Submission to the House of Commons Standing Committee on Finance

Sent via email June 9, 2017

CARP welcomes this opportunity to provide the House of Commons Finance Committee (the Committee) with our views on the implications of the retail banking issues currently under review.

About CARP

CARP is a national not for profit, non-partisan association with 300,000 members across Canada. Most of our members are retired and enjoy above average education, income and net worth. They are typically most concerned about outliving their money in retirement and about their children and grandchildren, who they believe are not saving enough for retirement – like a lot of Canadians.

Issues with Current Regulatory Regime

CARP fears that Canada is becoming an international laggard when it comes to Consumer Financial Protection.

FCAC is Ineffective

Courtesy of several recent in-depth CBC reports, we are aware of allegations of upselling and forgery by employees at Canadian banks. Bank employees and former employees have reportedly told CBC News that they regularly increased lines of credit or overdraft protection without client approval or knowledge.

These revelations are particularly troubling coming as they do hard on the heels of the most recent annual report of the Financial Consumers Association of Canada (FCAC) which did not disclose any issues or concerns[1]. If the allegations by bank employees are true, FCAC is not only failing to carry out its regulatory function, but also failing to recognize its failure to do so. CARP concludes that, as currently constituted, FCAC is not up to its role as Canada's financial consumer watchdog.

Fragmented Financial Regulatory Structure Harms Consumers

Financial regulation problems in this country extend beyond FCAC. Canada has a fragmented financial regulatory environment. Different regulators enforce different standards of care for banks, securities dealers and insurance companies in their dealings with customers. Regulations and recourse differ depending on

[1] The report touted FCAC's upgraded supervision framework and characterized market conduct among federally regulated financial entities as strong, "with no major or systemic concerns". The report went on to note that FCAC investigated 708 potential breaches of federal legislation, regulations, voluntary codes of conduct and public commitments in 2015-16 and "all compliance issues were addressed in a timely and effective manner."

whether the customer is purchasing a mortgage, a security (such as a mutual fund), a GIC, a segregated fund (insurance product) or a line of credit, all of which may be purchased from different subsidiaries of the same bank.

This directly harms consumers. Because similar products are regulated by different bodies, institutions can engage in regulatory arbitrage where they seek to sell the products with the highest profits and the lowest levels of consumer protection. Because consumers routinely rely on and trust their institutions for advice, they can suffer financial loss due to lower returns or higher investment or financial service fees as a result of such self-serving financial advice.

Duplicate Dispute Resolvers Harm Consumers

The regulatory environment is further compromised because banks can choose between two dispute resolution entities, Ombudsmen for Banking Services and Investment and ADR Chambers Banking Ombuds Office. Allowing banks to choose their regulator undermines the ability of customers to obtain a fair hearing since an unfavourable decision by the dispute resolver that displeases the bank, could result in the termination of its service.

Illegitimate Ombudspersons Harm Consumers

Another significant issue is the legitimacy of so-called “ombudspersons” employed by financial institutions. There is an inherent conflict of interest when the individual charged with resolving a dispute is paid by one of the parties to that dispute. While it is in both customers’ and institutions’ best interest to have a senior official such as a VP of Customer Services available to try and resolve customer complaints, the use of the word “ombudsperson” is misleading. It can also contribute to consumer loss either because consumers settle without understanding the inherent conflict of interest, or because the time spent dealing with the ombudsperson “runs down the clock” and consumers lose the opportunity to pursue other forms of redress before their appeal window closes.

Recommendations

CARP believes the following recommendations will strengthen regulatory oversight and improve consumer protections.

Establish Principles for Consumer Protection

The existing consumer financial protection regime lacks an overarching principle that establishes the responsibility financial institutions have to consumers. This is a problem. While detailed and prescriptive rules create the appearance of an industry that is highly or even overly regulated, the absence of an overarching principle allows regulated institutions to seek out ways to mitigate or sidestep more detailed and prescriptive rules and regulations.

The existing voluntary codes and sector commitments have proven to be inadequate and ineffective. At a minimum, for vulnerable consumers there should be binding codes and mandatory complaint resolution procedures and bodies that can impose meaningful fines and robust penalties up to and including the revoking of a license or charter.

CARP supports the adoption of a set of principles that will inform and protect consumers in dealing with banks and other product and service providers. CARP encourages the inclusion of principles to support an 'age friendly' marketplace, where the challenges and limitations of older vulnerable adults are specifically taken into account.

Create a Regulatory Body with Real Enforcement Power (or upgrade FCAC's)

FCAC was established to strengthen oversight of consumer issues and expand consumer education in the financial sector but recent events suggest that it lacks the resources and/or the tools to provide adequate accountability and meaningful enforcement.

In comparison with the enforcement powers of its U.S. counterpart, FCAC is toothless. When employees of U.S. bank Wells Fargo were found to have signed up customers for products without their permission, the bank was fined U.S. $185 million. This is 370 times the $0.5 million maximum Canada's regulator, the FCAC, can levy. Such a fine is ineffective as a deterrent; it is simply a cost to the bank of doing business as usual.

CARP recommends that FCAC, or a new regulatory body, have the ability to impose mandatory complaint resolution procedures underpinned with robust investigative and enforcement powers.

Fix Systemic Flaws with Dispute Resolution

CARP urges the government to eliminate competition between dispute resolution entities as fundamentally harmful to consumers. There should only be one entity for dispute resolution which CARP believes should be OBSI, as CARP believes this role should be carried out by a not-for-profit entity.

CARP further recommends that banks be prohibited from promoting or employing so-called "ombudspersons" to resolve customer complaints.

Overhaul Disclosure Requirements

The government has used disclosure requirements as a key tool to provide Canadians with information to make responsible financial decisions. While laudable in theory, this is falling short in practice. The use of complex language and lengthy disclosure has been used by institutions to effectively hide key pieces of information. Problems with ineffective disclosures are further compounded by the lack of financial literacy among Canadians as documented by FAIR and others.

CARP calls for clear guidelines to ensure that consumers are provided with sufficient, readily-understandable information about the benefits, risks and features of financial product or services to make informed decisions about them.

The information provided should:

- give the consumer the ability to make an assessment as to the suitability of the product or service for their situation,
- be presented in a manner that is clear, simple, not misleading and appropriate for the specific delivery channel, and
- be available at appropriate times in the life cycle of the product or service.

Much like regulation of food labelling, accurate, clear, and standardized information should be required to facilitate informed decision making by consumers. Whether consumers are paying interest costs, transaction charges or set fees is far less relevant than the total cost they are paying. Effective disclosure requires that consumers be able to readily compare costs, risks and features across different offerings to make decisions that are optimal for them.

We are pleased the government is undertaking this review as a first step to better protect Canadian consumers. CARP would be pleased to meet with the committee to provide ongoing input through its deliberations.

Sincerely,

W.W. Morris

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