Lokanan, M.E. (2017). Self-regulation and compliance enforcement practices by the Investment Dealers Association in Canada: 1984 to 2008. *Journal of Financial Regulation and Compliance*, 25(1), 2 – 21

1. Introduction

Meet Chris Morgis. In 2001, a Toronto real estate developer named Chris Morgis, “lost \$2 million due to unauthorized trading by the now-defunct brokerage [firm named] Thomson Kernaghan & Co” (Hamilton, 2007). Morgis “filed complaints with the Investment Dealer Association (IDA) in March 2001[,]...but the agency did not respond for more than a year” (Hamilton, 2007). In 2002, Thomson Kernaghan & Co. went bankrupt and “its former Chair, Mark Valentine, was later found guilty of securities fraud in the United States (U.S.)” (Hamilton, 2007). Morgis noted that dealing with Canadian regulators was a “disappointing process” (Hamilton, 2007). Morgis contended that there “was smoke” and then “there was a fire, but the IDA did [not] go in” (Hamilton, 2007). He charged that since Thomson Kernaghan & Co. was a member of the IDA, he was complaining to the very people that he had an issue with, and they were “reluctant” to put their members in a situation in which they could face criminal charges (MacNeil and Solomon, 2008).

Morgis’ claims reinforced what others have asserted to be the problem with securities regulation in Canada. It is alleged that a “patchwork system of thirteen provincial [and territorial securities] regulators and self-regulatory organizations (SROs)” are ineffective at policing Canada’s securities market (MacNeil and Solomon, 2008). This allegation has led self-regulation in the securities industry to come under intense scrutiny from regulators and investors’ advocates. Small wonder, then, that, in order to eliminate “potential regulatory gaps or overlaps arising from member regulation and market regulation being split into two SROs,” the IDA (the SRO responsible for regulating investment and brokerage firms in Canada) and Market Regulation Services Inc. (RS – the SRO responsible for regulating the marketplace) merged in June of 2008, to create the Investment Industry Regulatory Organization of Canada (IIROC)

(Jenah, 2008, p. 2).¹ As a “national self-regulatory organization”, IIROC polices broker-dealer firms (Member firms) and their employees (known as registered members) who sell brokerage and investment services to prospective investors (Jenah, 2008, pp. 1-4). IIROC sets the compliance rules that govern the conduct of its registered members who must comply with them or face penalties for violations that range from a written reprimand, to permanent bans from participating in the market (Jenah, 2007, pp. 2-15).

It is expected that a case study of the IDA’s enforcement practices, more generally, will advance our understanding of self-regulatory enforcement in the securities industry. But before this can be done, it is useful to bring the story on the enforcement of complaints by the IDA’s replacement, IIROC, more up-to-date. Due to data constraints, it is not feasible to analyse IIROC with the same rigor and detail as is possible for the earlier IDA period. This is because IIROC has only been in existence for seven years, and data from the limited cases that have been heard since then will not allow for rigorous quantitative comparison between the IDA and IIROC to be carried out at this point. It is possible, however, to provide a more qualitative commentary on IIROC’s enforcement performance to date.

Anecdotal evidence posits that IIROC is sending mixed messages to market participants in their enforcement of complaints (Baines, 2012). In some cases, IIROC’s enforcement staff seems to be imposing proportionate penalties for offences committed by registrants while, in others, penalties seem to be grossly inadequate (Baines, 2012). These claims are corroborated by the Canadian Foundation for Advancement of Investor Rights (FAIR Canada). In a study of fifteen high profile cases, FAIR Canada noted that the penalties imposed by securities regulators were lax and the fines imposed were often not collected (FAIR Canada, 2011b, p. 26). A

significant proportion of these cases involved registered individuals and Member firms which are members of IIROC (FAIR Canada, 2011b, pp. 3-4).

