Kenmar Associates
Investor Education and Protection

Kenmar Associates Comment Letter in Response to:

CSA Notice and Request For Comment Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

July 3, 2018

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
E-mail: comments@osc.gov.on.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Client focussed Reform consultation
http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20180621_31-103_client-focused-reforms.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 monthly 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.

1. Introduction

It has been almost 15 years since Julia Dublin's Fair Dealing Model drew attention to the concern to the need for a change in advice models. A best interests standard for advice is critical yet this Consultation paper does not propose it.Social and demographic changes have forced individuals to take more responsibility for their own financial future and retirement income security. People are living longer necessitating trusted financial advice. So what are Canadians faced with? University of Toronto law Professor Anita Anand succinctly summed up the situation *in* **Anti-investor Reforms at the CSA** *https://businesslawblogsite.com/2018/06/21/anti-investor-reforms-at-the-csa/* See also Ref 1.

(a) There is no question securities regulators have been complicit in creating the poor investor protection we encounter today. One need only look at the double-billing scandal or the 2008 ABCP fiasco enabled by regulators (**Regulators share blame for ABCP collapse**, Flaherty says (2008) http://investorvoice.ca/PI/3475.htm) The most recent example is the Hearing Panel decision regarding fund dealer RMFI (Ref 2). In that decision it is very clear the ill-begotten benefits enjoyed by the dealer far outweighed the tiny fine imposed and neither specific nor general deterrence was achieved. See **Investment industry slams OSC over 'disproportionately small' RBC fine** - The Globe and Mail https://www.theglobeandmail.com/investing/article-investment-industry-slams-osc-over-disproportionately-small-rbc-fine/

Rules are meant to be followed Back in Dec. 2017 a settlement Hearing in the matter of Sun Life Financial Investment Services (Canada) Inc. took place at which a fine in the amount of $1,7 M and costs in the amount of $100,000 were imposed .In that Settlement Agreement , Sun Life admitted that: (a) commencing in 2002, it failed to establish and maintain an adequate system of controls and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices and marketing and educational practice ; (b) between April 1, 2013 and June 30, 2015, it failed to adequately supervise leveraged accounts and concentration risk; (c) between Jan. 2010 and June 2015, it failed to report client complaints, bankruptcy and termination of Approved Persons within 5 business days ; (d) between June 2014 and June 3, 2016, it failed to adequately supervise the suitability of the sale of DSC mutual funds to clients and (e) between Nov. 2015 and Jan. 2016, it failed to adequately supervise a trade, contrary to MFDA rules. In other words, they spat on MFDA rules. See **Reasons for Decision** http://mfda.ca/reasons-for-decision/reasons201775/ When you consider that this Dealer is part of a major financial institution, it is truly startling that such brazen rule breaking could happen and happen undetected since 2002. Such cases shake our confidence in the compliance function and industry leadership. This is why we remain skeptical that still more conduct rules will improve Investor outcomes .Unless all the regulators sign up to dramatically increased regulation , tougher enforcement and materially larger sanctions against Dealers, there will be little change in Dealer behaviour.

While deeply disappointed at the proposals, it is not our intent in this commentary to point fingers and publicly castigate regulators. We prefer to move forward and focus on learning from the lessons of the past.

(b) While there are a few spirited and determined individuals, investor advocates and a charity financed FAIR. , investor advocacy in Canada needs a turbo boost. There is currently no effective counterbalance to the financial services industry.

Accordingly, we recommend that every securities regulator in Canada, including the IIROC and MFDA, establish a funded IAP along the lines of the OSC IAP. We are of the firm conviction that this will better allow the voice of the retail investor to compete with the relentless lobbying initiatives of industry participants. See **Involving Consumers in Securities Regulation** http://www.lse.ac.uk/law/people/academic-staff/julia-black/Documents/black18.pdf para 3.6 We also highly recommend that the JRC pro-actively engage with OBSI to harvest intelligence information regarding complaint issues and developing trends. OBSI measures the pulse of market conduct and can help the CSA address developing issues before they become big issues. We also recommend opening a dialogue with the Public Guardian and Trustee for insights into the advice process. These type of simple and inexpensive initiatives would go a long way in improving both the perception and efficacy of financial regulation. Kenmar also recommend that each regulator take the time to read the SIPA report **Listen to the voices.** Listen To The Voices This report traces the trauma and mental health effects upon victims of financial assault, when it is learned that they have little chance for fair and honest treatment by the industry and those who enable it.

(c) Regulators continue to regulate the transaction while investors believe they are getting personalized advice. Investors need qualified and unconflicted advice to achieve their desired outcomes. Maybe it's building a retirement nest egg or saving for a child's education, maybe it's a source of steady income, maybe its risk mitigation. Canadians are looking to realize an outcome as opposed to beating a benchmark and that is where regulators should be focused as well. They must identify and develop the skills to regulate personalized financial advice. It's not about active and passive. It's not even about ETFs vs mutual funds. It is about advice in financial management so that Reps help clients achieve their life goals. It's about a financial plan, savings, debt management, budgeting, tax strategies and estate planning.

This cannot be done fairly and efficiently when the advice is tied to the purchase of a product and there is no fiduciary duty to the client. The Dealing Rep's value in providing expert guidance at the helm of an investor's plan is where the financial services industry should be making the big contribution.

(d) Historically, one could paint a picture of a fragmented, staggeringly complex financial service industry regulatory structure gingerly testing the waters on a number of inter-related Investor protection measures. On June 21, 2018 the CSA stopped this testing via the following news release: Canadian securities regulators align to publish

harmonized response to concerns with the client-registrant relationship After years of research, consultation and Roundtables, investors learned there would be no ban on embedded commissions, no overarching Best interest standard and proficiency improvements are pushed off into an unknown future

Even some industry participants take issue with the CSA decision to back industry. One can only hope that such firms prosper, robo capabilities expand and IIROC lets discount brokers continue to innovate. **A bad day for the Canadian investor** – Tom Bradley of Steadyhand Investment Funds
https://www.steadyhand.com/industry/2018/06/25/a_bad_day_for_the_canadian_investor/

(e) The CSA's decision to propose a ban on DSCs, while welcome, simply makes official an industry trend over the past couple of years; while the decision to ban mutual fund trailer commissions for discount brokers is long overdue. Selling A series funds on discount dealer platforms should never have been allowed in the first place. Our hope that NI81-105 would be updated and expanded beyond mutual funds did not materialize and some of the most desired elements of the initially proposed targeted reforms were dropped. Some clarification of Dealer/Rep duties may improve investor protection at the margin, however, there is still a question whether even these modest reforms will ultimately be adopted since at least one more consultation round is pending.

(f) Why the big deal about mutual funds? Mutual funds are the retirement investment of choice for retail investors. The data analysis firm Strategic Insight says there was roughly $4.5-trillion in financial wealth in Canada at the end of 2017 – and almost 36 % of it was in mutual funds, more than either bank deposits (including guaranteed investment certificates) or individual stocks and bonds. At the end of May, 2018, Canadians had $1.5 trillion invested in mutual funds. Canada ranks highest among OECD [Organization for Economic Co-operation and Development] countries in terms of household assets invested in mutual funds. In 2017, 35% of OBSI cases (122)/351) involved mutual funds.

(g) The retirement income security of millions of Canadians depends on a robust platform for the distribution, sale and advice tied to the sale of mutual funds. It is truly a socio-economic issue.

The primary issues facing retail investors involve mis-selling, unsuitable investments, poor portfolio construction, wrongdoing / fraud and deficient Complaint handling.

(1) Mis-selling includes selling too much vs. paying down debt, excessive leveraging, use of higher cost products, sale of closed-end fund IPO's, account churning and the like.

(2) Unsuitable investments include products that are too risky for the client, sale of products that do not meet the objectives of the client, sales with redemption charges inconsistent with client time horizon, and sale of products that often have no portfolio

purpose e.g. leveraged ETF's , IPO's but may be suitable for traders.

(3) Poor portfolio construction includes over-concentration, poor asset allocation , mismatch of portfolio risk vs KYC , poor asset location , failure to monitor the portfolio over time (e.g. rebalancing) , portfolio not matched to objectives, inefficient income tax planning etc.

(4) Wrongdoing / Fraud includes negligence , personal financial dealing, exploitation of regulatory arbitrage, reverse churning, Off Book sales , acting as trustee/ executor, , unauthorized trading, document adulteration , signature forgery , misrepresentation and outright theft of assets and similar anti-investor acts.

(5) Deficient Complaint handling involves use of defective Complaint handling rules, adulterated KYC documents, lack of Root cause analysis, biased complaint investigations (not in the best interests of complainants), low ball compensation offers, citing client approval of transactions as a basis for denial, lack of a fairness standard, use of so-called internal "Ombudsman" and an Ombudsman service that does not have binding recommendation authority.

At a high level we assert that the root causes of the majority of these issues that regularly harm investors relate to a lack of Dealing Rep proficiency, weak KYC/ risk profiling, inadequate and poor supervision, dealer compensation systems designed to promote sales not trusted advice, weak dealer compliance oversight, lax regulatory enforcement, a bias for SROs to focus on sanctioning individuals rather than Member firms and wrist-slap sanctions that do not provide effective general deterrence. In our view, many problems could be avoided simply by improved dealer supervision of Reps. See **Report on IIROC Dealer Account Supervision** at
http://www.canadianfundwatch.com/2018/01/report-on-iiroc-dealer-account.html

Based on this perspective we review the proposed reforms and their likely efficacy in protecting retail investors. We conclude that some improvement may be achieved but only if several key support factors are also in place. The proposed reforms are designed to tighten up the transaction-suitability model without introducing a best interest standard and without prohibiting embedded compensation. We are not convinced that this approach will achieve the outcomes anticipated by the CSA. . We offer alternative reforms, most very simple, that we believe would have a more immediate and positive impact on investor outcomes and trust in the system.

The CSA is trying to turn salespersons into trusted advisors. Dealing Reps are registered as salespersons, so if the CSA wants more from them, they need to modify registration requirements in harmony with modifying conduct rules. Consider this characterization of a Representative courtesy of the ASC."…In that sense, it's not unlike purchasing a car from a dealership. If you walk into a Volvo dealership, and explain your needs (four-door, certain horsepower) the person working there will suggest the most suitable Volvo for your needs."

http://www.albertasecurities.com/investor/investor-resources/you-ascd-blog/Lists/Posts/Post.aspx?ID=63 and Mr.Elford's associated commentary https://unpublishedottawa.com/letter/81644/alberta-securities-commission-pressured-consumer-warning We are talking about salesperson registration not personalized professional financial advice.

Our core position is that a fiduciary standard is needed as the fundamental principle in the provision of personalized financial advice and that embedded commissions inherently undermine this principle. It appears to us that the CSA has no vision for ever establishing a professional advice industry in Canada. Attachment I provides the research supporting our position that a Best interests standard is required and embedded commissions should be prohibited. Attachment II provides support for the proposals put forward by the CSA to better protect Retail investors.

Discussion

At this point we would normally express our appreciation for the opportunity to provide our comments. Not this time. In fact this will be the last time we comment on this subject. The effort to bring about real reform has been time consuming and frustrating. The recent proposals have evoked expressions of disappointment, anger and even outrage from investors across the country. Nevertheless, we will use this comment letter to provide regulators with a number of constructive practical suggestions to improve this proposed package.

We first comment on the needed reforms that were not addressed at all:

2. Complaint Handling In a Dec. 7, 2017 CSA Bulletin Louis Morisset, CSA Chair and President and CEO of the Autorité des marchés financiers said. ***"We expect firms to participate in OBSI's dispute resolution process in a manner consistent with their obligation to deal fairly, honestly and in good faith with their clients and to respond to each customer complaint in a manner that a reasonable investor would consider fair and effective,"*** Indeed, effective complaint handling is a core element of effective investor protection. Yet the CSA, despite the well-documented instances of the abusive complaint handling by dealers, has done nothing. We are not aware of a single enforcement action by IIROC for deficient complaint handling. Complaint handling rules in Canada are far behind those in most other jurisdictions.This is our critique of the IIROC complaint handling rule 2500 B https://drive.google.com/open?id=0ByxIhlsExjE3ZGp5MWc1TUI4RzA and one by CFA Andrew Teasdale http://blog.moneymanagedproperly.com/ This rule places retail investors in harm's way. These deficiencies were brought to the CSA's and IIROC's attention over 18 months ago.

(a) Based on what we see as superficial complaint investigations, we urge the CSA to adopt Root cause analysis as the standard for complaint investigations by regulators, dealers and OBSI. As far as we can determine, no standard is in place now. Root cause

analysis (RCA) is a methodology used to solve problems at their root, rather than just fixing the obvious. RCA is often equated to a Kaizen improvement process, and rightly so, as it often digs into possible organizational change, rather than localized optimizations. The benefits of RCA are that it uncovers relationships between causes and symptoms of problems, works to solve issues at the root itself and provides tangible evidence of cause and effect and solutions. It leads to better resolution of client complaints and helps identify underlying process issues. See **Complaints Root Cause Analysis**
https://www.huntswood.com/uploads/files/complaints-root-cause-analysis-report.pdf
RCA has been adopted by the UK FCA and FOS.

(b) It is worth noting that OBSI report that over the past five years, issues related to suitability and/or suitability of margin or leverage have made up 55 % of their investments related case load. They have also seen an increase in fee related complaints which rose from 10 % of investment cases in 2016 to 17 % in 2017.
https://www.obsi.ca/Modules/News/index.aspx?newsId=5db44b85-d483-42ea-938b-64d6b7ab099a&feedId=c84b06b3-6ed7-4cb8-889e-49501832e911,e7931dbf-db6f-415d-9e92-619062c461ed,fc5e2a03-d608-461a-83b9-0257f352227b,a8023b85-7f41-4f9a-88b2-0793f4975f61 This should be of concern to regulators given all the regulatory emphasis and media attention on suitability , fees and disclosure of fees.

(c) It was the CSA that acceded to the controversial removal of OBSI's mandate to investigate systemic complaints. And it is the CSA that has for two years procrastinated implementing the 19 recommendations in the Batttell Report for reforming OBSI. In that report the CSA was made aware that 18% of complaints where OBSI had recommended compensation, were low balled, an average of $41K. And still the CSA has yet to introduce OBSI reforms allowing investors to continue to suffer losses and suffer a second time when their complaints are summarily dismissed or low-balled by registrants. Is this responsible investor protection? We recommend the CSA set improved complaint handling as a priority. This will have a tremendous and prompt impact as dealers and Reps understand that there are real consequences to harming investors or breaking rules. The feedback loop will produce quick and significant investor protection benefits. See Canadian Fund Watch**: Complaint Handling and Best Interests**
http://www.canadianfundwatch.com/2017/10/complaint-handling-and-best-interests.html

(d) In fiscal 2017, OBSI recommended just $2.4 million in compensation in investment cases with an average of $16.3 K. No information is provided in the Annual report regarding low- ball settlements. Per the 2017 OBSI Annual Report, 39% (150/382) of OBSI closed cases resulted in monetary compensation i.e. about 4 in 10 cases that had been rejected by dealers ended up being reversed by OBSI. This should cause the CSA to question dealer complaint handling integrity. We recommend that the CSA do just that.

3. Enforcement. Rules are meaningless without enforcement so even if these proposed rules are implemented, we are concerned about the capacity and resources of CSA members and SRO's to enforce them. We know that while NI81-105 came into force in 1998 the first enforcement action did not occur until 2017. For at least a decade we pleaded with IIROC to prohibit discount brokers from selling mutual fund series A to their clients. Nothing was ever done, costing Canadian investors well over $190M per annum in inappropriate fees. No guidance or Investor Alert was issued by any regulator during this period.

As we have pointed out many times, Enforcement actions typically overweight mitigating over aggravating factors, target individuals rather than Dealers who are the primary root causes of the malfeasance and dish out penalties that bear little relationship to the degree of wrongdoing. See Ref 2 as a classic example. When IIROC impose disgorgement sanctions they retain the cash, if collected, instead of returning it to harmed investors. In addition, IIROC risk-screening criteria mean that only a small fraction of client complaints ever get investigated.

(a) We recommend that regulators commit to more robust enforcement by putting more resources into their efforts and imposing more substantial sanctions that will actually act as a general deterrent .In many Settlement Agreements we observe long periods of obvious Rep exploitation of clients unaddressed by supervision or compliance. In fact, according to regulator compensation research, some of these supervisors receive commission over-rides on the salespersons they oversee. An easy fix here would be for regulators to hold dealers accountable for the actions and inactions for whom they have supervisory accountability. In our view, that would quickly lead to better dealer compliance and supervision and greatly increased investor protection. After all, clients sign contracts for service with dealers, not individuals.

According to the 2017 IIROC enforcement report in terms of penalties, IIROC ordered just $3.4 million in total fines, costs, and disgorgement against individuals in 2017, which was up slightly from 2016, when monetary sanctions totaled $3.1 million. In addition, IIROC handed out five permanent bans (down from six in 2016) and 16 suspensions (down from 20). As for enforcement activity against firms, IIROC ordered just more than $1 million in total monetary sanctions, which was up from a modest $425,000 the previous year. As well, the SRO imposed one permanent suspension compared with none in 2016. When one considers this level of fines for a multi- trillion dollar industry, it should come as no surprise that the CSA is not seeing the outcomes it expects. We have argued that an increased complaint investigation ratio and tougher sanctions (not just fines) on firms will lead to improved dealer conduct and corporate culture

(b) Kenmar recommend that SRO and Commission Sanction Guidelines emphasize investor restitution over the imposition of fines on individuals See **Are IIROC fines on individuals a deterrent?** http://www.canadianfundwatch.com/search?q=KYC+IIROC and **A Call for Sentencing Enforcement Reform in Ontario Securities Regulation: Restorative Justice, Pyramids and Ladders.** by Daniel Lo

https://tspace.library.utoronto.ca/bitstream/1807/33295/3/Lo_Daniel__201211_LLM_thesis.pdf

This would not adversely impact deterrence but it would improve investor protection. It would also likely lead to improved process improvements if dealers were held accountable for Investor redress. Such an approach would also free up regulators from collecting fines from individuals and redeploy that time to improved regulation and enhanced investor protection.

