

About CARP

CARP (Canadian Association for Retired Persons) is Canada's largest advocacy association for older Canadians with 320,000 members from coast to coast. As a non-partisan association, CARP is committed to working with all parties in government to advocate for better healthcare, financial security, and freedom from ageism.

CARP members also advocate for changes that will affect Canada's future seniors. As capital markets play an increasingly significant role in the retirement security of Canadians, this issue is of great importance to CARP. Thank you for giving us this opportunity to comment.

Background

Since being founded in 1985, CARP has met and advocated for thousands of seniors and retirees. Based on our decades of interaction, polling and chapter meetings, we offer the following insights:

- Seniors with defined benefit pensions (providing the underlying company is secure) tend to be better off in retirement and more positive about their financial wellbeing. As defined benefit pensions are becoming increasingly rare, it is now more urgent than ever that capital market regulators protect investors.
- Seniors are frequently naïve about financial markets, salespeople, financial products and the duty of care (or lack thereof) owed to them and their investments. For example, seniors overwhelmingly believe that:
 - Financial advisors will act in their best interest, whether it is with respect to fund picks, leverage, or savings targets;
 - Titles accurately represent the skills (Vice-President) or knowledge (Seniors Specialist) implied;
 - Their assets are invested optimally for tax purposes, and
 - The costs they are paying are far less than what they are actually charged.

Individuals who are more familiar with capital markets and their participants realize that these beliefs are often misguided. While it would be wonderful to have financially literate seniors, the reality is most seniors are notⁱ. Attempts to protect investors through improving financial literacy invariably fall short. According to Daniel Fernandez and his colleagues, programs created to improve financial literacy explain less than 1% of the variance in financial behaviours studiedⁱⁱ.

Given this reality, CARP calls on the Ontario Capital Markets Modernization Task Force to adopt recommendations that will protect investors to the greatest extent possible. Not only will this assist current and future retirees, but increasing the confidence of investors also will improve the viability of Capital markets

We have focused our specific comments on this submission on the issues directly related to investor protection: disgorgement and powers to the dispute resolver. We have also

addressed the issues of access equals delivery, and proprietary shelf restrictions as we believe these are particularly important to Canada’s seniors.

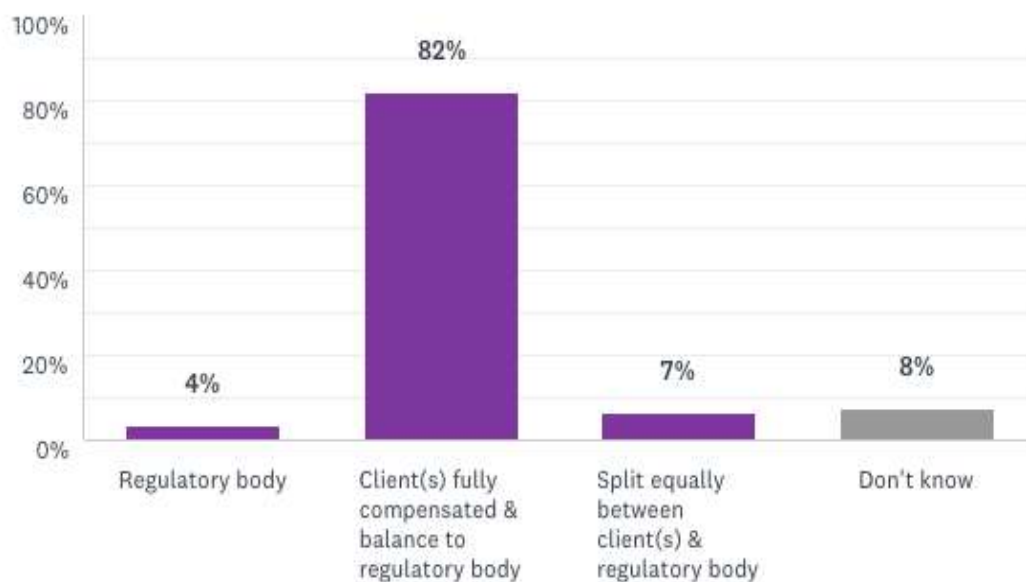
Task Force Recommendation 46

Require that amounts collected by the OSC pursuant to disgorgement orders be deposited into court for distribution to harmed investors in cases where direct financial harm to investors is provable.