Given that IIROC is in its elementary stages and there are not enough cases for a rigorous study, this study will focus on the enforcement of complaints by IIROC's predecessor, the IDA, and use it as a prototype case to evaluate the effectiveness of self-regulation in Canada's securities industry. The enforcement of self-regulation is complex and, to a large extent, depends on the regulatory will of the regulator to enforce the rules fully upon its members. Yet, it is surprisingly assumed that somehow, laws are self-enforcing and complied with by industry members. The point to keep in mind here is that SROs have considerable discretion. They can enforce (or choose not to enforce) the rules as they see fit; that is, they are not compelled to invoke sanctions that will have adverse consequences on their members (Brockman, 2004; Lokanan, 2014a). Hence, the present study seeks to evaluate the extent to which the IDA is policing its members and enforcing compliance by holding them accountable to rules and regulations. More specifically, the study examines securities fraud and transgression by market participants in financial markets/security trading in Canada. The paper is anchored with Stigler's (1971) economic theory of regulation to assess the relevance of a system of self-regulation in order to insure compliance with both legal and ethical standards and it seeks to address the following question: can the enforcement of misconduct by the IDA be adequate enough when the Association is the regulator which regulates self-interested economic actors (i.e., its members)?

On this note, the study makes three important contributions to the literature on self-regulation in the securities industry. Firstly, the paper employs an interesting data set to examine enforcement practices in Canadian securities markets. The wider academic field of fraud and transgression in financial markets/security trading is of significant public and policy interest. The

originality and relevance of the data to the IDA's enforcement process ensures a high degree of accuracy and reliability in the results on this issue. Secondly, since every SRO is unique in both its functions and operations, the findings of the study cannot accurately inform us about the enforcement practices of SROs in the securities industry in other parts of the world. Rather, the study has the potential to provide explanations on certain issues that can help us to understand the enforcement of complaints by SROs in jurisdictions where they continue to play a major role in monitoring the operations of market participants in the securities industry. Thirdly and perhaps more importantly, is the notion that self-regulation works best within a certain regulatory framework and is most useful when the concept is formally recognized within that framework. The self-regulatory framework is invoked when dealing with misconduct or illegal practices that go against the rules and regulations that form the legal underpinnings of the framework. While exploratory in nature, the self-regulatory framework presented here provides a foundation from which to understand the broader implications of self-regulation in industries such as accounting, medicine, law and the environment, as well as other industries that are moving in this direction. This will allow for a much broader contribution that will make explicit the effectiveness of self-regulation through different substantive areas.

The remainder of this essay is organized as follows. The paper first considers the wider debates on fragmentation of financial market regulation then examines the fragmentation issue within the context of securities regulation in Canada. Next, the economic theory of regulation and the structural problems associated with self-regulation in finance are briefly outlined. The methodology used to collect the data is then discussed, followed by a detailed analysis of the findings. Univariate analysis is used to analyze the types of offence that were committed, and the penalties imposed for committing those offences. Finally, a critical discussion on the

theoretically founded dimensions surrounding the effectiveness of self-regulation in Canada's securities industry is presented.

2. The Wider Debate on Fragmentation

The issue of fragmentation must be placed within the larger debate on financial market regulation. The focus of this debate is the effectiveness of the single regulator model as in the Securities and Exchange Commission (SEC) in the United States and the Financial Conduct Authority in the UK or the multi-agency model in Canada (see Goodhart, 2000; Lokanan, 2015; Masciandaro, 2004, 2006). The increasing integration of the banking, securities and insurance markets, as well as their respective products and instruments concomitantly poses regulatory challenges for regulators and accentuates the debate on the need for harmonization of regulation or to have regulatory agencies in charge of specialist supervision.