Policy debates may be intriguing but enforcement is what matters in investor protection. Enforcement supports the principle underlying investor protection: an overarching obligation to treat clients fairly and honestly.

4. The IIROC issue Via Recognition Orders, the CSA has outsourced regulation of the retail marketplace to self- regulatory organizations like IIROC and the MFDA. In effect, IIROC is the principal national regulator for retail investors. The CSA has granted IIROC the privilege and prime responsibility for retail investor protection in Canada. Kenmar has identified a growing number of issues, starting with governance, which raise serious concerns about whether IIROC can be counted upon to adequately protect retail investors. See http://www.sipa.ca/library/SIPAsubmissions/500_SIPA_REPORT_InvestorProtection_IIROCGovernance_20161009.pdf

(a) Despite a Kenmar offer to finance an IAP-like body, IIROC is unwilling to establish one. . Kenmar is also concerned about the relatively low number of complaint cases that are investigated. We have consistently expressed our dissatisfaction with the Hearing Panels unwillingness to perform Root Cause analysis. In 2015, the OSC actually reversed an IIROC Panel decision noting "The *Panel erred in law and proceeded on an incorrect principle in determining that a suspension was not required in all of the circumstances, In addition, the Panel's approach to determining the appropriate sanctions for Lukic's misconduct illustrates that the Panel's perception of the public interest is inconsistent with that of the Commission*.". We are regularly chagrined by how few cases of blatant dealer supervision compliance breakdowns go unenforced.

(b) Kenmar note IIROC's failure to address the systemic, industry-wide compensation practice conflicts-of-interest that the CSA first publicly identified in a 2014 survey -4 years ago- and that IIROC subsequently confirmed in an April, 2016 report. IIROC have promised to act but we see no progress. The President and CEO has publicly claimed that IIROC dealers operate under a best interest standard but IIROC has done nothing to stop firms from using compensation practices that put the firm and its employees' financial interests ahead of those of clients. They haven't stopped firms from rewarding high sales producing "advisors" with prestigious titles like VP, meant to impress and deceive clients. They have focussed enforcement on individuals rather than firms.

(c) Kenmar has consistently deplored the fact that the emphasis is invariably on sanctions on individuals rather than the dealers even when the individual was incented to cross the line and was poorly supervised. See Kenmar Report on **IIROC Dealer Account Supervision** http://www.canadianfundwatch.com/2018/01/report-on-iiroc-dealer-account.html In the few cases that IIROC prescribe disgorgement as a Sanction, they retain the cash -if it is collected- not a cent goes to the victims. The CSA should question why.

Back in 2014/15, IIROC released a proposal that would have allowed Dealing Representatives to act as executors for clients, a practice long prohibited by sister SRO, the MFDA. An Oct. 2015 Comment letter from SIPA attacked the proposal by pointing out all the risks to investors of such a practice http://www.sipa.ca/library/SIPAsubmissions/500%20OSC%20Greenglass%20-%20SIPA%20Comments%20re%20Executors%20201510.pdf The OSC IAP also was not supportive of the proposal http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf Consumer groups jumped in and IIROC had no choice but to withdraw the seriously flawed proposal.

(d) Similarly, IIROC was forced to stand down on changes it had proposed in a 2015 White paper. The prospect of a major restructuring of the competitive and regulatory landscape between investment and mutual fund dealers had to be taken off the table due to lack of support from investors , industry participants and the MFDA. The proposal asked registrants to consider two connected issues: allowing investment dealers to employ mutual fund representatives by eliminating the existing requirement that they upgrade the qualifications of mutual fund licensed employees to full-service status; and, allowing all Reps to use a directed commission structure .Again , the OSC IAP expressed their concerns in this Comment letter https://www.osc.gov.on.ca/documents/en/Investors/20160404_iiroc-white-paper.pdf and so did we http://www.iiroc.ca/Documents/2016/35cdcd06-05f1-42ce-8c62-c9f0f5283990_en.pdf .

(e) The industry-wide overcharging of investors was a major regulatory failure for IIROC. Overall, including the settlements involving overcharging, the no-contest settlement program has been used to resolve over 15 cases, resulting in over $350 million being returned to investors collectively. Every major IIROC regulated investment dealer overcharged their clients. How did so many dealer supervisory controls fail and their failure remain undetected by IIROC, some dating back to 2000? See table below:

Significant "no contest" settlements related to overcharging clients on fees

COMPANIES AFFILIATED WITH:	OVER-CHARGING OCCURRED	DATE OF SELF-REPORTING TO THE OSC	"NO CONTEST" SETTLEMENT DATE	NO. OF CLIENTS AFFECTED	EST. CLIENT COMPENSATION DUE	VOLUNTARY PAYMENT (INCL. COSTS)	PAYMENT AS % OF CLIENT COMP.
Toronto-Dominion Bank	2000-14	May 2014	Nov. 13, 2014	10,520	$13,500,000	$650,000	4.8
Bank of Nova Scotia	2008-15	Feb. 2015	July 29, 2016	45,703	$19,997,821	$850,000	4.3
Canadian Imperial Bank of Commerce	2002-16	March 2015	Oct. 28, 2016	81,755	$73,260,104	$3,050,000	4.2
Bank of Montreal	2008-16	Feb. 2015	Dec. 15, 2016	60,393	$49,885,661	$2,190,000	4.4
Royal Bank of Canada	2005-16	Feb. 2015	June 27, 2017	50,447	$21,802,231	$975,000	4.5
Manulife Financial Corp.	2005-16	June 2015	July 13, 2017	9,420	$11,700,000	$520,000	4.4

SOURCE: INVESTMENT EXECUTIVE RESEARCH INVESTMENT EXECUTIVE CHART

Source: http://www.investmentexecutive.com/-/osc-firms-focus-on-overcharging

(f) The IIROC investor Complaint handling process and policies needs improvement - many valid complaints are closed without adequate explanation. Investors are so frustrated with the boilerplate response" *Our review of your complaint is now complete and Enforcement staff has determined not to pursue formal disciplinary proceedings against Mr. X. As such, we have closed our file. "that* it is hard to see why anyone would bother to complain to IIROC at all.

(g) A basic tool like IIROC's online AdvisorReport is a nightmare for investors. In order to use this online service, investors must first agree to five pages of terms of use. The five-page document is full of confusing legalese. We have never encountered so many intimidating an unnecessary roadblocks from any other comparable regulatory site. See **Open Letter to Regulators** http://sipa.ca/library/SIPAsubmissions/600_SIPA_OpenLetter_to_SecuritiesRegulators_20171004.pdf

(h) Unlike its US counterpart FINRA, IIROC Sanction Guidelines are 100% Principles based which provides inadequate guidance for Hearing Panels to ensure consistency. The penalties levied often seem unrelated to the severity of the harm and mitigating circumstances consistently outnumber aggravating circumstances http://www.canadianfundwatch.com/2018/01/agravating-and-mitigating-factors-and.html .

(i) IIROC's current priority on obtaining legal rights to pursue fine collection from individuals and immunization from civil action for even negligence is especially worrisome. The priority on fine collection from individuals makes no sense given the other much more important challenges facing IIROC. Fine collection will likely lead to a diversion of resources from compliance / enforcement with little deterrence value and zero investor compensation. This is creating a very powerful industry controlled entity outside the statutory framework e.g. they are not subject to FOI obligations. Rather than enhancing investor protection, however, these powers appear to be transforming the role of SROs more into something resembling public prosecutors, without significant consideration or public debate of the implications. See

http://www.babinbessnerspry.com/blog/more-legal-authority-to-industry-regulators.html?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original .

(j) IIROC's engagement with consumer and investor advocacy groups is superficial. When IIROC cite research in their Consultations, they refuse to make public that research.

(k) For over a decade, we have requested that IIROC stop the exploitation of clients by allowing discount brokers receiving A series mutual fund trailer commissions for advice they cannot give but it was not until April 9th of this year that it issued a rather convoluted Guidance on the matter. The guidance permits the sale of A series mutual funds by discount brokers, a practice that even fund industry lobbyist IFIC disagrees with. Rather than require discount brokers to deal fairly, honestly and in good faith and eliminating a conflict-of-interest, IIROC says it expects the firm to "address the conflict by rebating to the client the portion of the trailing commission for ongoing advice, or taking other similar steps". The CSA should compel IIROC to direct its discount broker Members to stop selling Series A funds to their clients.

(l) For at least 15 years we have pointed out flagrant IIROC dealer violations of NI81-105 (issued in 1998) yet we are not aware of a single dealer prosecution.

(m)A number of IIROC registered dealers have rejected or low-balled OBSI compensation recommendations with impunity. Perhaps not surprisingly, an IIROC nominee on the OBSI Board is from a Member firm that was Named and Shamed!

(n) IIROC mischaracterize Best interests as resolving conflicts-of-interests in the best interests of clients knowing full well that it is a perversion of the true meaning of a Best interests advisory standard. viz" *We believe that the proper management of conflicts of interest – and compensation-related conflicts in particular- is at the core of the best interest debate"*. http://www.iiroc.ca/Documents/2017/a0d6a6a5-fb14-4552-85a3-fc343ce890d0_en.pdf All manner of compensation conflicts have been permitted without regulatory action. IIROC allow dozens of Rep titles based solely on sales production, which they know are designed to mislead and build investor trust. See **The Best Interests Advice Standard** - Canadian MoneySaver https://www.canadianmoneysaver.ca/the-best-interests-advice-standard/

(o) Finally, we refer to a 2017 CSA/ OSC Oversight report that in effect gave IIROC a failing grade. In summary, CSA staff note a repeat finding in the Business Conduct Compliance department given IIROC did not implement the necessary changes to their examination programs (high priority). Also, CSA staff found that IIROC did not make sufficient progress in resolving an issue raised during the previous oversight review in the area of Information Technology (medium priority) by not providing an information security program report to a Board committee on a quarterly basis. In addition, CSA staff raise other medium priority findings in the Business Conduct Compliance (one), Information Technology (one) and Enforcement (two) departments. In particular, the

report indicates that IIROC failed to make promised changes to its examination procedures for assessing suitability in managed accounts.

There is even a not so subtle comment on lying. "*Staff note that the revised procedures were implemented in October 2016, eight months after IIROC initially stated the changes had been made,*" the CSA stated in its report. Additionally, the CSA says that new examination procedures for assessing compliance with certain aspects of the mutual fund sales-practices rules were not implemented by June 30, 2016, as the regulators originally agreed. "Staff were subsequently informed that the revised procedures were implemented in February 2017, more than seven months later," the report states. Some of the other, less urgent issues identified in the report include a lack of guidance for IIROC compliance staff on identifying repeat or significant deficiencies, and the absence of a process for taking a holistic view of dealers and their compliance records. All in all, not a confidence building report card.

(p) The OSC IAP summed up their concerns in their response to IIROC's Strategic Issues consultation http://www.iiroc.ca/Documents/2015/7e3a6326-4620-4945-8696-2edcd650312a_en.pdf "*IIROC cannot fulfill its investor protection mandate without major changes to its governance structure. IIROC's current governance allows ample opportunity for industry involvement but is closed to retail investor participation and engagement. IIROC offers no formal opportunity for retail investor involvement/input into its operations, its policy development or its Board of Directors. While the Ontario Securities Commission, for example, has created an Investor Advisory Panel in addition to individual retail and institutional investor representation on its policy committees, IIROC has no retail investor representation on its five industry Policy Committees or 10 member firm District Councils*. "

We strongly recommend that the CSA impose on IIROC additional conditions for maintaining the Recognition Order. For a start, we recommend (a) set aside at least three board seats for retail investors (b) implement a funded Investor Advisory Panel similar to the one established by the OSC and (c) allow the use of restricted funds to finance independent investor research and investor protection.

5. IIROC Guidance on OEO 11**-0076** http://www.iiroc.ca/Documents/2018/54df3aa0-06d8-48fd-8e93-ce469be1c650_en.pdf The guidance was issued April 9 just 3 days after a class action [https://www.siskinds.com/mutual-fund-trailing-commissions/] suit was filed against TDAM for paying discount brokers for advice they knew the brokers could not provide.

This issue requires immediate attention by the CSA. We quote from the Investment Industry trade Association [IIAC] Comment letter on the IIROC proposed Guidance:
"*Industry's **Key Concerns***

The industry has many major concerns with the proposed Guidance. The key concern of our member firms is that clients may use online "educational" tools, products and information containing inaccurate data and information from unreliable sources in order to make investment decisions if the Guidance is implemented. Investors request tools and information from OEO firms in order to make educated investment decisions. Providing a wide range of documentation and products is to the benefit of the client and this Guidance, if implemented, will not protect the investor ***and is therefore not in the best interest of the client.***

We also believe that there are two other major concerns with the introduction of the Guidance:
1) An overly broad definition of "recommendation" and its ensuing applicability to both OEO and Advice dealers; and
2) The introduction of an "appropriateness" test. "
Another industry participant**, RBC Direct Investing, asked IIROC to withdraw the Guidance** Re http://www.iiroc.ca/Documents/2017/b8e3e93c-f7b6-4aaa-8576-74b0a10b9e3d_en.pdf So, basically industry participants did not support the proposed Guidance and expressed concerns.

Investor advocates including SIPA, FAIR, Kenmar, individual DIY investors, investor advocates and the OSC's IAP vigorously opposed the guidance. Yet, of today, a Guidance that will harm retail investors and is clearly not in the Public interest remains in place. See our letter at http://www.ocrcvm.ca/Documents/2016/9557bad7-f6f4-4d75-8a37-4dbed68fd788_fr.pdf and SIPA letter http://www.iiroc.ca/Documents/2017/b963d58b-9189-45ea-a3be-d7c68610ba43_en.pdf and the OSC Investor Advisory Panel letter https://www.osc.gov.on.ca/static/Investors/iap_20170202_iiroc-order-execution.pdf
Discount brokers provide a safe, low-cost method of investing and through various tools, simulators and calculators assist in developing financial capability. Implementing the guidance will limit innovation, unduly constrain access and add to client costs.

It is very clear - DIY investors are not being harmed (with the exception of the sale of A series funds and the occasional service interruption). All investor commenters said "Hands Off"- satisfaction with Discount brokers was very high. In order to justify their inappropriate action, IIROC had to redefine *recommendation* and *advice* to fit their approach to constrain discount brokers. We very much doubt if Securities Commissions ever conceived of these convoluted definitions. The consultation process itself was flawed – the submission timeline had to be extended twice, underlying research was not disclosed and claims of extensive consultation with advocates was rebutted. Despite IIROC unsubstantiated assertions, discount brokers do not provide personalized investment advice.

What is entirely inexcusable is that despite the lack of support from stakeholders, industry and investors, IIROC nevertheless chose to issue the Guidance.

An SRO does not have the power to redefine *recommendation* and a*dvice* for the entire financial services industry especially via Guidance that bypasses formal regulatory approval. Such power should be left to statutory Commissions and then only after adequate research and consultation. The Guidance may well unduly limit much sought after and needed capabilities of discount brokers thereby potentially causing DIY investors harm.

<u>We are therefore formally requesting that the CSA compel IIROC to recall the Guidance and thereby avoid further retail investor harm</u>.

6. NASAA Members Adopt Model Act to Protect Seniors and Vulnerable Adults

Everyone agrees there are issues re senior investors. On February 1, 2016 North American Securities Administrators Association (NASAA) took a significant step toward providing much needed protection for seniors and vulnerable investors; NASAA announced that its membership has voted to adopt a model act designed to protect vulnerable adults from financial exploitation.

The model, entitled "An Act to Protect Vulnerable Adults from Financial Exploitation," provides new tools to help detect and prevent financial exploitation of vulnerable adults.

The NASAA model act will help securities regulators, dealing representatives and dealers, as well as Adult Protective Services agencies work in partnership to protect vulnerable investors,"

The Model act:

- Mandates reporting to the applicable securities regulator and adult protective services agency when a qualified individual such as a securities broker or investment adviser has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred.
- Authorizes notification to third parties only in instances where an eligible adult has previously designated the third party to whom the disclosure may be made. Importantly, the model act directs that disclosure may not be made to the third party if the qualified individual suspects the third part of the financial exploitation.
- Enables dealers or Dealing Reps to impose an initial delay of disbursements from an account of an eligible adult for up to 15 business days if financial exploitation is suspected. The delay can be extended for an additional 10 days at the request of either the applicable securities regulator or adult protective services.
- Provides immunity from administrative or civil liability for Dealers and dealing Reps for taking actions including delaying disbursements as permitted under the act.

In Nov. 2017, FAIR Canada and CCEL issued a Canadian report on this topic urging regulators and governments to legislate such an Act in Canada. They made 6 concrete recommendations. We recommend the CSA members implement the recommendations

without undue delay. This will be a powerful element in protecting seniors and other vulnerable investors.