CARP members are strongly in favour (88% of those with an opinion)ⁱⁱⁱ of investor restitution as a first priority for any monies collected. While CARP believes all amounts collected should first be used to redress investors’ losses, we do support the distribution of disgorgement amounts collected by the OSC as a starting point.

Graph 1: How should fines be distributed?

If an advisor is found to have breached their duties to a client and is fined, should the fine go to:



Task Force Recommendation 47

Give the power to designated dispute resolution services organizations, such as the Ombudsman for Banking Services and Investments (OBSI), to issue binding decisions ordering a registered firm to pay compensation to harmed investors, and increase the limit on OBSI’s compensation recommendations.

Recommendation 47 - Question 1

Is it appropriate to give a designated dispute resolution services organization the power to issue binding decisions?

Yes. The current solution available to the Ombudsman for Banking Services and Investments (OBSI) to name and shame firms is ineffective.

The harms suffered by investors under the current regime have been well documented. As recently as last month, an investor was denied any compensation despite OBSI recommending compensation of over \$50,000.

Losses and inefficiencies arise because:

- Firms can refuse to make the recommended restitution, causing direct harm to investors,
- Investors know firms can refuse, so may settle for a firm's offer of less than OBSI's recommended restitution (so called low-ball offers), and
- OBSI knows firms can refuse, so may go through protracted negotiations to bring a firm on board, resulting in increased costs to all firms and delayed settlements for investors.

Recommendation 47 - Question 2

Are there other proposals that the Taskforce could consider to ensure retail investors who have been harmed and lost an amount too low to consider a court action are compensated?

Yes.

1. Adopt investor protection and restitution as a key goal of any reforms. Do not consider investor protection as an add-on, or something that is nice to have. Make it the lynch pin of all reforms and view any proposed changes through this lens.

Adequately protecting investors from harm, and ensuring they are compensated when harms arise, will improve investor trust thereby increasing capital invested and making it easier for firms to access funds.

2. Create a fund (or use an existing one) to ensure that compensation is available for investors who are owed restitution from insolvent firms.
3. Require firms to clearly note OBSI's role (with an active and visible link to OBSI's website) on their own websites.

This explanation and link should be directly above or below any reference to the firms' own internal dispute resolution service. The disclosure of OBSI should be readily visible and given equal prominence to the disclosure of a firm's internal dispute resolution service or process.

