



May 19, 2017

Prime Minister of Canada
Finance Minister of Canada
Premiers of the Provinces of Canada
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Sent via e-mail

Ministers:

The Consumers Council of Canada wishes to join with FAIR Canada and CARP in expressing its concern about the inherent compromise of investor and consumer protection inherent in the proposed cooperative capital markets regulator (CCMR).

If you are not yet familiar with FAIR Canada's position, please refer to that organization's website at: <https://faircanada.ca/submissions/what-about-the-investors/>

The Council has raised its voice repeatedly about the need to facilitate a stronger, more capable consumer voice in internal trade harmonization initiatives of the federal and provincial government. The negative implications for consumers in CCMR as it is developing is indicative of the problems the Council highlighted in its report *Options for a 'Sustained Institutional Role' for Consumer Organizations in 'Internal Trade' Harmonization Initiatives, 2015*.

We commend that report to your collective attention, and it can be downloaded here:

http://www.consumerscouncil.com/index.cfm?pagePath=Research/Recent_Reports/Request_for_Internal_Trade_Report&id=72112

You will see the problem that has emerged in the development of the CCMR is indicative of a systemic problem. No public policy effort laying claim to protect the interests of the "middle" or any other economic class of citizen – we are all consumers – can be taken seriously that fails to nurture consumer rights in the economy.

The process of harmonization should not be permitted to devolve consumer protections to the lowest common denominator, and consumer representation in regulated areas of the economy should not suffer a setback as a result of these efforts. Competition and the requirement to satisfy consumers should not be lessened.

All provinces and the federal government currently fail the test for fair, capable representation of consumers in their regulatory processes. But some provinces and their regulators, in some

instances, have made progress in this regard, especially the Ontario Securities Commission (OSC). Special interests should not be favoured in harmonization efforts meant to benefit the public at-large, leading to a reverse of this progress. The Council would point out that the competitive weakness that some provincial securities markets outside Ontario suffer result from the fact that investors flock to the jurisdiction where they are best protected. Some provincial regulators, and the special interests seeking to influence them, should stop trying to “level the playing field” at the expense of investor rights. More than they appear to appreciate, they do so at their peril. They should read the business press.

Accordingly, the Council supports the FAIR Canada and CARP when they say:

FAIR Canada and CARP call on the Participating Jurisdictions to reform the governance structure and substantive law of the CCMR so that it can fulfil its purpose to “provide increased protection for investors” as set out in the Memorandum of Agreements signed by the Participating Jurisdictions.

In contrast to the well-articulated submissions over the recent years of those who represent individual investors, the approach taken in developing CCMR has been completely devoid of necessary structures, processes and laws to protect investors and ensure investor interests are not subordinated to the interests of industry participants. This is unacceptable.

There is no shortage of governance best practices that are used by regulatory bodies to ensure that the consumer/investor is well protected. The CCMR proposal and work done to date have relied upon none of them.

Recently, at a meeting of the Canadian Securities Administrators, the only provinces to support a best interest standard of care for investors were Ontario and New Brunswick. This demonstrates two points about the CCMR proposal:

- There is no consensus among provincial regulators as to the extent of protection that individual investors deserve and the regulatory approach that needs to be taken to ensure that investors are truly protected from exploitive and harmful practices by industry participants.
- Under a common regulator, Ontario and New Brunswick investors will be less protected.

These facts makes sport of the idea that regulatory harmonization of this kind will benefit consumers, when it is the Council’s strong conviction that such harmonization both can and should do so.

The OSC has been a leader in making serious changes to reduce harm to investors, which has existed for a number of years and still exists today.

It has done this through the creation of an investor advisory panel, to inform its policy and rule making. It has been a proponent of addressing investor harms by introducing a best interest standard.

The Ontario securities law establishes the regulatory purpose that investors be protected from unfair and dishonest practices. It is the OSC’s position, and the Council’s, that this requires registrants to deal with investors on a best interest basis; that investors’ interests not be subordinated to the interests of any registrant — whether individual advisor or dealer.

The asymmetry of knowledge, power and resources between that of the individual investor and that of the registrant necessitates the best interest standard, to ensure investors are protected from

unfair and dishonest practices. Evidence shows this to be the case. Anything less harms investors.

Canadian investors expect and deserve the protection of the best interest standard.

The Council views the flaws in the CCMR as presenting harm to Ontario and New Brunswick investors and perpetuating harm to the balance of Canadian investors.

The Council observes that some provincial regulators and special interests are foolhardy for not putting investor protection first. There are ample examples in today's marketplace of the consequences for not only investors but to markets in the instance of real or even perceived breaches of trust. Recent independent survey measurements of public trust, show government and business held in low esteem. For example: <http://envionicspr.com/thinking/trust-in-canada-is-a-work-in-progress/>

The Council posits this problem is a serious one, and measures detrimental to building trust, such as the current approach to CCMR, are not in the national interest.

The creation of a national securities regulator has been pursued by successive governments and by investor rights advocates for at least 40 years, in order to improve the efficiency of markets and bring about quality and consistent investor protection. It would be a major failure for this latest attempt to founder because the best investor protection practices of the largest and most responsible regulator of securities in the country cannot be adopted.

Please contact me at any time through the Council's office should you or your representatives wish to gain a deeper understanding of the Council's perspective on the issues raised.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Mercer", written in a cursive style.

Don Mercer
President