7. Co-operative marketing et al We believe such payments from fund assets and non-monetary benefits can only lead to trouble and should be prohibited. Wealth managers should not receive payments or other benefits from product suppliers. Co-operative marketing ventures like "Free lunch" seminars have been shown to lead to several problems. A number of recent OSC enforcement actions demonstrate how pernicious such payments can be. The influence on recommendations can only be negative. We recommend that mutual funds be prohibited from providing cash for promotional marketing and Rep "education" and that such dealer/Rep influencing activities be banned regardless of cash source *Re Part* 5 of NI 81-105*.*

8. Proficiency We agree with the position taken by the FPSC (see link).It is very clear that the proposed CSA reforms imply that elements of financial planning skills are required to satisfy suitability and other requirements. It is also very clear to us based on assistance to investors, involvement with complainants and a review of SRO complaint statistics that there is a proficiency gap. Kenmar also note a clear proficiency gap in managing de-accumulation accounts for retirees. We therefore strongly recommend that the FPSC proposals on proficiency be considered as an integral high priority component of this initiative. This needs to be a priority if the anticipated objectives of the reforms are to be achieved. http://www.fpsc.ca/docs/default-source/FPSC/fpsc-response-to-csa-33-304.pdf As if Retail investors don't face enough market and advice system risks, the CSA is preparing to launch complex Alt Funds upon Canadians. We can only hope and pray that the risk disclosure and advisor proficiency standard will provide the necessary Investor protection. One cannot act in the best interests of clients if proficiency is lacking.

And now we discuss the CSA proposals

A component of the new rules, which involves updating "best interest" and "suitability'" rules, largely amplify/ clarify existing regulations, and there are few specific rules. Because there is so much wiggle room around what makes a specific recommendation suitable – depending on a client's account size, age and financial knowledge, among other things – the guidelines have historically proved to be tough to enforce. Adding the cost component to suitability criteria could reduce the impact of conflicted compensation if implemented properly.

10. KYC: In many suitability complaints, the investor complains that their KYC information was not accurately recorded, that they did not understand the KYC forms they signed, and/or that their advisor did not review the KYC forms or explain their significance. The question we ask is- will the proposed reforms address these core issues? We do not believe the reforms will resolve the fundamental issues unless Dealer compliance and supervisory systems/ processes are improved , fines for defective dealer KYC compliance reviews are increased , clients receive a signed/

dated KYC summary at least annually , clients are explained the importance of each element of the KYC, fines for lax dealer KYC supervision are dramatically increased and dealer complaint handling rules updated to 21st century standards.We agree that a KYC should be reviewed /updated when the registrant knows or reasonably ought to know of a significant change in a client's KYC information but question the 36 month interval for a review especially for seniors and retirees. We recommend an annual review as originally proposed.

In our assessment of real world KYC needs, dealing representatives would need to apply interpretations related to a client's tax position, employment status and future prospects, accumulated assets and debt obligations as well as spousal and /or dependent needs. The level of knowledge skills and abilities required for this level of analysis and interpretation goes well beyond the current proficiency requirements of a registrant by necessitating the ability to understand the interrelationships among several financial planning areas in order to make such interpretations or formulate appropriate strategies. It should be noted that most dealer marketing and promotional materials imply such skills are available and are provided. Notwithstanding these assertions, we urge the CSA and SRO's to accelerate their work on upgrading Rep proficiency.

(a) We have written extensively to the CSA on the shortcomings of the KYC process. In summary, the main issues are that the information is neither robust nor complete. Investors must be explained the significance of KYC information, they must be provided with a hard copy of the completed information and they must be told how this information can be used for the provision of sound advice and against them in the event of a complaint. We note that tax information is not included in the current proposals, yet for many Canadians, especially seniors and retirees such information is critical to their financial well-being. We recommend that such information be an integral KYC component if the client is willing to provide that information. Another issue is blank-signed forms, signature forgery and document adulteration .In our opinion, the sanctions for corruption of the KYC process are not sufficiently severe to provide specific and general deterrence. The regulators need to develop improved tools to prevent and detect KYC adulteration. For one, every change to an individual's KYC should require supervisory approval before entering the information system.

(b)The NAAF/KYC Form should have a more descriptive name and there should be a mandated data block for life objectives e.g. retirement, monthly income, a child's education, a down payment on a home. Too often we see objectives defined solely as portfolio characteristics e.g. "income with moderate growth "rather than desired life outcomes. In our view, it will be impossible to assess whether a Rep has acted in a client's best interest without a clear articulation of desired client life outcomes. Please refer to this SIPA Report for some simple basic ideas for improving the KYC process **The KYC Process Needs An Overhaul** : SIPA
http://sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20KYC%20Process%20Needs%20Overhaul%20-%20201607.pdf We believe these simple KYC process changes will yield disproportionate investor protection benefits.

(c) One major element missing from the KYC consultation section is a requirement that a registrant maintains evidence of the process used to collect and analyze the information. There is discussion in the CP but the CP is not enforceable. Therefore, unless there is a rule, dealers can let their Dealing Reps ask whatever questions they want as long as the KYC form is filled out. But what questions were asked to determine risk tolerance for example? Not required to be documented. Just the outcome has to be documented. In our experience, the biggest systemic problem relating to unsuitable advice is improperly assessing KYC (particularly risk tolerance). It's hard to figure out what happened after the fact if there is no documentation of what was asked. This record would make complaint and OBSI investigations much easier.

(d) In Nov. 2015 the OSC released a report by PlanPlus on risk profiling The research found (a) There is a confusing and universal lack of existence or consistency of the definitions of risk concepts and a lack of understanding of the factors involved in risk profiling; (b) Almost all regulators surveyed are principles-based and provide little guidance on how a firm or advisor should arrive at the determination of a risk profile. They all recognize and rely on the professional judgment of the advisor and the 'process' created by the advisor or firm to determine a consumer's risk profile. No regulator provides clear guidance on how to combine the multiple factors and form a client risk profile and (c) Over 53% of respondents to the advisor survey indicated that between 76-100% of their clients had completed a risk questionnaire. Almost half of the firms reported that risk questionnaires were developed in-house and another 36% said that advisors could choose their own risk profiling methodology. Only 11% of firms could confirm that their questionnaires were 'validated' in some way and (d) Most of the questionnaires (83.3%) in use by the industry are not fit for purpose - they have too few questions, poorly worded or confusing questions, arbitrary scoring models, merge multiple factors (75%) without clarity or have outright poor scoring models. Fifty five percent had no mechanism to recognize risk-averse clients that should remain only in cash. Given that more than two years have passed, we expect Dealers have rectified the deficiencies.

We believe the CSA Paper has gone beyond principles and provided industry reasonable direction for the application of robust risk profiling. The absence of prevailing dependable risk profiling tools has meant that suitability determinations are unreliable and acting in the best interests of clients highly questionable.

(e) An investment policy statement (IPS) is a document drafted between a Dealing Representative and a client that documents an investment plan consistent with KYC. This statement provides the general investment goals and objectives of a client and describes the strategies that the manager should employ to meet these objectives consistent with KYC. Specific information on matters such as asset allocation, risk profile and liquidity requirements are included in an investment policy statement. It provides guidance for informed decision-making and serves as both a roadmap to successful investing and a bulwark against potential mistakes or misdeeds. A well-devised IPS that contains only

actionable provisions that are intended to be followed can help advisors "talk down" clients who want to drastically (and potentially harmfully) change direction with their portfolio when markets start to falter. An IPS also makes compliance reviews and complaint investigations much easier. See a sample IPS at
https://news.morningstar.com/pdfs/investment-policy_apr2016.pdf
Kenmar believe an IPS will help solve many of the problems we see in the advice industry today by improving Rep-client communications. An IPS can be scaled to the needs of the Investor from very basic to elaborate. Kenmar recommend that an IPS be a standardized tool for all professional advice providers.

11. Suitability The proposal includes extensive changes regarding the suitability obligation, as the CSA points out that unsuitable recommendations generate the most complaints (27%) to the Ombudsman for Banking Services and Investments. It does among the SRO's as well. At the heart of the proposed rule would be a "core requirement that registrants must put their clients' interests first when making a suitability determination," the CSA's Notice and request for comment states. Most notably, Dealing Reps and dealers would be required to consider factors such as costs and their impacts when making recommendations. If costs are indeed wired in to recommendations we would anticipate an improvement in investor outcomes. We caution, however, that the manner in which these proposals are implemented, supervised and enforced will be critical. Effective compliance monitoring is a key success factor's Guidance will be required .Close CSA monitoring will also be required and related SRO rules will need to be scrutinized and open to public comment.

(a) In order to reduce the impact of conflicts-of-interest, the proposals "would require all existing and reasonably foreseeable conflicts, not just material conflicts, to be addressed in the best interest of the client." As well, registrants would have to report conflicts-of-interest they identify to their firms promptly, and extend disclosure requirements to identify the potential impact and risk a conflict may have on the client and how it has been, or will be, addressed. That disclosure would have to be prominent, specific and written in plain language. It is not clear if it is a dealer's obligation or a Rep's. We recommend that the dealer craft such disclosures but again we are concerned about how this will actually work in practice. For example if a dealer establishes weekly sales quotas, how will a Rep satisfy the Dealer without compromising integrity? This is one reason why we recommend a modern version of NI81-105 Sales Practices be released to constrain the types of conflicts Bay Street can use. Timely and vigorous regulator compliance review and enforcement is a key success factor, a factor that represents a high risk given the historical evidence at hand.

(b) As regards para 13.4.2 [A registered firm's responsibility to address conflicts of interest] -- new section requiring registered firms to address all conflicts of interest between the firm (including each individual acting on its behalf), and the firm's client, in the best interest of the client. If a conflict is not, or cannot, be addressed in the best interest of the client, then the registered firm must avoid that conflict]. For greater clarity we strongly recommend the last sentence be changed to "If a conflict is not, or

cannot be addressed in the best interests of the client, then the registered firm must decline to provide the service associated with the conflict" or provide exceptional disclosure regarding that conflict .

(c) In the case of IPO's where the conflict-of-interest is inherent in that sort of transaction we expect proposed IOSCO document **Conflicts of interest and Associated Conduct Risks during the Equity Capital Raising Process** https://www.iosco.org/library/pubdocs/pdf/IOSCOPD593.pdf or equivalent to be considered by the CSA in its finalized Guidance.

(d) Kenmar do not understand why the original targeted reform requirement to perform a suitability assessment when a significant market event affecting the capital markets the client is exposed to has been removed. It is precisely at such times when Retail clients financial condition and goals need to be re-evaluated. Counselling at such points can prevent panic selling by clients. We recommend the CSA consider reinstating this requirement despite Bay Street objections.

(e) What caught our attention are measures related to "portfolio-level suitability analysis". Depending on the details and level of compliance this could be a positive for investors. However, Kenmar believe that to properly execute such an analysis, dealers may need improved analytical tools and Reps will require CFP-level or equivalent proficiency. We expect the CSA will address this aspect on its work on proficiency. Again, this requirement already applies to MFDA and IIROC Reps so it is not a new obligation. See for example IIROC Notice-16- 0068, IIROC rule 42 and http://www.iiroc.ca/Documents/2017/5365cb5b-e384-477f-8fc0-8c2b9450424a_en.pdf

(f) We recommend that the CSA require one KYC. per account as the default. Only if it can be demonstrated that the relevant KYC parameters and Client objectives are identical should one KYC be utilized for multiple accounts. See **One Account Application for all Accounts?** http://www.canadianfundwatch.com/2018/02/one-account-application-for-all-accounts.html for our rationale.

The Consultation paper is rightfully focused on improving. the quality of advice .Who can argue with that, but consider this....Three U.S.-based academics who wrote **"The Misguided Beliefs of Financial Advisors"** *(*Kelley School of Business Research Paper No. 18-9 *)* reviewed 14 years of trading and portfolio data from more than 4,000 advisors and nearly 500,000 clients at two Canadian MFDA dealers and their findings suggest there are deeper problems. Here's a summary of what they found: *"[M]ost advisors invest their personal portfolios just like they advise their clients. They trade frequently, prefer expensive, actively- managed funds, chase returns, and under-diversify. Differences in advisors' beliefs affect not only their own investment choices, but also cause substantial variation in the quality and cost of their advice. Advisors do not hold expensive portfolios only to convince clients to do the same – their own performance would actually improve if they held exact copies of their clients' portfolios, and they trade similarly even after they leave the industry."*

In short, many advisors don't offer self-serving recommendations based on conflicts-of-interest but rather provide well-meaning and misguided advice based on their honest beliefs. Most importantly, the researchers conclude: "Policies aimed at resolving conflicts-of-interest between advisors and clients do not address this problem." The CSA may wish to examine this research in some detail. Mutual fund Rep proficiency may be more of an issue than is currently believed.

12. Know Your product Per the consultation para 3.2.1(3) Know your Product "A registered individual must not purchase a security for, or recommend a security to, a client unless the registered individual's sponsoring firm has approved that security to be made available to clients" .

The question is what happens if the Dealing Rep does recommend such a security? What if the client loses money as a result of the purchase? Will the Dealer be held accountable or will the client have to absorb the loss? It is one thing to establish rules but it is quite another to define in advance what are the consequences and what are the remedies. In our dealings with firms we find that dealers do not accept accountability when a trusting client is led astray. The CSA paper is ambiguous on this point. We recommend this be clarified. If the dealer is not accountable for the actions of its salespersons/Reps, then we argue that this clause is nothing more than a set of words strung together with minimal investor protection value.

13. Fees: We certainly agree with the decision to ban DSC sold mutual funds. It was back in 2005 when we first alerted the CSA about how Retail investors were being scammed. Of course, the 1998 Stromberg report flagged the issue earlier as did the OSC FDM initiative in 2004. It has taken a long time and millions of dollars in lost investor retirement savings but now it looks like the CSA is finally prepared to act.

It should be noted that the mutual-fund industry has voluntarily shied away from DSCs. In Sept. 2016 Investors Group announced it would be discontinuing the DSC purchase option as of Jan. 1, 2017.A rough estimate of DSC fund assets from the analysis firm Strategic Insight put them at 13 % of the total last year, down from 26 % in 2012. Banning the DSC purchase option outright will drive a fair number of scoundrels out of the industry which will improve investor protection.

We have seen many cases where clients were not advised of price breakpoints .In the case of mutual funds, there should be an explicit requirement to disclose price breakpoints when disclosing fees.

(a) As to the discount brokers collecting advice fees for no advice, this should have been dealt with by the IIROC back in 2008 when we first alerted it to the scamming of Retail investors. We did not know then that the issue was a $190 M plus per annum financial assault. It should not have not taken a class action to inspire IIROC and the CSA to respond. Anyway, better late than never but we urge the regulators to ensure that all the

money improperly charged to clients is refunded. We also expect the CSA to review fund governance to prevent unitholder cash from being improperly used. For those mutual funds that breached fiduciary standards, we expect regulators to pre-emptively deal with that issue and not wait for a flood of class actions lawsuits.

(b) Consumer confusion about mutual fund fees is demonstrated in Pollara's 2017 report "Canadian Mutual fund investor perceptions of mutual funds and the mutual fund industry". Page 34 of that report indicates that only 58% of advisors even discussed mutual fund fees paid to the dealer and only 16% of consumers were very confident in their knowledge of fees paid. This doesn't paint a very flattering picture of either investors understanding of fees (commissions) or Dealing Reps compliance with their obligations to discuss fees. So again, we have rules but without enforcement. We have trusting investors blissfully paying fees and commissions which impair their life savings. It is not at all clear to us that adding more rules will lead to better outcomes. The CSA provides no evidence, research or theory that improvements are likely if (and that's a BIG if) these proposals are ever approved.
https://www.ific.ca/wp-content/uploads/2017/11/Pollara-Investor-Survey-Final-Report-English.pdf/18460/ We therefore recommend that to mitigate the risks of the proposed rules that all client statements include the cost of investing. This will help improve cost visibility and move that 16% figure to a much higher level. That in turn would result in improved investor protection.

14. Investing Costs: (general) We are glad to see that product and account costs will now be integral to making a suitable recommendation. This may not be very effective however if the dealer only offers proprietary funds .As to account costs , there should be guidance provided to address the growing conversion of clients to fee-based accounts. Reverse churning is developing as a high risk especially for unsophisticated, pre-occupied or inattentive investors. IIROC sanction guidelines are principles-based so it is not clear to us how this can be enforced in practice. We recommend that at a minimum, CSA guidance be provided.

It is one thing to take cost into account in suitability determinations, quite another to enable investors to assess those costs. We therefore strongly recommend that the MFDA proposal for enhanced cost reporting, dubbed CRM3, be applied so that all costs incurred by an Investor are visible on client statements. This level of transparency will help improve the client-Rep relationship (or not) and thereby improve investor protection.

15. Embedded Commissions The CSA decision not to ban embedded commissions is a major disappointment after the hundreds of person-hours spent by ordinary Canadians expressing their views. By retaining embedded commissions, the CSA is exposing investors to the harms identified by the empirical results in the Cummings' report and other independent research and placing the interests of the fund industry ahead of Retail investors.

(a) The CSA is attempting to mitigate this inherent conflict with several rules within an enhanced suitability standard. It remains to be seen whether taking cost into account in suitability determinations and requiring dealing Reps to resolve conflicts in the best interests of clients will be effective or can be enforced. If such Reps are able to sell ETF's and Index Funds ,this may lead to some improvement in client outcomes .This will require a huge investment in training , dramatically increased compliance oversight, much better systems and controls and materially closer supervision by unconflicted supervisors. We recommend that the CSA monitor progress and be prepared to reconsider this decision.

(b) There is also an important issue with trailers in D series funds. The issue of discount brokers being compensated for "services" that they may or may not have provided to investors is one that deserves more attention. There are no mutual fund documents that define what is meant by "services" in the phrase "services and advice" that is the material phrase in the definition of a trailing commissions. There does not appear to be a common definition applied to services by different mutual fund stakeholders. Our general impression of those conversations is that the term "services" was left intentionally undefined by mutual fund companies so that different dealers can be left to interpret this term as they see fit and to their advantage in differing circumstances. However, the agreement to invest in a mutual fund is one between the mutual fund company and the investor - the definition of services rests with those parties (not the dealer) and most likely with the party that did not draft the mutual fund agreements (the investor). In our view these D series trailers are actually a redundant charge for services already implied in the Agreement the investor has with the discount broker.

