proposed whistleblower program³⁶ for FAIR Canada's recommendations in this regard.
- 5.38. FAIR Canada recommends that the powers, resources, and processes of regulatory bodies, including the Financial Consumer Agency of Canada, be reviewed to ensure that it has the necessary resources (both human and financial), as well as legislative mandates and process (such as transparency) to carry out its mandate and ensure effective compliance and enforcement over those it regulates and ensure adequate consumer protection.
- 5.39. FAIR Canada recommends that the Government pay particular attention to those "grey" areas where regulators either share jurisdiction or there are regulatory gaps so as to ensure that the system can fill gaps and ensure adequate consumer protection and market efficiency.
- 5.40. Clear rules regarding acceptable and unacceptable marketing and advertising need to be set for financial products and services. At the same time, non-compliance needs to be monitored and those that violate the rules should be the subject of enforcement action.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its

³⁴ FAIR Canada's report "A Canadian Strategy to Combat Investment Fraud", available online at: <http://faircanada.ca/wp-content/uploads/2014/08/FINAL-A-Canadian-Strategy-to-Combat-Investment-Fraud-August-2014-0810.pdf>

³⁵ FAIR Canada's Comment letter on the Cooperative Capital Markets Regulatory System, available online at: <https://faircanada.ca/submissions/the-cooperative-capital-markets-regulatory-system-revised-consultation-draft-of-provincialterritorial-capital-markets-act-and-draft-initial-regulations/>

³⁶ FAIR Canada's Comment letter to the Ontario Securities Commission regarding OSC Staff Consultation Paper 15-401: Proposed Framework for an OSC Whistleblower Program, (May 4, 2015), available online at <http://faircanada.ca/wp-content/uploads/2011/01/150501-Final-Whistleblower-Program-Submission-May-1-signed.pdf>.

public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Marian Passmore at _____ or Kate Swanson at _____.

Sincerely,



Canadian Foundation for Advancement of Investor Rights