The arguments for the unification of financial regulation stems from the premise that financial agencies, tasks with market regulation and operating under one umbrella, will be in a better position to share information about potential "hot spots" in the market (Braithwaite, 2013; Lokanan, 2015; Simpson, 2002; Veltrop & de Haan, 2014; Williams, 2012). Financial institutions undertaking a combination of activities will have more information at their disposal to inform policies and mitigate potential disaster than the multi-agency model (Goodhart, 2000; Lokanan, 2015; Williams, 2012). A unified regulatory model, it is argued, can carry out group-wide risk assessments of problem areas that may not be adequately addressed by specialist regulators in the multi-agency model (Goodhart, 2000; Lokanan, 2015). Unified regulation generates economies of scale as expertise are interconnected across sectors and, therefore, seen as more cost effective than specialist regulation (Goodhart and Schoemaker, 1993). Regulation under the unified model is considered to be more flexible and helps achieve competitive

neutrality by avoiding excessive rule-making – a trait that characterizes agencies trading and dealing with multiple products (Goodhart, 2000; Lokanan, 2014a; Masciandaro, 2006). It is also argued that inter-agency problems such as turf wars (Williams, 2012) and political interference (Calomiris & Haber, 2014), which characterize the multi-agency model, can be subverted and addressed under a unified model (Ryder, Turksen and Hassler, 2014; Sinclair, 1997; Schwarz, 2014; Yackee, 2013). Based on these arguments, a unified regulatory model seems to be the natural fit to address the challenges that come with blurred financial markets (Masciandaro, 2006, p. 73).

On the other extreme, the arguments for a multi-agency model are as strong, if not stronger, than the arguments for the unified model (Goodhart, 2000; Lokanan, 2014a; 2015; Masciandaro, 2004, 2006). Chief among these arguments is that a unified regulatory model can suffer from diseconomies of scale. An inefficiency associated with diseconomies of scale is that regulators are involved in regulating various sectors of the market and, as such, a unified regulatory model can lead to monopoly and rigidity in operation (Patil, 2001) as opposed to a multi-agency model that encourages flexibility and fluidity in operations (Braithwaite, 2013; Lokanan, 2015). Goodhart (2004) expands upon this point on the grounds that a central regulator with too many functions can become too powerful and hinders efficiency and innovation. Following on, a unified regulator may have too many objectives ranging from safeguarding the financial system from systemic risk to protecting the public interest (Lokanan, 2015; Masciandaro, 2006). As such, it is quite possible that a single regulator may have a blurred view of the market and may inadequately differentiate between operational and systemic risks (Williams, 2012). There is also the argument that a single regulator will have supervisors for various sectors who can be captured by the very industry they are trying to regulate (Veltrop &

de Haan, 2014). Hence, some sectors may have adequate safeguards, while others may be exposed to industry capture (Calomiris & Haber, 2014; Lokanan, 2015; Yackee, 2013). In the next section, the argument that fragmentation leads to poor regulation is further elaborated upon in the Canadian case.

3. Fragmentation: the Canadian Context

It is the case that much of the “popular” discourse in Canada refers to the fragmentation of Canadian securities regulation as the root of the problematic outturns of self-regulation in the country. Legislative ambiguities, high transaction costs and inconsistent oversight are all seen as major causes of weak regulation. Indeed, the Supreme Court, in a recent opinion, compounded this issue by giving primacy to the provinces in securities regulation – not a surprising conclusion but nevertheless an important one.² Canada’s fragmented framework coupled with jurisdictional problems, and multi-jurisdictional cases means that no one agency has the legislative authority needed to address fully the offences committed by brokers and their firms. Consequently, the system of securities regulation and enforcement in Canada tends to lean towards particular types of case that fall within the regulators’ regulatory gage to the exclusion of others.

According to some commentators, the IDA (now IIROC) is embedded in a maze of regulation (Pan 2009; Urquhart, 2008). In Canada, “securities regulation is entirely in the hands of the provinces” with “each province maintain[ing] its own securities commission (Pan, 2009, p. 25). “Accountability for securities regulation extends from the securities regulator to the Minister responsible for securities regulation and, ultimately, the legislature, in each province” (Hockin Panel, 2009, p. 39). In their quest “to promote coordination of regulation across borders, the provincial commissions have formed the Canadian Securities Administrators [CSA]...,

consisting of the chairs of the thirteen provincial securities regulators” (Pan, 2009, p. 25). The CSA’s mission is to protect investors from unfair, improper and fraudulent practices and foster fair, efficient and vibrant capital markets in Canada (CSA, 2007, para. 1).