As big a travesty as payments for advice that was not offered is the travesty of hundreds of millions of dollars of Canadian's wealth being transferred to dealers (discount and full service) each and every year for "services" that have never been defined. How can an investor know if he/she received something that has no definition? How can a dealer claim to have provided an investor with services when there is no definition for services? Can a dealer double dip - charge you for a service through your mutual fund holdings that you have either already paid? Can a dealer charge for a service for which there is no charge under the terms of your Relationship Disclosure with your dealer (e.g. access to quotes)? According to a paper released in January, 2017, by the Canadian Securities Administrators (CSA) that discussed the topic of discontinuing embedded commissions. there are a total of $30 billion held in mutual funds at discount brokers. And $**1.5 trillion** in other accounts. We are formally asking the CSA to investigate this serious issue and publicly report the findings.

16. Disclosure representations The CSA intends to enhance disclosure on the use of proprietary products, limitations on the products and services made available to clients and the impact of these on investment returns. Thus, registered firms would be required to make public information that includes the newly defined terms "third-party compensation" and "proprietary product." Specifically, registrants must disclose any third-party compensation associated with the firm's products and services, and whether

proprietary products will be used primarily or exclusively in clients' accounts, respectively. We agree with the disclosures but (a) question the efficacy of those disclosures and (b) if the typical retail investors will be able to convert them into investment decisions. We recommend that the CSA supplement this disclosure with additional obligations on dealers/Reps to guide investors through these disclosures.

We also recommend that the CSA prepare a plain language, multi-media broadly communicated Streetproofing message to retail investors in this regard.

As to conflict-of interest disclosure, we find something like this from a U.K. firm would be useful. https://www.oldfieldpartners.com/files/file/view/id/1136 Most retail clients do not understand the role conflicts-of-interest play in skewing advice. In fact, many do not believe it even exists wrt their Rep.

17. Referral fees The CSA is proposing to limit referral fees, saying such fees cannot continue for longer than 36 months, exceed 25% of the fees or commissions collected from the client by the party who received the referral, or increase what would otherwise be paid by a client to that registrant for the same product or service.

In CSA CONSULTATION PAPER 81-408 the CSA stated "We acknowledge that the above types of payments may give rise to conflicts of interest that may continue to incent registrant behavior that does not favour investor interests." So why are referral fees not being prohibited? 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 investor it is hard to imagine he/she would escape unscathed. People are looking for trusted investment advice on their life savings and it is the duty of regulators to provide a safe environment for doing so. If there is one referral fee that should be banned it would be the referral fee that supports leveraging. It is our understanding that one bank, noted for leveraged lending, counts 27,000 advisors among its clientele.

The bank offers a 3 for 1 investment loan (!) and loans for RRSP's. Visit https://b2bbank.com/sn_uploads/forms/0817-07-203E_B2B_BANK_Investment_Loan_Application.pdf for details. It is hard to see how such loans could ever be the retail investors' Best interests. Allowing referral fees for such loans just perpetuates the bad culture that permeates Bay Street. See **The lowdown on paying for referrals** | Advisor.ca http://www.advisor.ca/my-practice/paying-for-referrals-13121 We recommend that the CSA reconsider the proposed criteria as it draws Reps further away from acting in the Best interests of clients.

18. Sales Practices If embedded commissions are going to remain, at least until a scandal occurs, then NI81-105 needs to be updated and expanded to all products. This would at least constrain the nature of the sales commission payout schemes and provide a basis for compliance and enforcement. We have recommended this numerous times

over the past 5 years, and we recommend it again now. Again, if the Instrument is updated but there is no compliance oversight or regulatory enforcement, then Investor protection is not improved.

19. Sales communications For Dealing Reps , the CSA proposals regarding the misleading communications provision state that Reps must not represent their services in a misleading or deceiving manner as it relates to their proficiency, experience, or qualifications and the products or services provided. Reps also must not use a title, designation, award, or recognition that is based on their sales activity or revenue generation, nor can they use a corporate officer title — unless they actually fulfil such a role. Since this mischief has been going on for years even under existing rules, we have no confidence these proposals will result in behavioural change. Unless dealers are meaningfully sanctioned for breaching these rules, the status quo is unlikely to change. Kenmar are not aware of a single Enforcement action on misleading titles or service representations. Dealers will have to implement changes to their internal compliance processes and control systems to ensure the new measures are met. Given the outrageous industry history on the double-billing scandal, it is very hard to believe this will work out as anticipated.

While we understand that the titles issue will once again be examined at a later date ("longer term"), we wish to establish the principle right now that any title used should have a defined underlying level of knowledge, skills and ability to provide financial consumers the services offered. Clients should be able to readily identify those individuals who can supply the services they require. The titles issue must be resolved in synchronization with the introduction of these reforms for the reforms to work.

20. Personal Financial dealing We do not agree that an SRO rule should ever allow a registrant to lend money, provide a guarantee in relation to a loan of money, extend credit, provide margin or lend securities or any other asset, to a client but para 13.4.4 (2) would not disallow this. The exceptions are a booby trap awaiting the unsuspecting investor and must be revised. We also do not agree that a SRO rule should ever permit a registrant to act under a Power of Attorney from a client, act as a trustee with respect to a trust in which a client is the settlor or beneficiary, or act as a trustee or executor in respect of the estate of a client, or otherwise have full or partial control or authority over the assets of a client as might be permitted by Para. 13.4.4 (c). Such arrangements are just a problem waiting to happen. We agree that a registrant must not borrow money, arrange a guarantee in relation to money the registrant has borrowed, or borrow securities or any other assets, from a client. The sanctions for such activity should be severe.

21. Off book transactions Since Off-book transactions occur, the CSA should make it clear that the Dealer is responsible for all Dealing Rep actions and inactions unless it can be demonstrated that the client had knowingly purchased an investment separate from the firm and the firm has robust tools to detect off book selling.

We have encountered several complaint cases where Dealers refuse to accept accountability for client losses resulting from the Off book transactions of their Representatives. Additionally, we recommend that the CSA be more prescriptive in defining how a retail investor client is to be informed of approved Outside Business Activity.

22. Regulatory arbitrage The proposed reforms will have a positive effect on reducing regulatory arbitrage with insurance products. By retaining attractive embedded commissions there should be less motivation for dual- licensed Reps to unduly migrate clients to Segregated funds and other high compensation insurance industry products. There is still the possibly that these Reps may favour the lighter touch regulation of the insurance sector. This will have to be closely watched. The issue with multi-hatted in -brunch bank Reps will however remain- they will still be able to offer Index- linked GIC's , Structured Notes and PPN's and arrange investment loans outside the securities regime. It is our hope that our elected officials will revise the Bank and FCAC Acts and eliminate competing ombudsman services. There appears to be some momentum given the excellent CBC exposee of the Canadian retail banking industry.

23. Discount Brokers Selling A series Funds
"We *are starting to approach these issues from the perspective of considering how our [discount-brokerage] dealers can meet their obligations under our conflicts-of-interest rule if offering the Series A funds. Those are the areas that we have started to explore. We have not reached any conclusions at this time about what our next step will be*." - Marsha Gerhart, vice-president of member regulation policy at IIROC Source: **Discount brokerage Series A funds come under regulatory scrutiny** – The Globe and Mail Sept. 28, 2017 https://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/discount-brokerage-series-a-funds-come-under-regulatory-scrutiny/article36428147/ This is regulator-speak justifying inaction in the face of annual multi-million dollar harvesting of investor retirement savings by IIROC Member firms. One thing it certainly is not, is INVESTOR PROTECTION. Our suggestion? Cut it out or you will face sanctions in proportion to the wrongdoing.

The Paper says "To address potential conflicts in the discount brokerage channel and other instances where dealers do not make investment recommendations, as well as to better align the fees investors pay with the services they receive, we propose to prohibit investment fund managers from paying, and dealers from soliciting and accepting, trailing commissions (whether for advice or any other service), where the dealer does not make a suitability determination in connection with the distribution of prospectus qualified mutual fund securities."
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20180621_81-330-status-report.htm

Kenmar find this language oblique and unduly limiting. We urge the CSA to change this to any product, not just mutual funds and to explicitly state that any product with an embedded fee for a service / advice that cannot be provided by the discount broker should not be available on the platform. Full stop. If this wording is not changed, the

industry will be able to design products that circumvent the regulatory intent. For example, ETF's could again offer a series with embedded commissions.

This issue of embedded commissions for advice or recommendations for DIY clients represents 'low-hanging fruit' and a clear opportunity for immediate targeted regulatory intervention to end this exploitive practice. The time is NOW to level the embedded advice commission- paying field for DIY clients of discount brokers: It is simple and makes common sense – no recommendations or advice, then no embedded fee for recommendations or advice. Ending this abusive conflicted practice will materially improve investor savings and retirement outcomes. We see no need for yet another round of consultation in September on this matter.

In Bhasin v. Hrynew 2014 SCC 71 the SCC found that a duty to perform contractual obligations honestly. So no matter what IIROC allows, Canadian law trumps IIROC determinations. It is essential that the CSA prevent IIROC from allowing its Members, including discount brokers, to act outside the law. https://www.mackoff.ca/single-post/2016/04/12/Bhasin-v-Hrynew-2014-SCC-71-––-Summary-and-Implications

Training The proposed new rules includes measures requiring dealers to train Dealing Reps on "compliance with securities legislation, including conflicts of interest requirements, the KYC and KYP obligations, the obligation to make a suitability determination and prescribed elements of the securities available through the firm." That is long overdue. We strongly recommend the training include a discrete module on ethics. Dealers must also train Reps on products they approve their Reps to sell. A prime example where this did not happen involved the sale of leveraged and reverse ETF's resulting in a significant number of client complaints.

24. Enhanced Client Statements Since the CSA has not banned embedded trailer commissions allowing the inherent conflict to exist, we recommend that the CSA protect potential victims by increasing the transparency of those commissions by their inclusion on monthly or quarterly client statements. This would highlight the charge and prompt client questions. It is the minimum protection the CSA should provide given the asymmetry in knowledge and power between Reps and clients. It is a healthy form of self- protection that is sorely needed in the Caveat Emptor advisory regime that exists today.

It will be essential for the CSA to implement a comprehensive countrywide educational program for investors if these proposed reforms are implemented .In implementing the new reforms it must be made clear to consumers that a registrants requirement to act in a client's best interest is defined in the reforms and what that means in the context of the individuals registration depends on their required proficiency and qualification as depicted by their title.

Transition Periods for SRO regulated Dealers (excludes EMD's)

The transition periods proposed by the CSA are overly long for MFDA and IIROC Dealers. It may well be that EMD's require longer transition periods. There is no justification to have a step function milestone for all elements of the proposal for all Dealer categories. It should be broken down by milestones by Dealer registration Category. To propose 36 months for implementation of these modest reforms, most of which are already in place for SRO firms if you choose to believe industry marketing materials are honest, cannot be justified.

Here are our suggestions for implementation timetables for SRO's:

1. Discount brokers charging fees for services it cannot provide: 24 hours after receipt of this Comment letter. This should be accompanied by a letter to all fundcos that they are to immediately stop using unitholder assets to pay for services that cannot, will not be provided. Regulatory action should be taken against those who did make such payments. It makes no sense to wait a day longer while the retirement savings of Canadians are impaired. Besides, costly prominent class actions will be launched given the egregious nature of the financial assault which will further hurt the reputation of the wealth management industry. See **Regulators fiddle while investors burn over fund fees at discount brokers** - The Globe and Mail https://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/regulators-fiddle-while-investors-burn-over-discount-broker-fees/article38195683/

2. Use of DSC option: 3 months for large firms, 12 months for smaller firms. This must be accompanied by a large scale CSA advertising campaign telling Retail investors of the CSA concerns with DSC. Enforcement should accelerate on DSC sellers that do not comply with current CSA and MFDA guidance on the use of the DSC option. IIROC would be required to accept the MFDA guidance since we do not believe it has such guidance.

3. Use of the VP title or any title improperly used to signify corporate official status: 30 days See SIPA Report **Advisor Title Trickery** http://sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf

4. Requirements relating to the KYC process that place greater responsibility on all Dealing Reps to properly assess their client's needs and objectives and to clarify for dealers and Reps the specific information upon which this analysis must be based: 12 months for small firms, 6 months for large firms. This has been studied to death for years. Another 3 years is far too much punishment to hoist upon retail investors

5. Clearly prescribing the triggering events that will require a dealer/ Rep to reassess their client's KYC information. We have seen far too many cases where significant suitability problems could have been avoided through more timely and frequent KYC updates. This provision will be extremely beneficial to seniors. : 60 days as investors have pleaded for this for well over a decade. Such triggering events are one of the key reasons for clients to utilize professional advice in the first place.

6. Integrating a portfolio-level suitability analysis, an approach Kenmar has long advocated. Kenmar consider it a professional advisory practice for understanding the suitability of securities or strategies.: 18 months given the need for increased Dealing Rep proficiency training and analytical tools. It is our understanding that SRO's already require this.

7. The specific recognition of costs as important for suitability analyses. This will provide clarity to both the Rep and the investor and help to ensure that Reps recommend the best choices for investors.: 6 months. To implement this is not rocket science. Industry ads continuously imply that the client comes first so apparently it is already in place.

8. The enhanced disclosures relating to the nature of the firm and its relationships, which can help investors make informed decisions about where they should invest. Their hard earned money: 6 months to write down the existing relationship in plain language should be more than enough. Surely, Dealers already have this basic information at hand.

9. The specific direction that conflicts-of- interest are to be resolved in the best interests of the client. . This is an important provision that will provide clarity to Dealers, / Reps and align with the existing expectations of investors and marketed services: 0-3 months to translate this into clear guidance for registrants. The short time is justified because the IIROC have claimed in public that this is already in force at its Member dealers.

We remind the CSA that since these proposed reforms are intended to reduce the chance of harm, the longer they are put off, the more harm investors are exposed to. Compressed transition times, demonstrating a sense of urgency, are an opportunity for the CSA to rebuild investor trust in the regulatory system.

Summary and Conclusion

Kenmar have been advised that the Small Investor Protection Association has decided not to make a submission thereby substantially limiting the Investor feedback to this consultation. A number of retail investors have also decided not to waste time commenting on this topic again. For good reason, a number of our most knowledgeable Kenmar associates have boycotted this consultation. As a result we are unable to make the fulsome contribution we would have preferred to make. We apologize for this but since all are volunteers we cannot resolve the resource constraint.

This is an critically important consultation for retail investors. There may not be another one on this subject for a decade. The consultation paper is written in legally correct language and riddled with bear traps that ordinary investor commenters may not detect. An example is the use of Dealing Reps as executors. At first glance it appears the CSA has banned such duties except that a careful eye will detect that the door is wide open for an SRO to allow such duties by the exception permitted in 13.4.4 (3). Exceptional expertise is required to wade through hundreds of pages, each page perhaps containing

a key word or phrase that negates the value of the claimed protection. We therefore strongly recommend that the CSA and the SRO's utilize their restricted funds to finance an independent qualified firm to make Comments representing investor interests. This firm would consult with individual investors and consumer groups

As we reflect on the evolution of this latest CSA consultation process designed to strengthen investor protection we are forced to face some very difficult, but not entirely unexpected, realities.

- Two Commissions that had argued strenuously and persistently for an overarching Best interest standard effectively abandoned their position.
- The package of targeted reforms now being proposed has been scaled back from those originally proposed.
- Independent empirical research demonstrating the harm to investors caused by embedded commissions has been set aside.
- We are now embarking on what will likely be a protracted consultation process that will water down even these modest reforms; and
- We are being asked to accept a drawn out- industry friendly implementation time frame that will continue to expose investors to harm many years into the future.

This most recent abdication by the CSA of its investor protection mandate is a major disappointment. This disappointment is made more acute in the context of a country that:

- has not been able to create an effective financial services Ombudsman;
- has a dubious record of white collar crime enforcement ;
- has no strategy, either national or provincial, to professionalize investment advice givers; and
- provides SRO's with increasing powers not matched by increased accountability,

In this environment, prospects of additional consultations involving regulators that appear to have been co-opted by industry and advocates that have been sapped of their will to advocate are worrisome. The CSA has determined, despite protestations to the contrary, that while investor interests are important the interests of the industry are more important. We do not expect a change of corporate culture to result from these reforms. And that, my fellow Canadians, is the reality in Canada today.

It appears to us that the main positives of these proposals are the possible elimination of DSC, the likely elimination of most trailers at discount brokers and the addition of cost as a discrete element in suitability determinations. Other changes may have positive effects on outcomes.

As for advice-skewing compensation structures and schemes, we see no change despite overwhelming evidence of the harm they do to fund unitholders saving for retirement. While the original proposals to introduce a form of Best interest standard and ban embedded commissions were based on empirical research and hard evidence, the current proposals are based on assumptions and hoped for conduct changes. Kenmar regard the

lack of strong foundational support and quantitative evidence as constituting a material risk for investors. The risk that retail investors are being asked to take is that the proposed reforms will be effective based on theory/assumptions and that regulators actually enforce them in practice. This is an unacceptable risk that must be mitigated.

Our only two mitigation ideas involves (a) embedding retail investors on the Boards of each provincial securities regulator , the MFDA , IIROC and OBSI and making IAP's statutory at each institution. The second is a fail-safe backup involving OBSI. If OBSI is given binding recommendation power (and retail investors are represented on the Board) than there is at least a chance that retail investors harmed by the prevailing regulatory system will be compensated for undue losses if the proposed reforms prove ineffective at protecting investors.