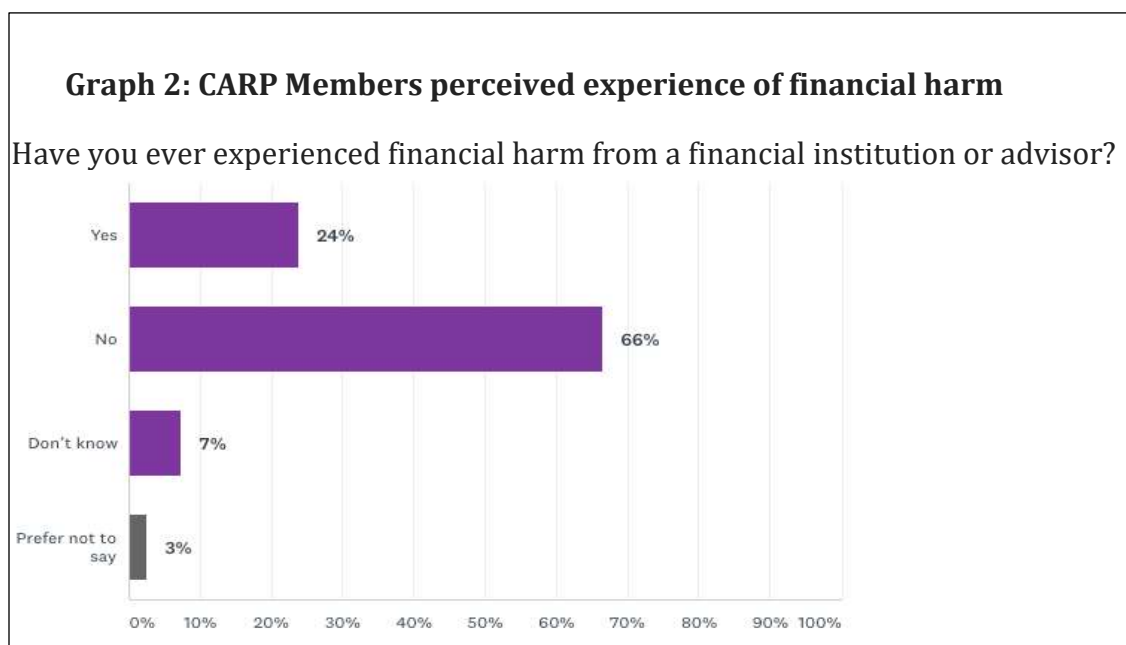
This will ensure retail investors who have suffered losses are at least aware that OBSI exists. Comparing OBSI’s case load with that of its peers shows that OBSI is underutilized by investors who would benefit from its services.

Table 1: OBSI penetration vs that of its peers

County	Ombuds Office	Investment Cases	Population (millions)	Cases per million population
Canada	OBSI	399 ^{iv}	37.8 ^v	11
Australia	AFCA	3520 ^{vi}	25.5 ^{vii}	138
UK	FOS	5125 ^{viii}	66.8 ^{ix}	77

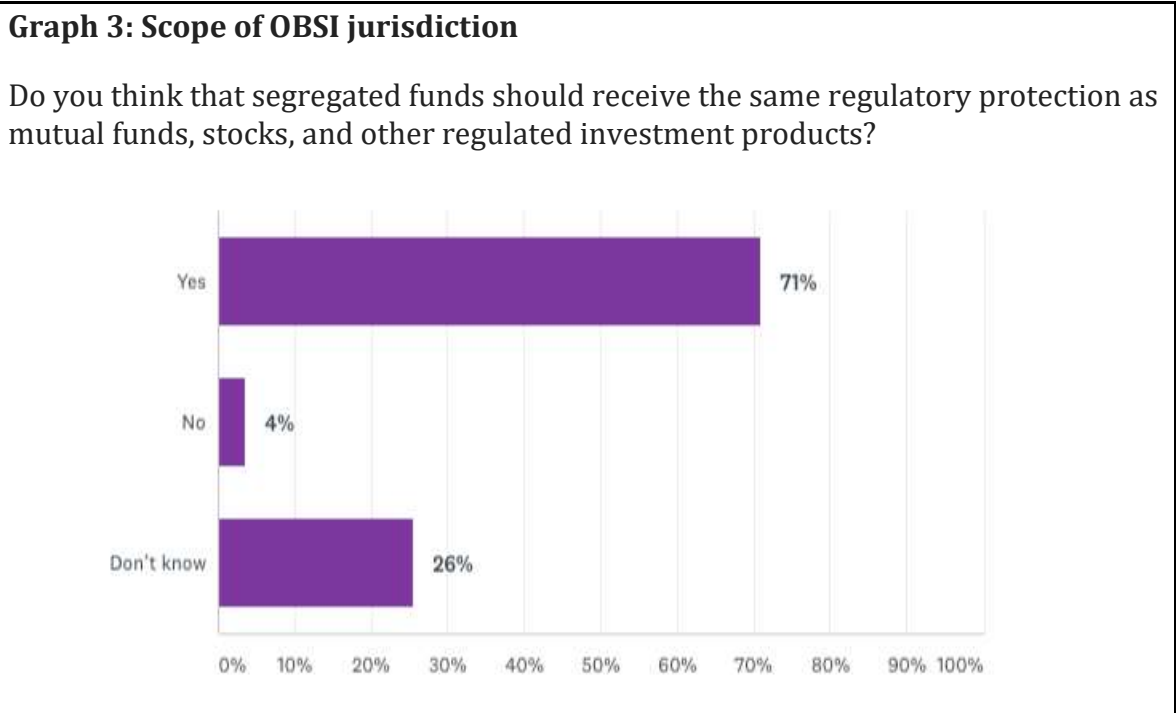
The increased awareness that would result from such exposure will also address the belief of 2/3’s of CARP members that they have been harmed by a financial institution or advisor (see Graph 2).

