

# COMMON FRONT FOR RETIREMENT SECURITY

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## Re: COMMENTS REGARDING STATEMENT OF PRIORITIES FOR FISCAL YEAR ENDING MARCH 31, 2011

Dear Mr. Robert Day:

The Common Front for Retirement Security consists of 21 organizations representing 2 million Canadians. The CFRS advocates pension and capital market regulatory reforms through political and other representations. The CFRS evolved from the Common Front for Pension Splitting (CFPS) following its successful advocacy that convinced the Federal government to implement pension splitting legislation, June 22, 2007

The CFRS believes that the current pension and retirement crisis represents a failure of capital market regulation. Retirees, directly and indirectly have suffered significant losses to their financial security that in many cases cannot be recovered. We believe that it is imperative that public confidence be restored for the benefit of investors and the economy. Next to the banks, pension funds and retirement savings are the largest economic engines driving the Canadian economy.

We are pleased to offer comment on your Statement of Priorities for Fiscal Year ending March 31, 2011.

The OSC website states:

*"We administer and enforce securities legislation in the Province of Ontario. Our mandate is to:*

- Provide protection to investors from unfair, improper and fraudulent practices; and*
- Foster fair and efficient capital markets and confidence in capital markets"*

This in itself indicates a conflicted mandate. As David Brown, former Chair of the O.S.C. once stated *"The problem is, we are trying to manage a giant conflict of interest."*

Delegating investor protection to Self Regulatory Organizations exacerbates the problem, reinforcing a public perception that “the fox guarding the henhouse”.

The complaint mechanisms offered by industry seem, not surprisingly, industry biased. Directly compensating victims for investment industry fraud and wrongdoing, would instill greater confidence in the system and would create a business culture based upon self interest in the ideals of fundamental principles of investor protection and fiduciary trust obligations.

The OSC Town Hall Event in 2005 provided an opportunity for dialogue with consumer/investors and also gave victims an opportunity to speak out.

The Town Hall Event was helpful, but became disappointing when follow-up meetings were not forthcoming. While talk of creating an investor panel is encouraging, the last approach attempted by the OSC was a dismal failure.

Although your OSC consultant interviewed a number of organizations and investor advocates to determine the consumer/investor viewpoint, the terms of reference were not released. As a result several parties lost faith and declined to participate. Without terms of reference and a mandate a committee would seem fruitless.

Many studies provide commentaries on consumer panels or investor advisory committees. To enhance investor protection organizations representing consumer/investor interests must be at the table.

The OSC website provides the following:

***“Our Vision***

*To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.”*

We agree, but fostering a culture of integrity and compliance has yet to achieve the desired effect. A stronger approach is needed to instill investor confidence starting with a much stricter enforcement of rules and regulations to disgorge profits from fraud and other forms of wrongdoing. Until the industry faces a reality that fraud requires restitution and other penalties it is improbable that the existing industry culture will change.

The website also indicates the OSC mandate:

***“Our Mandate***

*The OSC’s mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. The mandate is established by statute.”*

Preventive protection has not served to guard investors from losing their savings due to systemic practices of wrongdoing and fraud that at times appear to be accepted industry practice. We desperately need remedial measures and payment of restitution to the victims. Delegating investor protection to SROs allows the industry to create and control the dispute resolution mechanisms leaving investors powerless.

The OSC website describes the investment environment:

***“Our Environment***

*... At the same time, there has been a proliferation of complex securities products and investment advice (including the use of leverage, derivatives and exposure to commodities) and an increasing technological sophistication in the operations of market participants. Investors may not sufficiently appreciate the risks associated with novel investment options or new technologies. This is a particular concern in the current low interest rate environment in which many investors are trying to rebuild their portfolios after the recent market downturn.”*

The OSC seems to have a good understanding of the issues investors face. It is interesting the OSC allows and facilitates the industry's development of “novel investment options” and the widespread use of leverage that too often result in the consumer/investors placing their trust in the industry and regulators only to lose substantial portions of their savings.

Trends away from defined benefit pension plans, towards defined contribution pension plans and RRSPs exacerbates the retirement crisis. This exposes a growing number of Canadians to the capital market regulatory deficiencies and the cavalier attitude of some industry representatives

The OSC should make it clear that commercial institutions, and their agents, have a fiduciary responsibility when they are “selling financial products” and/or “providing advice”. The average consumer/investor is not equipped to determine which products are suitable for them. This coupled with the fact that the highest commissions are paid for the seemingly worst products places both consumer/investors and registered representatives in impossible positions.

Until such time as the industry and its representatives are held more accountable and forced to pay restitution to the victims of fraud and wrongdoing, consumer/investors will remain in an “Buyer Beware” environment where regulators are unwilling or unable to enforce those rules and regulations to protect investors, and continue to exempt industry from those rules and regulations.

Your declared website goals provide great optics, but what will be done and how will it be measured?

You say timely access to accurate information is an important component to investor protection. Yet the BCSC has been providing an online alphabetical list of

disciplined persons for the past ten years with records going back to 1987. The OSC has only recently participated in the CSA list of disciplined persons and only provides data going back five years. Worse yet IIROC and the MFDA appear to be exempted. If the consumer/investor does not clearly understand this, she can be misled by unscrupulous industry operators. To be effective a comprehensive list of disciplined persons needs to be publicly exposed including all of representatives regulated by the CSAs, without exception or exemption.

Many of the structured products that have resulted in investor loss have been subject to exemptive relief. If the OSC truly believes in investor protection it should weigh carefully the impact on consumer/investors when considering applications.

There are many studies that indicate the deplorable state of investor education in Canada. While we are pleased to live in a society that is based on trust, unfortunately there are some in our society who betray that trust, and as result many seniors are losing their retirement security when they are sold unsuitable products and unsuitable strategies. Selling trusting seniors leveraged plans that are based on home equity are particularly damaging. This practice should not be tolerated by regulators trusted with investor protection.

The CFRS represents 2 million Canadians who have vital interests in how reforms and regulatory changes will impact them, directly and indirectly. It is imperative that the CFRS along with other consumer/investor interests be represented in these vital discussions. Please contact me to determine how our participation can be achieved.

Dan Braniff  
Founder and Liaison  
Common Front for Retirement Security (CFRS)  
Reference attached list of member organization

## Common Front for Retirement Security Charter Members

- CARP, A New vision for Aging in Canada
- SenTax
- Small Investor Protection Association SIPA
- The Royal Canadian Legion
- Air Canada Pionairs
- Response: A Thousand Voices (RTV)
- Allstream Retirees
- Federal Superannuates National Association (FSNA) L'Association nationale des retraités fédéraux
- Alliance of Seniors – the Older Canadians Network - Toronto
- Canadian Activists for Pension Splitting/Regroupement des Canadiens pour le partage des pensions (CAPS/R CPP)
- Retired Airline Pilots of Canada RAPCAN
- Older Women's Network (Ontario)
- The Ontario Coalition of Independent LIF Holders
- Armed Forces Pensioners'/Annuitants' Association of Canada Inc.
- CBC Pensioners National Association / Association nationale des retraités de la SRC
- COMTECH, Communication and Technical Workers Credit Union
- REAL Women of Canada
- Army, Navy and Air Force Veterans in Canada
- Molson Retirees
- Canadian National Pensioners Association
- **Professional Institute of Public Servants of Canada - Retired Members Guild (PIPSC RMG)**