In the face of this unsatisfactory state of affairs it is time to seriously consider the establishment of a national financial consumer protection agency independent of existing federal and provincial regulatory agencies and a national professional licensing body for advice givers. Maintaining the status quo and expecting different, let alone better, outcomes is the definition of insanity.

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.

Do not hesitate to contact us if there are any questions regarding our Comment letter.

Permission is granted for public posting.

Ken Kivenko P.Eng.
President, Kenmar Associates
kenkiv@sympatico.ca

REFERENCES

1. **It just became clear we'll never see an investment industry where clients must come first** Globe and Mail
https://www.theglobeandmail.com/investing/personal-finance/article-well-never-see-an-investment-industry-where-clients-must-come-first/

2. The OSC RMFI Settlement Agreement

On May 13, 2018 the Ontario Securities Commission (OSC) approved a settlement agreement with Royal Mutual Funds Inc. (RMFI), which will pay an administrative penalty of $1.1 million for offering higher commission fees to its sales reps for selling proprietary funds. The RBC-owned dealer was also ordered to pay $20,000 for the investigation costs, the settlement agreement said. RFMI distributes RBC mutual funds-including the RBC Portfolio Solutions suite of mutual funds (RBC PS Funds) — and third-party mutual

funds. Between Nov. 2011 and Oct. 2016, RMFI paid its salespersons 10 bps more in commission for selling RBC PS Funds over other third-party funds, in breach of NI81-105, *Mutual Fund Sales Practices*. The higher commissions added up to average additional annual commissions of $5,500 per salesperson. According to the Cumming Report for mutual fund sales through fund distributors that are affiliates of the fund manufacturer, past performance has little to no influence on sales, and this also negatively impacts future fund performance i.e. Clients were likely harmed by this compensation skewed advice by the approximately 900 “advisors” recommending the Portfolio funds.

NI81-105 is black and white i.e. that you cannot pay more to a salesperson for a sale of a proprietary fund than you pay for a third party fund Yet RMFI did this for 5 years, the MFDA detected it and that caused RMFI to “self report” to the OSC. We're not sure how it can be considered self-reporting when the MFDA tells you that you are offside. Interestingly, CRM2 reporting would not have exposed these payments to clients as they were not payments made to the dealer. This isn't RBC’s first case of rule breaking. See https://www.newswire.ca/news-releases/osc-approves-no-contest-settlement-agreement-with-rbc-dominion-securities-inc-royal-mutual-funds-inc-and-rbc-philips-hager--north-investment-counsel-inc-631132903.html They are not a first time offender.

The settlement Agreement says the Salespersons were paid an extra 10 bps and that in total RMFI paid out $24.5 [$24,517,931] million in commissions. That implies sales of $24.5 billion. On that level of assets, at a 50 bps (0.005) effective fee, which is probably on the low end, that is $122.5 million in revenue for the related fundco. For that, RMFI is fined a paltry $1.1 million. Royal Bank of Canada has reported net income of $3,012 million for the first quarter ended January 31, 2018, which includes the impact of the U.S. Tax Reform of $178 million .This amounts to roughly $33M profit per day assuming a 90 day quarter or $4.1 M/hr. fine of $1.1 million against RMFI represents a few minutes of deterrent value.

What rational financial institution would not pay a $1.1 million fine if the illegal act generates $122.5 million in revenue (and that is a low estimate as they collect that annually)? With enforcement like this, how can retail investors have confidence in the system or feel that it is possible to achieve any progress in improving/reforming the system? This is one of the worst settlement cases Kenmar has seen. Very disappointed and disturbing. ZERO deterrence value.
http://www.osc.gov.on.ca/documents/en/Proceedings-OTH/oth_20180613_royal-mutual-funds-inc.pdf and http://www.osc.gov.on.ca/documents/en/Proceedings-SOA/soa_20180608_royal-mutual-funds-inc.pdf It is very hard to see how the Best interests of clients were represented by this sales practice abuse.

ATTAACHMENT I: Selected References supporting Best interests standard and embedded commission ban

The references listed below paint a clear picture. The takeaway message is that the mutual fund industry has evolved into a sales and marketing culture. Sales incentives like

trailers support this culture .Any financial advice provided is incidental, undefined and ad hoc and unregulated. Fund industry lobbyists have been successful in blunting reforms in the $1.5 trillion Canadian mutual fund industry. This has however resulted in needed investor reforms being delayed or derailed.

The industry has chosen to bend the playing field in favour of distributors and "advisors" to the detriment of retail clients. The CSA has determined that it's not quite the time to level the playing field or disconnect advice from product sales.

Recently published research (2016) on mutual fund commissions' influence on fund flows led by Douglas Cumming, finance professor at the Schulich School of Business at York University in Toronto - and the related Frequently Asked Questions document - has triggered passionate responses. The research found that commissions and "related dealers" (those affiliated with fund manufacturers) result in higher fund flows regardless of portfolio performance. The fund industry - and financial advice providers - downplayed the report, urging regulators to do more analysis before making any policy changes. The industry's automatic "no" response to virtually every investor-friendly proposal has been effective. Each time such an idea surfaces, the industry seemingly puts up roadblocks rather than making constructive suggestions to move proposals forward. The CSA analysis is now in- there will be no ban on embedded commissions and no over-arching best interests standard. It will be at least a decade before this issue will be revisited- for now, reform is over save the modest proposals in this consultation,

Stromberg report on mutual funds (1998)
http://www.sipa.ca/library/SIPAdocs/Stromberg_InvFunds-Oct1998.pdf

Interview with Glorianne Stromberg | Advisor.ca
The conclusion: Resolving. Conflicts of interest in the best interests of clients is an oxymoron.
http://www.advisor.ca/lessons-from-20-years-of-advisors-edge-full-interview#glorianne

New Mutual Fund Advice Guidelines Underwhelm Advocates for Consumer Investors | The Motley Fool Canada
https://www.fool.ca/2018/06/22/new-mutual-fund-advice-guidelines-underwhelm-advocates-for-consumer-investors/

Personal Investor: **Canadian regulators fail to protect investors from hidden fees** - Article – BNN Bloomberg
https://www.bnnbloomberg.ca/personal-investor-canadian-regulators-fail-to-protect-investors-from-hidden-fees-1.1097271

A Dissection of Mutual Fund Fees, Flows, and Performance by Douglas J. Cumming, Sofia Johan, Yelin Zhang: SSRN
Abstract: This paper provides a dissection of both mutual fund fees and flows into several categories, and presents evidence that relates specific components of fees to flows, and

fees and flows to performance. For stand-alone funds that cannot be purchased directly from fund managers, fees that compensate fund advisors when investors maintain their portfolio positions, and fees that penalize investors for early withdrawal, have a much flatter flow-performance relationship ("flow-performance slope"), and higher flows regardless of past performance ("flow-performance intercept"). Further, the data indicate that flow-performance intercept and slope are significantly negatively and positively, respectively, related to future risk-adjusted performance, which is consistent with the view that flow-performance provides a strong incentive to generate future returns. These findings are quite stable over time, and robust to numerous sensitivity checks. We find some consistency in the evidence but less robust statistical significance amongst the subsamples of direct purchased funds, and among fund-of-funds.https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2678260

Web of Deception: SIPA
http://sipa.ca/library/SIPAsubmissions/WEBofDECEPTION_2017.pdf

Why do investors lose money?
https://www.canadianmoneysaver.ca/index.php?p=download&file=2571

Giving Small investors a Fair Chance: SIPA 2004
http://www.sipa.ca/library/SIPAdocs/CARP-SIPA_Report_20040928.pdf

No consensus on CSA's best interest proposal | Investment Executive
"…The Ontario Securities Commission (OSC) believes that investors deserve "nothing less" than a best interest standard, says Maureen Jensen, the OSC's chairwoman. She points out that the research and consultations that regulators have carried out during the past four years have revealed that clients believe there already is a best interest standard and that the investment industry tells clients that it acts in their best interests. "It's time for the standard to match," she says..".
https://www.investmentexecutive.com/news/from-the-regulators/no-consensus-on-csas-best-interest-proposal/

Conflicts of interest (ASIC research).
Managing conflicts of interest when providing personalized financial advice is virtually impossible. To even suggest that such an advisory process is viable is laughable.
http://download.asic.gov.au/media/4632718/rep-562-published-24-january-2018.pdf

FCA Handbook Chapter 10 Conflicts-of-interest
https://www.handbook.fca.org.uk/handbook/SYSC/10.pdf

The Status Quo Is Not An Option: Keynote Address M. Jensen Sept. 2016
http://www.osc.gov.on.ca/en/NewsEvents_sp_20160927_status-quo-not-an-option.htm

Banning Trailer Commissions Could Give Canadian Investors a Wealth of Lower-Cost Products | The Motley Fool Canada
http://www.fool.ca/2017/01/13/banning-trailer-commissions-could-give-canadian-investors-a-wealth-of-lower-cost-products/

The good, the bad, and the shameful: Rob Carrick reviews Canada's 100 biggest mutual funds - The Globe and Mail
"…It's scandalous that embedded commissions won't be prohibited." I would say the majority of products are not worth investors' money," said Dan Hallett, a long-time mutual fund analyst who is now vice-president at HighView Financial Group. "There's a lot of really mediocre product, and mediocre is kind in some cases. That's what it comes down to."..
https://www.theglobeandmail.com/investing/markets/inside-the-market/article-analysing-canadas-largest-mutual-funds-mediocre-is-kind-in-some/. This is what Canadians without DB pensions will be exposed to if the CSA has its way.

Uncovering the hidden fees: Questrade
http://media.questrade.com/downloads/manuals/crm2_free_guide.pdf

CSA proposals branded "negligible" and "embarrassingly modest"
https://m.wealthprofessional.ca/news/mutual-funds/csa-proposals-branded-negligible-and-embarrassingly-modest-244244.aspx

PMAC Supports the CSA's Consultation on Option of Discontinuing Embedded Commissions - PMAC
PMAC see the future of personalized advice in Canada as avoiding conflicts of interest
http://www.portfoliomanagement.org/pmac-supports-csas-consultation-option-discontinuing-embedded-commissions/

Why it's hard to hope for mutual fund fee reform -CSA embedded
http://www.theglobeandmail.com/report-on-business/streetwise/why-its-difficult-to-expect-mutual-fund-fee-reform-in-canada/article30907996/

Kenmar Comments KYC and Suitability Guidelines (2009)
http://www.iiroc.ca/RuleBook/ProposedPolicy/PPolicy-Notice09-0293-Comment-2009-10-09-Kenmar_en.pdf

How to Lose Market Share [a warning message to the complacent Canadian mutual fund industry] http://www.investmentexecutive.com/-/comment-how-to-lose-market-share?redirect=%2Fsearch

Change and opportunity ahead for Canada's financial advice industry: Vanguard Global AdvisorTrends report
"Financial advisors play a fundamental role in providing Canadians with valuable financial advice. But their business model is changing with many advisors shifting

towards fee-based business models driven in part by the implementation of Client Relationship Model reforms," said Jason McIntyre, head of distribution for Vanguard Investments Canada Inc. "Advisors see this as a positive development that can lead to greater client trust, fee transparency and an opportunity to communicate value." https://www.vanguardcanada.ca/advisors/articles/vanguard-news/news-from-vanguard/gat-press-release.htm

CSA reveals damning evidence of impact of embedded commissions
http://www.moneysense.ca/save/investing/embedded-commissions-hurt-investors/

Why hasn't indexing taken root in Canada? | Christopher Davis | Fund Investing | Morningstar **"...It's the incentives, stupid** The same fund companies that have little incentive to offer index funds have given advisors little reason to use them. Paying advisors far larger commissions to sell clients active funds tilts the field against index funds. The commissions, which are built into the management-expense ratio (MER) and are commonly known as trailer fees, generally add another percentage point to the management fees paid to active stock funds but add half that amount (or less) to the price tag of index funds. (Commission-based series from ETF providers like iShares, PowerShares and Purpose Investments, which have 1% trailer fees, are an exception.) The commission-based business model is on the decline, but historically fund companies have paid advisors to sell costlier funds, and they've gotten their wish...." http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?culture=en-CA&id=781441

CSA statistics Based on the CSA review of current actively managed fee-based (series F) fund offerings and their five year alphas, the data suggests that 87% of investment fund managers offering actively-managed funds today have some funds with negative alphas which could be at risk of redemption if embedded commissions were discontinued and these managers were not able to adjust their fees or improve performance. For active investment fund managers that manage funds with negative alphas, the proportion of assets at risk or redemption could be on average 53% of firm assets. This is truly a startling statistic. In aggregate, the CSA estimate that 44% of actively-managed fund assets may experience redemption and reallocation pressure to competitor investment fund managers over time if embedded commissions were discontinued and these managers were unwilling or unable to adjust their fees or improve performance .For active investment fund managers with little or no access to related party distribution , on average 59% of assets at these firms may experience redemption pressure over time assuming once again these managers were not able to adjust their fees or improve performance. We leave it to industry participants to agree or challenge these estimates. The CSA appear to be making the implicit assumption that dealing representatives and investors will act on the information.

Two ways mutual fund investors get burned; First they get scorched by fees, then behavioural silliness compounds the problem: They chase funds with strong track records
The typical Canadian ETF beats its actively managed counterpart by almost 2 per cent a year, after fees. If Canadian investors behave as poorly as those in the United States, those in actively managed funds would give up a further 1 per cent a year by chasing past returns. On the flipside (as mentioned above), Morningstar says index-fund investors outperformed their funds by 0.58 per cent annually during the same time period ended Dec. 31, 2015.If that were true in Canada, those who invest in index funds might beat those who invest in actively-managed funds by more than 3.4 per cent a year. You can make a lot more money if you can avoid getting burned.
http://www.fpinfomart.ca/doc/intranet/thelibrary/pr%7C210378%7Cntgm%7C20170203%7C266110588/

Letters to the editor: It's well past time for reforms –KK- Investment Executive
http://www.investmentexecutive.com/-/letters-to-the-editor-it-s-well-past-time-for-reforms

Regulators point out anomalies in fund sales and accounting practices | Steven G. Kelman | Fund Investing | Morningstar
The review also looked closely at certain aspects of sales practices including cooperative marketing practices, mutual fund sales conferences and fund manager participation in the sponsoring of dealer events. What investment fund managers can and cannot do is spelled out in *National Instrument 81-105 Mutual Fund Sales Practices*, which has been around since 1998. Its purpose was to discourage sales practices and compensation arrangements that raised the question as to whether the clients' interests rather than those of the sellers were being served (to quote the commentary published at the time which I prepared for IFIC).Fund managers can pay a portion of the costs of an investor conference or seminar that a dealer puts on for investors. However, the staff Notice says there was a 25% incidence rate where "cooperative marketing practices did not meet the primary purpose of promoting or providing educational information concerning a mutual fund, a mutual fund family or mutual funds generally in order to be eligible for support. "Staff also had concerns regarding mutual fund sponsored conferences. Fund managers are prohibited from paying travel and accommodations expenses of sales representatives, yet there was a 50% incidence rate of this occurring. Similarly, non-monetary benefits such as meals and entertainment were deemed excessive.
http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=655104&culture=en-CA

Financial Advisor or Investment Salesperson? Consumers Federation
http://consumerfed.org/wp-content/uploads/2017/01/1-18-17-Advisor-or-Salesperson_Report.pdf

Reshaping retail fund distribution: PWC June 2015

https://www.pwc.lu/en/asset-management/docs/pwc-am-reshaping-retail-fund-distribution.pdf

Margin of error: Why advisors shouldn't be off-book loan distributors - Investment Executive
"Interestingly, B2B Bank doesn't consider its clients to be the people who borrow from it. In its own corporate profile, B2B says its "client communities" are advisors and dealers. It sees itself as a lender "that serves a network of 27,000 financial professionals." It reassures them that "we don't compete with our clients by offering products directly to the public." No, indeed. Under this business model the manufacturer doesn't sell its products (investment loans) directly to consumers. Instead, the manufacturer's clients (advisors and dealers) are utilized, in effect, as product distributors. They're the sales force for these loans..."
http://www.investmentexecutive.com/-/margin-of-error-why-advisors-shouldn-t-be-off-book-loan-distributors?redirect=%2Fsearch

Indexing and Active Fund Management: International Evidence January 5, 2015
Abstract: We examine the relation between indexing and active management in the mutual fund industry worldwide. Explicit indexing and closet indexing by active funds are associated with countries' regulatory and financial market environments. We find that actively-managed funds are more active and charge lower fees when they face more competitive pressure from low-cost explicitly indexed funds. A quasi-natural experiment using the exogenous variation in indexed funds generated by the passage of pension laws supports a causal interpretation of the results. Moreover, the average alpha generated by active management is higher in countries with more explicit indexing and lower in countries with more closet indexing. Overall, our evidence suggests that explicit indexing improves competition in the mutual fund industry.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1830207

90% SALES 10% ADVICE: A SNAPSHOT OF THE FINANCIAL PLANNING INDUSTRY
http://www.industrysupernetwork.com/wp-content/uploads/2011/10/A-snapshot-of-the-financialplanning-industry-110930-1010version.pdf "The facts set forth in the report support the position long held by ISN that ongoing commissions and asset-based fees for advice enable planners and dealer groups to earn 'passive' income at the expense of consumers and should be banned, along with all other forms of conflicted remuneration. If ongoing asset-based fees are permitted to continue, credible reform requires that these fees be subject to a regular 'opt-in' mechanism. The ASIC [Australian Securities Commission] report has pulled back the curtain to reveal the extent to which the structure of the financial planning industry impedes planners from being able to act in the best interests of their client. The Future of Financial Advice reforms are essential to restructure this industry to serve the interests of clients, who are relying on advisers to help them save for retirement, build wealth, and otherwise manage their financial lives. However, the financial planning industry has stridently opposed the key aspects of

reform legislation that would clean up their industry. The ASIC report makes this opposition easy to understand: this is an industry built around conflicted remuneration and passive income charged to millions of unwary clients (often from their compulsory super) who receive no ongoing services. "

Banning Investment Commissions – moving beyond "if" towards "how" | Chalten Fee-Only Advisors Ltd. | Blog
We continue to emphasize that the root cause of the Caveat Emptor advice environment is management, not the front line dealer Reps. A large minority are merely trying to survive in a toxic environment and do what they can to protect their clients. The low recruitment criteria, attractive sales inducements and weak compliance systems created by Bay Street management are the cancer that permeates the so-called Wealth Management industry today.
http://www.chaltenadvisors.com/blog/banning-investment-commissions-moving-beyond-if-towards-how/

Investing industry is a drag on returns- by design
http://www.theglobeandmail.com/globe-investor/investment-ideas/strategy-lab/growth-investing/why-mutual-funds-hurt-your-returns/article4619712/"..One simple example of that drag is the fees charged by actively- managed mutual funds. Those levies take a big bite out of your returns. Andrew Hallam, the millionaire teacher and a fellow Strategy Lab contributor, has written compelling articles demonstrating that actively-managed funds underperform a broad stock market index. He's right." G&M Oct 18, 2012. , Pg B16

Conflict -of- interest part of DNA In "Conflicts of Interest and Competition in the Mutual Fund Industry," Ajay Khorana (Georgia Institute of Technology) and Henri Servaes (London Business School) examine how conflicts-of - interest in the U.S. mutual-fund industry affect competition and investor behaviour (their database covered the period 1979-1998). Overall, their paper "highlights a number of conflicts between fund families and investors," say the authors. For example, they found "no evidence that investors derive any benefit" from annual fees for marketing and distribution (12b-1 fees in the U.S). Furthermore, "fund families generally want to maximize assets under management … and the resulting management fees," an objective at odds with investors' "desire for high risk-adjusted performance at low cost."