In addition to the provincial securities commissions, several SROs play an important role in the regulation of Canada’s securities markets (Pan, 2009, p. 26). Of these, the most important SROs are IIROC and the Mutual Funds Dealers Association of Canada (MFDA) (Pan, 2009, pp. 26-27). The provincial securities commissions and SROs are complimented by the Royal Canadian Mounted Police (RCMP) and Provincial and territorial Attorneys-General (CSA, 2007, p. 4). This enforcement mosaic has been criticized for being “fragmented” and not allowing “Canada to be as responsive and effective as it should be” (Hamilton, 2007, para. 24; Hockin Panel, 2009, p. 41). Concerns over fragmentation of the securities industry were also echoed by Utpal Bhattacharya, who was asked to prepare a report by the Task Force to Modernize Securities Legislation in Canada (the Task Force), “documenting the effect of enforcement of securities laws on cost of equity and liquidity [,] and ...to study Canada in as much detail as available data will allow” (Bhattacharya, 2006, p. 6). Bhattacharya’s report notes that securities regulation in Canada is “decentralized” and “fragmented” with “provincial securities commissions and self-regulatory organizations” all involved in a complex process of regulation that involves “multiple rules, decision makers and costs” (p. 6). While Bhattacharya’s report alludes to the benefits of having so many regulatory bodies, it also highlights the drawbacks – one of which is the poor enforcement of securities laws (p. 6).

As with most white-collar crimes, securities violations can evoke a range of official responses, from SROs’ investigations and hearings to criminal prosecutions (Brockman, 2004; Lokanan, 2014a; Perri and Brody, 2011). In between these extremes is the possibility of

regulatory actions by provincial securities commissions and quasi-criminal prosecutions under provincial legislation. The same activity can call for all four types of response; however, it would be rare for all four to occur. Decisions regarding which enforcement agency should pursue white-collar securities crime create a complex coordination issue. For example, at one point, the IDA and the MFDA “identified at least 84 cases of suspected fraud, forgery or misappropriation of funds to police”, but there’s no guarantee that these will be taken on (Hamilton, 2007, para. 34 - 35; also see Hyndman, 2007).

Urquhart highlights the roles of the SROs and the securities commissions in relation to the criminal justice system (Urquhart, 2008, pp. 6-9). According to Urquhart, the RCMP and the regional and municipal police forces have been inundated with calls from investors, and have expressed concerns that they “cannot continue to send all persons with complaints of wrongdoing in the investment industry and in public corporations to the provincial securities commissions” (Urquhart, 2008, p. 7). Urquhart notes that neither the provincial securities commissions nor the SROs have the legislative mandate to prosecute criminal charges under the *Criminal Code* (Urquhart, 2008, pp. 7-8). In theory, the provincial securities commissions could bring a private prosecution under the *Criminal Code*, but this would be subject to provincial prosecutors’ powers to take over such prosecutions (see Brockman and Rose, 2011, pp. 74-76). Urquhart calls for a “complete overhaul of Canada’s process for receiving complaints from the public and whistleblowers about white-collar securities crime” (2008, p. 1). More specifically, Urquhart laments the need for “a securities crime complaints intake and assessment system managed by police, rather than the investment industry’s Self-Regulatory Organizations...and provincial securities commissions” (2008, p. 6). Urquhart goes so far as to suggest that Canada should eliminate its reliance on SROs when it comes to protecting investors (2008, p. 1).

4. Economic Theory of Regulation³

The theoretical justification for self-regulation is that it works to safeguard the public interest (Brockman and McEwen, 1990; Lokanan, 2014a; Posner, 1974). This regulatory approach assumes that a system of self-regulation has sufficient powers to “investigate and discipline the unethical behaviour of its members” (see also CFA, 2007, p. 2). But, while the “protection of the public” has been used as a justification for the existence of self-regulation, legal scholars have charged that self-regulation “does not protect the public at large but only the interest groups” (Hantke-Doman, 2003, p. 165). This school of thought has its origin in Stigler’s (1971) economic theory of regulation. Stigler argued that regulation “. . . is acquired by the industry and is designed and operated primarily for its benefit” (1971, p. 3). A more basic question, in view of Stigler’s (1971) work, is to ask: how do regulations that hurt the public interest (consumers) and benefit a few stakeholders (industry) get passed?