The function of an ombuds office is both to redress harms and educate investors. Some claims result in compensation, others in explanations. Both outcomes are valuable. Requiring improved disclosures on firm websites will increase compensation to investors and improve investor confidence in financial markets.



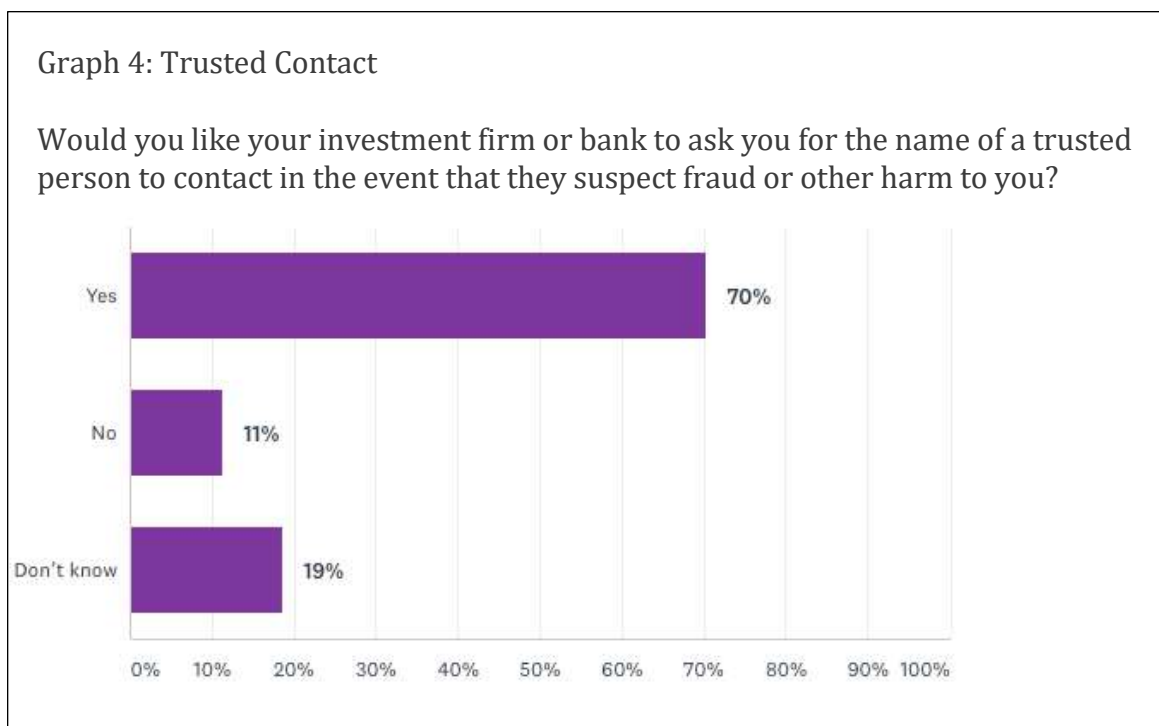
4. Amend the scope of the independent dispute resolver to include complaints related to Segregated Funds.