The Genesis of DSC Mutual Funds | WhereDoesAllMyMoneyGo.com
http://wheredoesallmymoneygo.com/the-genesis-of-dsc-mutual-funds/ Shows how the trailer was born.

Leave deferred sales charges for mutual funds to the dinosaurs - Globe and Mail
http://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/leave-deferred-sales-charges-for-mutual-funds-to-the-dinosaurs/article28088507/

Talk versus action on embedded commissions ban | Advisor.ca

http://www.advisor.ca/news/industry-news/talk-versus-action-on-embedded-commissions-ban-223245

Impact of Fees on Investor Returns

Numbers and percentages.. In the past, if the benchmark return was 10 per cent and you under performed by 2% then you left 20% of this potential return on the table. Going forward if the benchmark return is 6% and investors still underperform by 2%, now the retail investor is still taking all the risk but is left one third of the potential return on the table.

Retail Financial Advice: Does One Size Fit All?
Stephen Forester, Juhani T. Linnainmaa, Brian T. Melzer, Alessandro Previtero NBER Working Paper No. 20712 November 2014
Using unique data on Canadian households, we assess the impact of financial advisors on their clients' portfolios. We find that advisors induce their clients to take more risk, thereby raising expected returns. On the other hand, we find limited evidence of customization: advisors direct clients into similar portfolios independent of their clients' risk preferences and stage in the life cycle. An advisor's own portfolio is a good predictor of the client's portfolio even after controlling for the client's characteristics. This one-size-fits-all advice does not come cheap. The average client pays more than 2.7% each year in fees and thus gives up all of the equity premium gained through increased risk-taking.
http://fbe.usc.edu/seminars/papers/F_10-3-14_LINNAINMAA.pdf

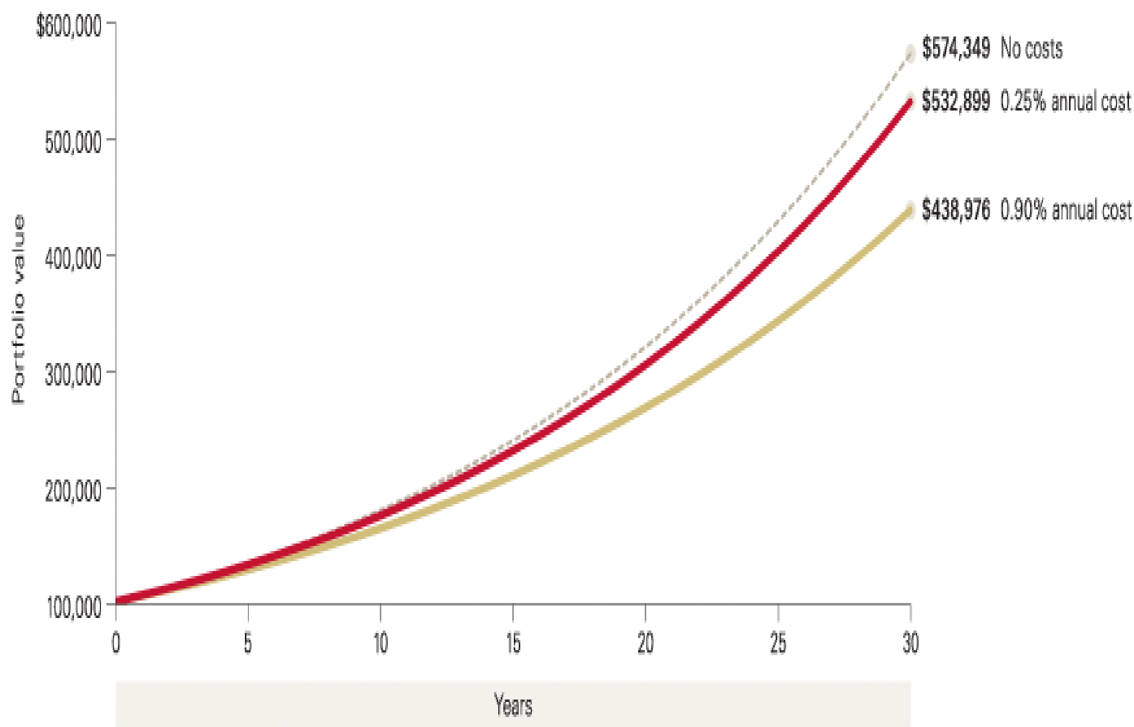
Research: The $25 billion annual mutual fund rip-off
http://cupe.ca/pensions/The_25_billion_annua
A comprehensive study by Canadian pension fund expert Keith Ambachsheer has found that defined benefit pension plans in Canada achieved annual average returns at least 3.8% higher than mutual funds with comparable investments. Defined Benefit pension funds outperformed the market by 1.23% per year, while mutual funds had average returns that were 2.6% below the market during the 1996 to 2004 period. Returns for most mutual investors were even less than this, as a result of sales fees and consistently poor selection of mutual funds by misinformed investors: buying high and selling low. This means that those with savings in mutual funds lost a total of about $25 billion a year from the higher management fees and lower returns compared to workplace pension funds. Higher management fees are responsible for about $15 billion of this.

How much do investors lose from conflicted advice? « The Mathematical Investor
http://www.financial-math.org/blog/2015/02/how-much-do-investors-lose-from-conflicted-advice/

Wrap accounts add costs but yield questionable benefits .The CSA confirms our experience with wraps. Over the last several years, wrap accounts (fund-of-fund products) have grown in popularity, now accounting for approximately 47% of long-term mutual fund assets under management, up from 37% in 2006 .Wrap .accounts hold

substantial appeal for Reps since they are per-packaged mutual fund investment portfolios which eliminate having to do any fund selection and asset allocation . In the case of a wrap, the advisor need only assess the suitability of the top level fund rather than assess the suitability of every fund in the portfolio. Notwithstanding the dramatic workload decreases that wraps provide for dealer Reps, the trailing commissions payable on wraps are the same or higher than on stand-alone equity mutual funds. We have found no evidence clients obtain more face time with Reps; instead we are told, the time freed up is used for prospecting for even more buyers. Fund manufacturers also gain by sales [AUM] of their own proprietary funds rather than using Best-in-Class funds. The client ends up with a package of expensive funds whose asset allocation is not tailored to their individual needs, personal situation and objectives.

The long-term impact of investment costs on portfolio balances
Assuming a starting balance of $100,000 and a yearly return of 6%, which is reinvested



Note: The portfolio balances shown are hypothetical and do not reflect any particular investment. The final account balances do not reflect any taxes or penalties that might be due upon distribution. Source: Vanguard.
https://personal.vanguard.com/us/insights/investingtruths/investing-truth-about-cost

A fund-by-fund break down of the hidden advice fees Canadians are paying - The Globe and Mail
http://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/table-trailer-fees/article29792039/

Investment fees cost Canadians hundreds of thousands
Next to buying a home, fees paid on investments can be the single biggest lifetime expense many Canadian households will have to deal with. Over the course of an investor's life, mutual fund fees can end up costing the average Canadian household $323,654.40, according to Nest Wealth, a Toronto-based digital wealth manager (www.nestwealth.com). "Put in context, the average Canadian household will spend $80,000 more on investment fees than they'll spend to raise their child to the age of 18," says Randy Cass, founder and CEO of Nest Wealth. "It's not surprising that Canadians feel like no matter how much they try to save, they keep falling further behind their goals."
http://www.newswire.ca/news-releases/next-to-buying-a-home-investment-fees-can-be-the-average-canadian-households-largest-single-expense-587432951.html

Morningstar research: How Expense Ratios and Star Ratings Predict Suc*cess* If there's anything in the whole world of mutual funds that you can take to the bank, it's that expense ratios help you make a better [purchase] decision. In every single time period and data point tested, low-cost funds beat high-cost funds. To see the results, click here. http://factualfin.com/blog/blog2.php/how-expense-ratios-and-star-ratings-pred In other words, Fees Count!

The Tyranny of Compounding Fees: Are Mutual Funds Bleeding Retirement Accounts Dry?
https://www.onefpa.org/journal/Pages/The%20Tyranny%20of%20Compounding%20Fees%20Are%20Mutual%20Funds%20Bleeding%20Retirement%20Accounts%20Dry.aspx

Lessons from proprietary mutual fund returns - Yahoo! Finance Canada
http://ca.finance.yahoo.com/news/lessons-proprietary-mutual-fund-returns-195227448.html

A June 2015 **Morningstar report *Global Fund Investor Experience Study***
https://corporate.morningstar.com/US/documents/2015%20Global%20Fund%20Investor%20Experience.pdf shows that for Fees and Expenses, the highest-scoring country (that is, the country with the lowest costs) is the U.S., a position held since the start of this study in 2009 and reflective of the scale of this market and, as discussed later, sales practices. Australia and the Netherlands join the U.S. with an A grade. Among the lowest-scoring markets are Canada and China, which, while not the most expensive in all categories, do not have any category where fees are at an average or better level. Canada received a D- grade.

How Fund Fees are the Best Predictor of Returns | Morningstar
http://www.morningstar.co.uk/uk/news/149421/how-fund-fees-are-the-best-predictor-of-returns.aspx

Wrap mutual fund disappointment
http://www.fa-mag.com/news/wrap-mutual-fund-disappointment-12154.html

Canadian mutual fund fees are among the highest fees in the world as supported by numerous independent research studies [portfolio transaction expenses add to investor costs but are not included in the MER]. Needless to say, this severely impairs the retirement income security of Canadians. Global Fund Investor Experience Study: Morningstar June 2015
https://corporate.morningstar.com/US/documents/2015%20Global%20Fund%20Investor%20Experience.pdf

High Fees Destroy Bond Fund Performance | Morningstar
http://www.morningstar.co.uk/uk/news/95449/high-fees-destroy-bond-fund-performance.aspx

The arithmetic of all- in investment expenses: J. Bogle
A very interesting paper. Results may be different in Canada due to higher Mutfund MER's and trading expenses. Even worse for Segregated funds. Vulnerable investors, such as seniors, may be disproportionately disadvantaged according to other research. All regulators report that complaints from seniors are disproportionately high, mostly due to unsuitable investments.
http://johncbogle.com/wordpress/wp-content/uploads/2010/04/FAJ-All-In-Investment-Expenses-Jan-Feb-2014.pdf

Trailer commissions are BIG $$'s http://www.thestar.com/business/article/846861--daw-industry-defends-mutual-fund-trailer-fees According to a August 12th 2010 article by the Toronto Star's James Daw , *Industry defends mutual fund trailer fees* , a lot of money is at stake. He quotes Carlos Cardone, senior consultant with research house Investor Economics who says about $2 billion was deducted from Canadians' mutual fund assets in 2009 to pay advisers what are called trailer commissions. That compares with about $9.5 billion in the U.S., with ten times the population. The Canadian figure excludes what banks embed in their funds to pay sales and advisory staff. Bank funds hold roughly 30 % of total mutual fund assets in Canada. According to the CSA Consultation "A significant portion of the management fees earned by most Canadian mutual fund manufacturers on the mutual funds they manage is used to pay an ongoing commission to dealer firms. This payment was originally intended to compensate dealer firms for the ongoing services their advisors provide to investors after the mutual fund purchase, including investment advice. This is generally referred to as the "trailer fee" or "trailing commission"...Trailing commissions are usually paid by mutual fund manufacturers to dealer firms quarterly for as long as their clients hold investments in the manufacturers' mutual funds. Each dealer firm then pays out a portion of those trailing commissions to its representatives according to the firm's own compensation grid. Generally, under this compensation grid, the more commission or fee revenue the advisor generates for the firm, the greater the portion of that revenue the advisor gets to

keep." There is ZERO connection to the amount or quality of advice provided or any measures of client satisfaction.

How much do actively-managed mutual funds cost investors?
http://independentinvestor.info/content/view/961/236/1/0/ "When you add up the numbers for MER, taxes and load fees you come up with the following (what is sometimes called the croupier's take; see Davis 2009 Reveal the true cost of the croupier's take doc.1825).In the US -the MER, impact and load costs add up to 3.87% of fund investments. In Canada - the comparable number is 5.13%. Therefore, the typical US and Canadian equity funds needs to outperform their index benchmarks by almost 4% and by more than 5%, respectively, in the two countries before its investors do better than the market as a whole. This is a major challenge, and the odds of any active fund manager overcoming these types of numbers are very poor. And remember these numbers do not take into account expense categories 2 (non-MER MER expenses), 3 (non-traditional management fees), 4 (mutual fund shenanigans) and 7 (risk premium) in our list because we have not been able to quantify them but which are nevertheless very real expenses."

Influence of "Advisors"

Research: *What is the Impact of Financial Advisors on Retirement Portfolio Choices and Outcomes?* http://www.nber.org/programs/ag/rrc/NB10-05%20Chalmers,%20Reuter%20FINAL-revised.pdf

What Do Financial Advisors Do? | Investopedia
Does your "advisor" perform these tasks?
http://www.investopedia.com/articles/personal-finance/050815/what-do-financial-advisers-do.asp

Financial Advisors: A Case of Babysitters? by Andreas Hackethal, Michael Haliassos, Tullio Jappelli: SSRN
Abstract: We use two data sets, one from a large brokerage and another from a major bank, to ask: (i) whether financial advisors are more likely to be matched with poorer, uninformed investors or with richer and experienced investors; (ii) how advised accounts actually perform relative to self-managed accounts; (iii) whether the contribution of independent and bank advisors is similar. We find that advised accounts offer on average lower net returns and inferior risk-return trade-offs (Sharpe ratios). Trading costs contribute to outcomes, as advised accounts feature higher turnover, consistent with commissions being the main source of advisor income. Results are robust to controlling for investor and local area characteristics. The results apply with stronger force to bank advisors than to independent financial advisors, consistent with greater limitations on bank advisory services. http://www.csef.it/WP/wp219.pdf

The value of advice- an investor viewpoint
http://www.investingforme.com/pdfs/reports-studies/Advice-An-Investor-View.pdf

Why Don't Most Financial Planners Plan Finances?

A recent article http://www.milliondollarjourney.com/why-don%E2%80%99t-most-financial-planners-plan-finances.htm on financial planning stated:" While many financial planners claim to do financial planning and provide holistic advice, very few actually provide comprehensive planning with written financial plans, as taught in the CFP courses. The issue is best highlighted by Alan Goldhar, Professor of Financial Planning at York University and Manager for the Ontario Public Trustee. The Public Trustee takes over the finances for people that are mentally unable to make financial decisions. They have taken over more than $500 million in investments for 10,000 clients, most of which had a financial planner, broker or bank advisor. They interview the client and the family and then send in a team to obtain all financial documents. The shocking fact is that, of the 10,000 clients they took over, none had a financial plan! Not one!". For seniors, such a state of affairs is more than troubling.

A professional advisor can help people make the right financial decisions, decisions that are not blurred by dual loyalties. In some cases, the fee for advice, can be deducted as an expense, a tax advantage not available to investors in embedded commission funds. The scope of decisions range from budgeting, debt management, and financial planning to investing for retirement, insurance and estate planning. A professional advisor is well educated in the field (s) he/she is registered in. Depending on issue complexity, specialists in such areas a taxation, life insurance or estate planning may also be called in. Professional advisors have a fiduciary duty to clients. Traditional embedded commission advisors paid by mutual fund companies need only provide products that are "suitable" for investors. Most such advisors may have taken no more than a correspondence course and passed a multiple choice exam to be licensed. If even as only a transition move, the **qualifications** of "advisors" must be increased if the title *adviser* is to be permitted. (otherwise, regulators should mandate the title *Salesperson)*.