CARP believes that many investors do not understand the distinctions between owning mutual funds or segregated funds. Investors should not have to access two dispute resolution services to resolve a complaint with their investment portfolio.



5. Require investment firms to request a Trusted Contact

A trusted contact is an individual a bank or firm can contact if they suspect a client is being abused or treated fraudulently. In some jurisdictions, banks and investment firms are required to ask for the name of this individual for each client. 70% of CARP members support the need for a trusted contact. Of those who had an opinion, 86% supported.



Question 47 – Part 3

Do commenters consider OBSI to be suitably equipped to make binding decisions on complex capital markets matters, specifically on exempt market issues?

Yes.

CARP believes that individuals may be sold high-risk, illiquid investments that are inappropriate given their assets, incomes and time horizons.

In cases where the market value of an asset cannot be determined due to extreme illiquidity, CARP understands OBSI has assigned zero fair market value to the asset (and directed the shares to be returned).

CARP believes that OBSI's findings in these cases are entirely appropriate. CARP hopes they will act as a deterrent so no more seniors are exposed to unsuitably illiquid and risky investments, and the resulting harm to their finances, health and emotional well-being.

Question 47 – part 4

What structural or governance requirements should the OSC impose on OBSI as part of the designation process?

CARP believes that a sufficient framework already exists.

Adding an appeal procedure is neither necessary nor advisable, nor is it in keeping with other national ombuds offices. The latest independent review of OBSI noted: “All ombudsman offices we are familiar with have put in place procedures to enable reviews, not appeals, and principally through internal review processes”^x.

The review further stated:

“It would be rare for an award to be overturned on its merits, provided the position reached was one that was open to a reasonable decision maker. If a decision were to be substantively appealed to any other authority, for example the courts or an independent arbiter, it would effectively negate the purpose of an ombudsman and undermine the ombudsman’s authority.

Having an appeal process would also undermine the purpose of ombudsman offices: fair, fast and informal resolution as an alternative to the court system. We understand judicial review would not be an appropriate option given OBSI’s current mandate, however we consider that some form of review rather than appeal is desirable. We therefore consider that an internal review process should be established alongside binding authority.”^{xi}

With respect to an independent internal appeal process, CARP supports the existing internal review mechanism (adopted since the issue of the above report) where a review is conducted by staff who did not perform the initial assessment.

Issues that have impacted OBSI’s operational efficiency have tended to be externally imposed, such as restrictions on investigating systemic issues and (on the banking side) the creation of a competing ombuds office.

Structural changes should focus on ensuring OBSI has the mandate and authority to operate as an effective ombuds office.

Recommendation 47 – Question 5

What should the maximum binding compensation amount per misconduct potentially imposed on a registered firm be considering that the objective is to provide compensation to retail investors who lost smaller amounts?

CARP accepts the Taskforce’s recommendation of \$500,000 as in line with other international dispute bodies (UK’s FOS has a limit of £350,000 and Australia has a limit of AUS \$500,000). This is an appropriate increase since the original limit of \$350,000 was established in 2008. CARP also supports a biennial increase in line with CPI to ensure the threshold remains at a reasonable level.

Recommendation 47 – Other Comments

It is critical that providing a designated dispute resolver (OBSI) with binding authority and a higher compensation limit be implemented in tandem with making OBSI the sole ombuds office. Allowing multiple ombuds offices (as in the banking sector) would undercut the effectiveness of the office.

Task Force Recommendation 9

Transition towards an access equals delivery model of dissemination of information in the capital markets, and digitization of capital markets

CARP echoes the comments of FAIR Canada. CARP supports eliminating delivery of paper documents *if* the new rules ensure that investors receive specific notification of delivery of a document and how the document can be viewed.

CARP does not support adoption of “access equals delivery” if it means that as long as a person has access to a document online then he/she is deemed to have received delivery. People must be notified in a meaningful way that a document is available and how it can be accessed.

Delivery should require an individual to be notified by email that a specified document has been issued and can be viewed on a specific web page, with a link to that page provided. This is the same way that notice of availability of an investor account statement or bank statement is generally provided today.

The option of receiving a hard copy on request for people who have no or limited internet access or seniors who have difficulty with online documents should be retained, at least for a transitional period.

Task Force Recommendation 17

Increase access to the shelf system for independent products

CARP is strongly in favour of the Taskforce’s recommendation that closed product shelves/proprietary-only shelves should not be allowed in the bank-owned distribution channel.

CARP further supports the proposed requirement that all bank-owned dealers include independent products on their shelves if requested by an independent product manufacturer, unless the bank-owned dealer has determined, on a reasonable basis, that a particular product is not suitable for their clients. CARP believes this access should be available not only for stocks and mutual funds, but also for highly liquid investments. For example, bank-owned discount brokers should be required to offer competitors’ high-interest savings accounts on their platforms.

Seniors Disproportionately Impacted

Seniors are disproportionately represented in complaint statistics. For example, OBSI’s analysis of demographics for complaints filed in 2017 and 2018 revealed that 38% of complaints were from those 65 and older, although this group comprises only 30% of the Canadian population^{xiii}.

The impact of financial loss on a senior can be a life altering event. Retirees, seniors and vulnerable investors need a robust financial ombudsman service as any undue losses they incur cannot readily be recouped. With increased longevity, more seniors will face financial extremis and require taxpayer-supported social benefits.

We thank you for the opportunity to provide our comments and views in this submission. We would be pleased to discuss our submission with the Taskforce. Should you have questions or require further explanation of our views on these matters, please contact Bill VanGorder, Chief Policy Officer, CARP at vangorder@carp.ca.

Yours truly,

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ⁱ See for example, The Strategic Council's Public Opinion Research to Strengthen Financial Literacy for Seniors, June 2014 <https://www.canada.ca/content/dam/canada/financial-consumer-agency/migration/eng/resources/researchsurveys/documents/porstrengthenfinancialliteracyseniors.pdf>

ⁱⁱ Fernandes, Daniel & Lynch, John & Netemeyer, Richard. (2014). Financial Literacy, Financial Education, and Downstream Financial Behaviors. *Management Science*. 10.1287/mnsc.2013.1849. https://www.researchgate.net/publication/259763070_Financial_Literacy_Financial_Education_and_Downstream_Financial_Behaviors

ⁱⁱⁱ All polling data shown in this submission is from CARP's Member Poll, June 2020 <https://www.carp.ca/2020/06/18/new-poll-older-canadians-want-government-to-improve-protections-for-investors/#:~:text=A%20trusted%20contact%20is%20an,need%20for%20a%20trusted%20contact.>

^{iv} OBSI 2019 Annual Report

^v Statistics Canada population estimates, Q4, 2019 Accessed September 2, 2020 <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901>

^{vi} AFCA 2019 Annual Report (total 2518 less superannuation 171) annualized by 12 / 8 as only 8 month reporting period <https://afca.org.au/about-afca/annual-review/annual-review-201819>

^{vii} Australian Bureau of Statistics, Population December 31, 2019 <https://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/3101.0>

^{viii} FOS Website, 2019 statistics (Investment related products 2,832; Securities 1224; Stockbroking 1069) <https://www.financial-ombudsman.org.uk/data-insight/annual-complaints-data>

^{ix} Office of National Statistics

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>

^x Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate, page 32 <https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/2016-Independent-Evaluation-Investment-Mandate.pdf>

^{xi} Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate, page 35 <https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/2016-Independent-Evaluation-Investment-Mandate.pdf>

^{xii} OBSI Seniors Report https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/seniors-report_FINAL_EN.pdf