Advisor Risk
https://docs.google.com/viewer?a=v&pid=forums&srcid=MDQyNjM4MzIyMTkzMjczODgyNDABMTQxNTYxNzExMTMwMjcyMzE2NzEBV2lUMEYtb1ZrejBKATQBAXYy Trailer commissions are embedded in the management fee rather than shown separately. Many retail investors mistakenly believe there is no cost to buying or owning a mutual fund. They don't grasp the significance of distribution costs on Rep recommendations. Dealer Representatives aren't required to disclose all forms of their compensation, such as trailer commissions, that they earn from clients' fund investments. If mutual fund costs aren't mentioned to clients, they don't become a factor in a client's decision-making. This creates a risk for unsuspecting clients.[Costs deter only one of six investors from buying, according to an Investor Education Fund survey which is a major financial competency problem in itself.]

http://www.investingforme.com/pdfs/reports-studies/Advice-An-Investor-View.pdf

Do advisors really help reduce the buy high, sell low trap or do they contribute to it? In their study, "Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry," Daniel Bergstresser (Harvard Business School), John Chalmers (University of Oregon), and Peter Tufano (Harvard Business School) analyze a database of U.S. mutual funds from 1996 to 2004. Their objective was to compare the performance of investors who bought funds through broker-dealers to investors who purchased funds directly. They found that investors with broker-sold mutual funds experienced "lower risk-adjusted returns, even before subtracting distribution costs." They also found that investors purchasing broker-sold funds were directed into funds with "substantially higher fees" and failed to show superior asset allocation. And as for helping investors avoid behavioral biases, "regrettably, the advisers generally demonstrated all the same biases that the rest of us have." Even without this study, one only had to look at how advisors overemphasized technology funds in the late 1990s and how many advisors are overemphasizing energy, gold, and foreign funds today.

Research shows commissioned advisers add trouble not returns According to Do financial advisors improve portfolio performance?, a study of German investors at Vox by university professors Andreas Hackethal, Michalis Haliassos and Tullio Jappelli. says they don't. The reason is the old bugaboo - costs and fees. Advisors add value but ... "*Even if advisors add value to the account, they collect more in fees and commissions than they contribute.*" Apparently the authors found that richer, older people tend to use advisors more which accounts for a preliminary gross conclusion that "*Investors who delegate portfolio management to a financial advisor achieve on average greater returns, lower risk, lower probabilities of losses and of substantial losses, and greater diversification through investments in mutual funds.*" They note that the financial industry would love to grab that statement for publicity. However, the net truth is completely opposite: "*Once we control for different characteristics of investors using financial advisors, we discover that advisors actually tend to lower returns, raise portfolio risk, increase the probabilities of losses, and increase trading frequency and portfolio turnover relative to what account owners of given characteristics tend to achieve on their own.*"

In **Whose responsibility is suitability?** Lawyer Harold Geller observed: ***"Clearly, the advisor and the dealer jointly bear the responsibility to recommend an appropriate match between the product and the client. Despite widespread investment industry misunderstanding to the contrary, suitability analysis is never the responsibility of the client. IIROC Rule 1300.1(q) requires that both dealer and advisor, "when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer." MFDA Rule 2.2.1 is similar. Nowhere is this obligation for ensuring suitability imposed on the client - even***

in the case of unsolicited orders." Source: IE , May 2012 [Issues related to suitability of investments constitute the lion's share of investor complaints investigated by the Ombudsman for Banking Services and Investments-most complaints were about suitability issues. Investors who have lost money on mis-sold transactions, ones that failed to match their investment profile or goals, will seek restitution for losses claiming that the security or mutual fund was unsuitable. The vast majority of complaints to the OBSI concern securities and mutual funds, but also cover high commission products like Segregated funds, Principal Protected Notes and Scholarship trusts. About 35 % of investment complaints made to OBSI result in complainant compensation, meaning that over one third of investor complaints dealers have rejected, have been overturned by OBSI, a rate suggesting that the dealer complaint handling process is not robust/fair. .

Financial Abuse - (this insightful exposition was written several years ago before the IDA morphed into IIROC). Author Andrew Teasdale is an expert on suitability, KYC and portfolio construction)
http://moneymanagedproperly.com/new_folder/rights%20and%20abuse/financial%20abuse.htm **""...Trailer fees:** Trailer fees are annual fees paid by a mutual fund company to an investment advisor for recommending the mutual fund. The investor does not need to be told about this even though the money is paid from the investor's own funds. Likewise the advisor has no obligation to do anything for the client to earn these fees. Trailer fees and other referral type fees are an abuse of the client -advisor relationship and, unless these fees are disclosed and used to offset valid and identifiable services performed by the advisor, they increase costs and are detrimental to an individual's financial position. The greed of the industry has seriously affected the ability of mutual funds to meet the objectives and needs of the individual. Indeed, the benefits of one of the most efficient investment vehicles ever invented have been submerged under the self- interests and costs of an industry that has lost sight of its reason for being...." [The fact that trailer commissions as a percentage of "adviser" income has risen since 1996 was not known to retail investors .The lack of disclosure added to investor risks and may explain the apparent increase of leveraging and the rapid rise of wrap accounts]

Research: Legal liabilities of Financial Advisors in Canada
http://www.canadianfundwatch.com/2012/10/legal-liabilities-of-financial-advisors.html

Financial Advisors Encourage Bad Behavior
http://www.forbes.com/sites/rickferri/2012/03/30/financial-advisors-encourage-bad-behavior/

The Market for Financial Advice: An Audit Study This working paper by Sendhil Mullainathan (Harvard), Markus Noeth (University of Hamburg), and Antoinette Schoar (MIT), was recently published by the National Bureau of Economic Research (NBER), a

private, non-profit, non-partisan research organization. Most individual investors consult a financial advisor before purchasing investments. Given the central role of advisors in the investment process, Mullainathan, Noeth and Schoar tested whether financial advice serves to de-bias individual investors and thus correct mistakes they might make without these inputs, or whether advisors encourage the same bad behavior. The study defines 'good advice' as recommendations that move investors toward a low-cost, diversified index fund approach, which textbook analyses on mutual fund investing suggests. Overall, their findings suggest that the market for financial advice does not alter individual investor biases, and if anything may exaggerate existing biases. They also found that advisor self-interest plays an important role in generating recommendations that are not in the best interest of the clients. They are unwilling to lean against these biases even when they know they exist because not doing so helps them further their own economic interest.

Macro Considerations

Have active Canadian fund managers earned their keep?: Morningstar
http://www.morningstar.ca/industry/articles/Active_Passive_White_Paper.pdf

CFA Institute Integrity List: 50 Ways to Restore Trust in the Investment Industry
http://www.cfainstitute.org/about/vision/serve/Pages/integrity_list.aspx #3 **Place the client's interests before your own; #**8 **Strive for a conflict-free business model**

Risks to Customers from Financial Incentives
http://www.fsa.gov.uk/static/pubs/guidance/gc12-11.pdf [UK FSA] This is an excellent document demonstrating how incentives distort advice. After extensive research the FSA found that:
• Most firms did not properly identify how their incentive schemes might encourage staff to mis-sell. This suggests they had not sufficiently thought about the risks to their customers or had turned a blind eye to them.
• Many firms did not understand their own incentive schemes because they were so complex, making it harder to control them.
• Firms did not have enough information about their incentive schemes to understand and manage the risks.
• Most firms relied too much on routine monitoring, rather than risk-based monitoring, such as performing more checks on staff with high sales volumes.
• Some firms had sales managers with a clear conflict- of- interest that was not properly managed.
• Many firms had links to sales quality1 built into their incentive schemes that were ineffective.
• Some firms had not done enough to control the risk of potential mis-selling in face-to-face situations.

Such results have caused the FSA to essentially ban commissions

Why hasn't indexing taken root in Canada? | Christopher Davis | Fund Investing | Morningstar
"..That's not a problem for Canada's six largest banks, which have successfully used their built-in distribution network of bank branches to sell in-house funds. The banks control an increasingly large slice of long-term mutual fund assets. According to Morningstar data, the banks' combined share rose from 39% at the end of 2011 to 48% by September 2016. (Investors Group, which controls 7% of long-term fund assets, uses a distribution model similar to the banks, selling only funds with its house label through its giant national network of advisors.)..."
http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?culture=en-CA&id=781441

Study shows trust for advisors in Canada down
Entitled *From Trust to Loyalty: A Global Survey of What Investors Want*, the survey also showed that in Canada, strong ethics was the most important factor for clients. "Overall, trust globally is up from 50% to 61% so that's the good news," she says. "In Canada, we are still above the global average with 64 per cent, but that is down from the 2013 survey when we were at 76%. Globally the financial markets have done better in that timeframe, while the reverse is true for Canada, so I think that might be the rationale for the change in sentiment." http://www.wealthprofessional.ca/news/study-shows-trust-for-advisors-in-canada-down-208737.aspx and https://www.cfainstitute.org/about/press/release/Pages/02172016_128524.aspx
Fund Fact sheets littered with weaknesses
http://www.theglobeandmail.com/globe-investor/investment-ideas/fund-fact-sheets-littered-with-weaknesses/article625822/ In this piece respected fund analyst Dan Hallett discusses FF deficiencies re risk disclosure. We agree with Dan's observations and also add that we have for the past 4 years been pleading with regulators to spell out Rep/dealer conflicts-of-interest and locate fund fees disclosure ahead of performance on the Fund Facts form. Relocating cost information would give costs more prominence.

Managing conflicts of interest in the financial services industry: ASIC
The paper seems to suggest that extraordinary effort is required to "manage" conflicts but in the end ASIC concludes that if the efforts are expended, ASIC will consider the conflicts "managed" re investor protection. Corporate culture, policies, employee training, oversight and regular audit are required. Maybe better to avoid conflicts of interests altogether.
http://download.asic.gov.au/media/1327370/Conflicts_discussion_paper_April_2006.pdf

Seniors/ Retirement

Purse Strings Attached: Towards a Financial Planning Regulatory Framework
The report reveals that the pace of reform has been slow for an industry entrusted with

the retirement security of Canadian consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," notes Jonathan Bishop, co-author of the report. The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by conflicts of-interest .The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors. http://www.piac.ca/wp-content/uploads/2014/11/pursestrings_attached_final_for_oca.pdf

The Feeling's Not Mutual | Canadian Centre for Policy Alternatives
The High Costs of Canada's Mutual Fund Based Retirement System
David Macdonald FEBRUARY 25, 2015 Download
Abstract: This study compares the management fees charged by mutual funds and pension plans, and finds that high management fees will cause Canadians relying on mutual funds for their retirement income to work longer or retire with less, compared to those with pension plans. The study recommends an expansion of inexpensive workplace pension plans or public pension plans, like the CPP; and as a stopgap measure, trailers fees—the portion of mutual fund fees that go back to the advisor—could be capped or banned entirely.https://www.policyalternatives.ca/publications/reports/feeling's-not-mutual

OSC IAP Seniors Roundtable: Facilitator's Report
http://www.osc.gov.on.ca/documents/en/Investors/iap_20141212_facilitators-report-seniors-roundtable.pdf

Free Lunch Seminar Report: AARP 2009
http://www.aarp.org/work/retirement-planning/info-11-2009/freelunch.html

PROTECTING SENIOR INVESTORS: REPORT OF EXAMINATIONS OF SECURITIES FIRMS PROVIDING "FREE LUNCH" SALES SEMINARS – U.S. Securities and Exchange Commission
https://www.sec.gov/spotlight/seniors/freelunchreport.pdf

Seniors, Suitability and Ethics
http://fpawi.org/downloads/Symposium_2011/2._2011_symposium___ethics___seniors_suitability_handout.pdf

Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Conflicts of Interest in Retirement Savings | whitehouse.gov
https://www.whitehouse.gov/the-press-office/2016/04/06/fact-sheet-middle-class-economics-strengthening-retirement-security

Retirement Security - theZoomer: Television For Boomers With Zip!
Great feature story on advisors and retirement security Lawyer Harold Geller, Alan Goldhar, Keith Ambachtsheer, John DeGoey, Cary List and investor Peter Whitehouse explain the sorry situation. A strong argument for Best interests is made.
http://www.thezoomertv.com/videos/retirement-security/

According to a Broadbent Institute study **An Analysis of the Economic Circumstances of Canadian seniors** https://d3n8a8pro7vhmx.cloudfront.net/broadbent/pages/4904/attachments/original/1455216659/An_Analysis_of_the_Economic_Circumstances_of_Canadian_Seniors.pdf?1455216659 a large percentage of older, working Canadians are heading to retirement without adequate savings. Unbiased advice would help reduce the percentage.

A recent study **Old Age and the Decline in Financial Literacy** http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948627 shows the ability of the elderly to manage their money may decrease after they reach retirement age, but confidence in their ability to make good financial decisions stays the same. The study, found financial literacy declines at a consistent rate after retirement. The ability to answer basic financial questions decreases as respondents age, and this rate of decline almost exactly matches the gradual erosion of memory and problem-solving abilities later in life. This is worrisome because households aged 60 years and older control about half of the wealth in Canada. Since fewer employers provide pensions than ever before, more people are dependent entirely on their retirement savings and that in turn is dependent on trustworthy investment advice.

Protecting Seniors and Their Life Savings: Policies and Practices of Missouri's Investment Firms
A specific policy that ensures account information for senior clients is maintained, regularly reviewed, and updated is a solid approach to avoiding unsuitable recommendations. This information is vital because as investors age, their investment time horizons, and objectives, risk tolerance, family's needs and tax status may change. Liquidity becomes a higher priority, and products that were once a sound investment may no longer be suitable if money is locked up in complicated products where liquidation is possible only after a substantial penalty is paid. These changes in investment needs and goals can be recognized in a timely manner through regular account maintenance and updating.
http://www.sos.mo.gov/securities/MIPC/SecuritiesReport_ProtectingSeniorsLifeSavings.pdf

PROTECTING SENIOR INVESTORS –Compliance, Supervisory and Other Practices When Serving Senior Investors
http://iiac.ca/wp-content/uploads/Canadas-Investment-Industry-Protecting-Senior-Investors_March-18-2014.pdf

Attitudes Toward the Importance of Unbiased Financial Advice
AARP conducted a nationally representative survey of adults ages 25 and older who currently have—or who have had—a retirement savings account.
http://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2016/attitudes-unbiased-fin-advice-rpt-res-econ.pdf

The Best Interest Standards and the Elderly - Canadian MoneySaver
https://www.canadianmoneysaver.ca/the-best-interest-standards-and-the-elderly/

The Changing State of Retirement in Canada – Fidelity (Oct., 2007)
http://m.twmg.net/state_of_retirement_cda.pdf A survey of more than 2200 households shows that Canadians are on track to replace only 50% of their pre-retirement income. To maintain a comfortable lifestyle they may need as much as 80% of pre-retirement income. That's one reason that investing fees and expenses are so important.

Retirement brings new financial challenge
https://secure.globeadvisor.com/servlet/ArticleNews/story/gam/20121127/SRWEALTHMGMTQAMPAATL The investor de-accumulation phase will have a major impact on the advice industry. Drawing down assets in retirement encompasses more than simply ensuring that clients have enough money to cover living expenses and such lifestyle choices as vacations and golf fees each year, but also that clients are not pulling so much out of retirement nest eggs that they are bumping into higher and higher tax brackets. Retirement income planning, covers just how much income people should draw from various sources: tax-deferred, tax-exempt and taxable income accounts. This is true financial planning and is significantly different from transaction based selling of mutual funds. The Regulatory and fund industry implication are self -evident. We're surprised there is so little debate about opening up a supplemental tranche of CPP as an obvious and elegant solution to most retirement concerns being discussed. Securities regulators are not qualified and ill-suited to develop retirement incomes policies in Canada. Canadians at large are not willing allocators of capital. It's something they are forced into doing in the absence of alternatives. Many cost and behavioural finance concerns would be resolved with the CPP option. Flaherty came close to going this route at the PEI first ministers conference but caved to the insurance lobby and we got the stillborn PRPP instead. We stand with Keith Ambachtsheer and Malcolm Hamilton in support of an expanded CPP.

White Paper: The "advice gap"? Kenmar Associates
http://www.canadianfundwatch.com/2015/11/white-paper-advice-gap.html

The Retail Fund Investor Profile

The Canadian Securities Administrators' (CSA) 2016 edition of its investor education survey found that a growing number of Canadians are relying on advisors, with 56% reporting that they utilize an advisor, up from 43% in 2006 when the CSA first carried out the survey.
Moreover, investors cited advisors as their primary source of investing information and credited their advisors as the reason for reassessing their risk tolerance in the past year. The CSA survey found that 61% reviewed their level of risk tolerance during the year, up from 49% in 2012.This supports the need for a best interest standard as proposed by FAIR Canada and other investor advocates.

Retail mutual fund investors do not understand the adverse impact of fees over time i.e the de- compounding of returns [studies show that the majority of mutual funds do not meet benchmark over 10 or even 5 years]. This results in clients losing a significant amount of market returns over a 20-30 year investment horizon due to fees.

BCSC study confirms investors need to learn more about fees
The first phase of the research, which Innovative Research Group conducted on behalf of the BCSC this past November and December, found that 28% of survey participants don't know how their advisors are paid while 36% are not familiar with the types of fees they pay. The survey also found that 51% of investors say they know what they paid in direct fees over the year, but just 34% know the impact of indirect fees on their investments. Furthermore, the research reveals that only 44% of survey participants understand that paying 1% more, or less, in fees will impact their returns.
http://www.bcsc.bc.ca/News/News_Releases/2017/06_BCSC_study_confirms_investors_need_to_learn_more_about_fees/ This suggests that securities regulators need to do more targeted investor education on the de- compounding effect of fees on long -term returns.

Opinion News: Opinion: **Why the time to eliminate trailers has come**
".., The mutual fund industry has no moral authority left when it comes to retaining embedded compensation. The Cummings report has shown that embedded compensation causes conflict and, as such, the people who are pro client choice are effectively pro conflicted advice..."- John DeGoey http://www.wealthprofessional.ca/opinion/opinion-why-the-time-to-eliminate-trailers-has-come-207554.aspx

What Investors Want: CFA Institute
https://blogs.cfainstitute.org/investor/2016/02/18/what-investors-want-2/

Regulating remuneration systems: distribution of financial products - Oxera
http://www.oxera.com/getmedia/c28539cd-c6dc-42e4-9940-a624b0ff47ea/Remuneration-systems_Final-report_Jan2015.pdf.aspx?ext=.pdf

DIY Investing Is the Only Way to Avoid Conflicts of Interest
http://www.doughroller.net/investing/conflicts-of-interest-diy-investing/

Many Canadians on shaky financial ground
http://m.wealthprofessional.ca/news/many-canadians-on-shaky-financial-ground-217634.aspx

Research: Mutual Fund Investors: Sharp Enough?
Who are mutual fund investors? The answer is critical to regulatory policy. The mutual fund industry portrays fund investors as diligent, fairly sophisticated, and guided by professional financial advisors. The SEC paints a more cautious portrait of fund investors, though touts improved disclosure by the fund industry as a sufficient antidote. However, an extensive academic literature finds that fund investors are unaware of the basics of their funds, pay insufficient attention to fund costs, and chase past performance despite little evidence that high past fund returns predict future returns. These findings suggest that policymakers should rethink current regulatory policy. Disclosure may not be enough. http://ideas.repec.org/a/ris/jofitr/0948.html

Research**: Investor behaviour and beliefs: Advisor relationships and investor decision-making study** OSC Investor Education Fund
http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf . In summary, advisors are the key influence in investor decision-making. Investors rely upon their advisor for planning and asset mix advice, as well as advice on what specific investments to buy. Other sources of information are secondary to the advisor's opinion. Investors trust their advisor to provide advice that benefits the client first. This trust is underpinned by a belief that their advisor has a legal responsibility to 'put the client's best interest first'. With this as a foundation of investor belief, investors find little reason to be concerned about fees, and perhaps as a result, fewer than half of advisors disclose what they are paid..". Another troublesome finding is that disclosure of trailing commissions declines as the age of the investor increases. Some 40% of 20-39 year olds agree that trailing commissions were disclosed versus 24% for age 40-59 and just 18% for those age 60+. This suggests to us that a seniors vulnerability issue has developed.

The sad fact is that most "advisors" are acting as salespersons with no regulatory requirement to provide financial planning or indeed, any particular advisory service. This huge regulatory gap is what the CSA appears to finally be trying to close. [A 2012 OSC IEF study concluded "..Two-thirds of investors know little about their advisor when they enter into a relationship with that advisor. Only one-third gets to an advisor through a referral. The most common way to get an advisor is to have one assigned by a bank or financial institution. Investors trust this assigned advisor, because they trust their financial institution to do what is best for them..."]

Investor Awareness Booklet

Enhancing the Client-Financial Advisor Relationship (Presented by Onus Consulting Group) Evaluating Your Financial Advice While Gaining a Better Understanding of Canada's Retail Investment Industry
http://www.onusconsultinggroup.com/uploaded_files/InvestorAwarenessBooklet.pdf

White Paper: The "advice gap"? Kenmar Associates
http://www.canadianfundwatch.com/2015/11/white-paper-advice-gap.html

Is this the end of the line for trailer fees? Aka commissions: Vanguard
" Given how common trailer fees are in the mutual fund industry, any hint that commissions may be limited (or even banned as in the United Kingdom and Australia) naturally raises alarm bells from advisors worried about the impact of any restriction on compensation. Our Vanguard colleagues in the U.K. have reported that the advisors who weathered the commission ban best were those who proactively decided to adjust their practices to thrive and not just survive. Many shifted to a fee-based compensation structure, as Vanguard has advocated in our advisor's alpha framework. Our own recent global survey of advisors found this view was shared by a majority, with 83% of Canadian advisors surveyed indicating a fee-based model was better for their practices than a commission-based model, as the illustration shows."
https://www.vanguardcanada.ca/advisors/articles/research-commentary/vanguard-voices/is-this-the-end-of-the-line-for-trailer.htm?lang=en Report at
https://www.vanguardcanada.ca/documents/global-advisor-trends-en.pdf

Miscellaneous

G20 HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION
See section 6 conflicts of interest
https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf

TR14/4 – Risks to customers from financial incentives – an update - Financial Conduct Authority https://www.fca.org.uk/news/tr14-4-risks-to-customers-from-financial-incentives

The motivations, needs and drivers of non-advised clients: FCA
https://www.fca.org.uk/publication/research/non-advised-investors-research-paper.pdf

Rethinking Mutual Fund Pricing, Entirely: Morningstar
http://news.morningstar.com/articlenet/article.aspx?id=788545

Supervising retail investor advice: inducements -FCA
https://www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf

Impacts of conflicts of interest in the financial services industry: U.D DOL
https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/proposed-regulations/1210-AB32-2/conflictsofinterestreport4.pdf

Funds overpriced? Various studies, including Standard & Poor's well-known SPIVA reports, have shown that most funds fail to outperform their relative benchmark index fund. In some cases, the fund underperformance can be attributed to the fund's higher incremental costs relative to the benchmark's fees. In fact, a recent study concluded that a large percentage of actively managed mutual funds are priced to fail, as their fees and other costs sometimes negate their actual outperformance of their benchmarks based purely on returns...." https://iainsight.wordpress.com/2017/01/08/the-gotcha-that-wont-go-away/

FCA cracking down on inducements Report at https://www.fca.org.uk/news/inducements-conflicts-interest-thematic-review-keyfindings Trailer commissions not the only way advice is skewed.

UK FCA suggests reforms that would make financial advice and guidance work better for smaller investors http://www.fca.org.uk/news/reforms-will-make-financial-advice-and-guidance-workbetter-for-consumers Some of the ideas would work well in Canada too and should be considered by the CSA/Government.

Other Related Materials

There is not enough research to demonstrate that "advisors" actually contain bad investor behaviours as often cited by industry participants. In fact a number of papers suggest the opposite effect. The short 6-7 year average hold period for mutual funds in Canada is evidence of sorts that investor behaviour is not being contained by "advisors". We have seen accounts churned, funds exchanged upon maturation of the DSC hold period, fund recommendations dramatically altered when a new advisor takes over an account etc. Blaming the investor is easy but salespersons have some accounting to do.

It's time to ban embedded fees - Investment Executive

"...One of the biggest beneficiaries of such a move is likely to be independent advisors. For too long, advice has been devalued by embedded compensation, which distorts the market for advice and undermines advisors' value to clients. Trailer fees work well for the investment fund companies and for dealers because trailers serve as a powerful incentive to accumulate assets - but these fees don't reward superior advice to clients and don't allow high-quality advisors to distinguish themselves. That's why advisors should embrace the CSA proposal to eliminate embedded compensation as a once-in-a-lifetime opportunity to shed a system that devalues their service, deters them from developing into genuine professionals and often compels them to be simply salespeople..."
http://www.investmentexecutive.com/-/it-s-time-to-ban-embedded-fees?redirect=%2Fsearch

Canadian Fund Watch**: Kenmar review of "A Major Setback for Retirement Savings: Changing how Financial Advisers are Compensated could Hurt Less-Than-Wealthy Investors Most "**
http://www.canadianfundwatch.com/2016/04/kenmar-review-of-major-setback-for.html

Self-assessment tool to manage conflicts of interest: IIAC
http://iiac.ca/wp-content/uploads/Conflicts-of-Interest-Self-Assessment-and-Materiality-Weighting-Considerations-June-1-2012.pdf

Is Conflicted Investment Advice Better than No Advice?: NBER
http://www.nber.org/papers/w18158

Supervising retail investor advice: inducements and conflicts-of-interest -FCA
https://www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf

Collapsing Arguments for Conflicted Advice | Huffington Post
http://www.huffingtonpost.com/dan-solin/collapsing-arguments-for_b_8311552.html

Fund Stewardship Matters: Morningstar Research Shows Link Between Good Stewardship and Strong Performance
Morningstar evaluated the 27 Canadian fund providers to which Morningstar analysts had assigned a 2010 Stewardship Grade. The group includes both large and smaller providers, and represents approximately 75 percent of the industry's assets and 1,500 distinct funds. Among this group, Morningstar analysts assigned five firms a Stewardship Grade of "A," six firms received a "B," 15 firms received a "C," and one firm received a "D." Overall, Morningstar found that fund companies with higher Stewardship Grades had better-performing funds during the study period, as measured by their Morningstar Success Ratios.http://www.prnewswire.com/news-releases/fund-stewardship-matters-morningstar-research-shows-link-between-good-stewardship-and-strong-performance-for-canadian-fund-companies-277431651.html

Financial Illiteracy meets conflicted advice: John Turner
http://www.actuaries.org/stjohns2016/presentations/Tue_Plenary_Turner.pdf

Opinion: Conflicted advisors – when weekly sales targets take priority over client care
http://m.wealthprofessional.ca/opinion/opinion-conflicted-advisors--when-weekly-sales-targets-take-priority-over-client-care-207865.aspx

Carl Richards: **Six Things the Investment Industry Can Do to Change the World |** CFA Institute Annual The "behavior gap," he said, comes from measuring time-weighted versus dollar-weighted rates of return. "Most of the money in a mutual fund is advised; it

gets there because an adviser put it there. So if there is a big difference between the time-weighted and dollar-weighted rate of return on mutual funds, and most of the money is advised, we are part of the problem," he said. "We are constantly creating new products. It is easy to sell to clients what they want, but it takes a bit more to have them purchase what they need, and often we are facilitating this mess we have created. Our industry has to be one of the most opaque industries in the world. Nobody really knows what they pay. It's really hard to even figure it out."
https://annual.cfainstitute.org/2014/05/06/carl-richards-six-things-the-investment-industry-can-do-to-change-the-world/

FAIR Canada **» Reforming Mutual Fund Fee Structure Critical For Canadians**
http://faircanada.ca/whats-new/reforming-mutual-fund-fee-structure-critical-for-canadians/

FAIR Canada » **Report to CSA Indicates Trailing Commissions Impact Fund Sales to the Detriment of Investors**
http://faircanada.ca/whats-new/report-to-csa-indicates-trailing-commissions-impact-fund-sales-to-the-detriment-of-investors/

Trailers paid to on-line brokers
We do not understand why IIROC permit trailer commissions to be received by online brokers transacting class A mutual funds. Regardless of the outcome of this consultation, IIROC should use its enforcement powers to prevent online brokers from receiving cash for advice that they do not and cannot provide. There is no way this can be considered as dealing fairly, honestly and in good faith with clients.

It's time we Do Something' About Mutual Fund Fees in Canada: OSC Chair Jensen
http://bloombergtv.ca/2016-09-07/news/its-time-we-do-something-about-mutual-fund-fees-in-canada-osc-chair/

Conflicted advice and second opinions: Lowenstein
http://www.cmu.edu/dietrich/sds/docs/loewenstein/ConflictedAdvice2ndOpinions.pdf

Ambachtsheer and Waitzer comment letter to CSA re Best interests
http://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/com_20160909_33-404_waitzere-ambachtsheerk.pdf

The value of advice: An investor viewpoint
http://www.investingforme.com/pdfs/reports-studies/Advice-An-Investor-View.pdf

It's Time to Ban Advisor Commissions | Canadian Couch Potato on Advocis position
With an investment advisor, the situation is completely different. Selecting appropriate funds for the client is (or should be) a fraction of the overall service. An advisor's time is spent primarily on goal planning, risk assessment, tax planning, portfolio maintenance,

behaviour management and a host of other ongoing services. None of that has anything to do with financial products. So why should a professional advisor be compensated primarily by mutual fund commissions?
http://canadiancouchpotato.com/2013/06/13/its-time-to-ban-advisor-commissions/

The Gamma Factor and the Value of Financial Advice: CIRANO
This study, based on a new Canadian survey and adjusting for the causality issue, reconfirms the positive value of having financial advice. As in our earlier paper, the discipline imposed by a financial advisor on households' financial behaviour and increased savings of advised households are key to improving asset values of households relative to comparable households without an advisor. Benefitting from a subset of participants in both surveys, dropping an advisor between 2010 and 2014 was costly: those households lost a significant percentage of their asset values while the households who kept their advisor have gained in asset values.
https://www.cirano.qc.ca/en/summaries/2016s-35

How Financial Advisors Can Help Close the Behavior Gap
https://blogs.cfainstitute.org/investor/2015/07/27/how-financial-advisers-can-help-close-the-behavior-gap/

The Market for Conflicted Advice by Briana Chang, Martin Szydlowski:: SSRN
Abstract: We study decentralized markets in which advisers have conflicts of interest and compete for customers via information provision. We show that competition partially disciplines conflicted advisers. The equilibrium features information dispersion and sorting of heterogeneous customers and advisers: advisers with expertise in more information sensitive assets attract less informed customers, provide worse information, and earn higher profits. We further apply our framework to the market for financial advice and establish new insights: it is the underlying distribution of financial literacy that determines the consumers' welfare. When advisers are scarce, the fee structure of advisers is irrelevant for the welfare of consumers.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2843050

Why U.S. equity funds in Canada are so lousy | Christopher Davis | Fund Investing | Morningstar
http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=761077&culture=en-CA

Most US equity funds are priced to fail — Morningstar
http://www.evidenceinvestor.co.uk/most-us-equity-funds-are-priced-to-fail/

Fund Fees Predict Future Success or Failure: Morningstar
http://news.morningstar.com/articlenet/article.aspx?id=752485

Blowing smoke on trailer fees - MoneySense Cummings

http://www.moneysense.ca/save/investing/blowing-smoke-on-trailer-fees/

Younger investors most willing to pay for financial advice: Cerulli
http://www.investmentnews.com/article/20170104/FREE/170109984/younger-investors-most-willing-to-pay-for-financial-advice-cerulli?ito=583

Financial Advice: Does it Make a Difference? by Michael S. Finke:: SSRN
Abstract: The financial advice profession provides a potentially valuable service to consumers within an increasingly complex financial marketplace. Financial advice professionals can substitute for costly investment in financial knowledge by households. This paper provides evidence that financial advisers improve financial outcomes when the interests of the advisor and household are aligned. However, professional advice can harm consumers if conflicts of interest create high agency costs. Understanding how differences in compensation methods and regulatory frameworks affect incentives is essential to improving the breadth and quality of professional advice.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2051382

OSC Annual Report-Dealers/Advisors A recent OSC report airs concerns over advice to seniors. The Report states:
"Through recent compliance reviews or investor complaints, CRR and the Investor Office, have detected concerns related to the provision of investment advisory services or sales of products to vulnerable investors; in particular, senior investors, but also investors with other vulnerabilities (e.g. a diminished cognitive capacity, a severe or long term illness, a physical disability, mental health problems, a language barrier). Senior investors, especially those who may have diminished capacity, are vulnerable to investment advice that is unsuitable, investment fraud and financial abuse. OSC staff is concerned with issues related to senior investors because: ☐ they are growing as a demographic, both in terms of population and also in terms of household investable assets, ☐ they are relying on investments to fund retirement costs, and in some instances agreeing to invest in high-risk products to generate a desired level of income, and they may have a reduced investment time horizon to recover from financial losses, ☐ they may not understand the risks and investment features of the product they have invested in. We are prepared to take serious regulatory action when we find unsuitable investments."
http://www.wealthprofessional.ca/news/osc-report-airs-concerns-over-advice-to-seniors-other-regulatory-red-flags-211059.aspx Report at
http://www.osc.gov.on.ca/documents/en/Securities-Category3/20160721_sn_33-747_annual-rpt-dealers-advisers.pdf

Canadians deserve real price competition in mutual funds - Inside Track - Investment Executive
http://www.investmentexecutive.com/-/canadians-deserve-real-price-competition-in-mutual-funds

Regulatory Guide 246 Conflicted Remuneration: ASIC

http://download.asic.gov.au/media/1247141/rg246.pdf

.

ATTACHMENT II : Documents supporting the CSA proposed Reforms

Industry Comment Letters supported by post-consultation industry lobbyist initiatives

We are really disappointed that the CSA did not provide an Impact Analysis with the Consultation Paper. For instance, will the proposals lead to an increase in fee -based accounts? If yes, do proposed rules provide compliance and supervision sufficient guidance and criteria to determine suitability of account type? Will the added tasks required by the proposals lead to an increase in investment costs for clients? Is there reason to believe low cost indexing portfolios will be economically viable for Dealing Reps using embedded commissions as compensation? If not, will this deter the use of index Funds and the use of ETF's? Will increased advice costs limit choice for retail investors?

Do these proposals provide sufficient guidance for compliance to apply the "best interests" criterion to the advice provided? Does the existing NI31-103 complaint handling criteria provide for the resolution of complaints in the best interests of complainants? Have adequate fail-safe provisions been built in to the proposals to ensure investor protection is enhanced? For example, will clients receive better and more frequent fee transparency, be assured of enhanced SRO vigilance, see marked improvement in regulatory enforcement and receive definitive OBSI compensation decisions? Will Rep titles and proficiency be congruent? And if they are not, what sanctions will be imposed on dealers? Will these proposals lead to an increase in regulatory arbitrage? If so, what steps can be taken to reduce the impact? Perhaps most importantly, will dealers be held fully accountable for the actions and inactions of their representatives with respect to negligence, misappropriation of assets , Off Book sales and vulnerable Investor exploitation ?