Stigler (1971) tries to answer this question by drawing on the insights from Downs’ (1957) and Olson’s (1965) works, which state that, since group interests are collective goods, only the powerful groups are equipped to overcome collective action to realize group goals. Stigler (1991) took this argument further and argued that there is a market for regulation just as there is a market for collective goods (Williams 2004, p. 3). According to Stigler (1971), regulation is set by the industry to create advantages for its members. Stigler’s (1971) main premise is that powerful industry players coalesced with government to develop laws governing the financial market to further their interests. In so doing, the industry set these laws to benefit its members at the expense of the public interest (see den Hertog, 2010; Hedberg, 2015; Lokanan, 2015).

Posner's (1974) work on the economic theory of regulation, in many ways, expanded Stigler's (1971) hypothesis that regulation strongly benefits interest groups. According to Posner (1974), actors in the regulatory game are rational utility maximizers (1974, p. 343). That is, they seek to maximize their own self-interests and do so rationally (Posner, 1974, p. 343). Posner's (1974) central concerns here are that regulators are not efficient at serving the public good, but are efficient pursuers of their own interests. Using a Marxist orthodox framework, Posner (1974) deviates slightly from Stigler by making due allowance for struggles among interest groups which mean that not all forms of regulation will benefit the industry. As such, while Posner (1974) supports the main proposition of Stigler's (1971) hypothesis, he is slightly more inclined to suggest the superiority of legal over administrative means to address deficiencies in market regulation.

Peltzman (1976) rebalanced Stigler's (1971) explanation to account for the growing influence of interest groups on regulatory policies. According to Peltzman (1976), the political process of regulation is captured by large industry players. Regulation not only fails to counter monopolization but, on the contrary, is used to sustain it (Hertog, 2010). Peltzman (1976) went on to argue that even when regulation is influenced by big industry players, regulators trying to work in the public interest rarely succeed (Brockman, 2004; Lokanan, 2014a; Williams, 2004). Regulators are self-interested maximizers and, as such, industry can influence the outcome of regulation by playing to their interests either through financial or other forms of support.

Whereas Stigler (1971) and Peltzman (1976) argue that interest groups demand that favourable legislation be translated into a specific outcome that benefits their industry, Becker (1983, 1985) advances a model that concentrates on the effects of competition between interest groups. Becker's main proposition is that the competition "...between these pressure groups for

political influence determines the equilibrium structure of ...political favors” (1983, p. 372).

Central to Becker’s (1983) argument is that some interest groups have more resources and, as a consequence, are better equipped to exert pressure on regulators. Policies are then implemented to align with the wealth maximization of those interest groups with greater influence (and strengths) rather than those with little to no influence on regulators. The implication of Becker’s (1983) model is that regulations with a high cost to the public interest will not survive competition between powerful interest groups (Williams, 2004, p. 7).

By integrating the various permutations of Stigler’s (1971) and Posner’s (1974) versions of the economic theory of regulation with Peltzman’s (1976) additional insights into regulatory capture and Becker’s (1983, 1985) expansion of competition between special interest groups, one gets a fairly accurate picture of the political process of regulation. Can the economic theory of regulation also explain self-regulation in the securities industry? As will soon be made clear, the economic theory is perfectly applicable to industry self-regulation, but the concerns about regulatory capture have to do with the manner in which the rules guiding market conduct are policed and enforced to the advantage of specific industry players (Lokanan, 2015).

4.1. Political Elites and the “Social Interaction” of Finance

Research suggests that self-regulation does not work in finance (Begg, 2009; Lokanan, 2014b; McCaffrey and Hart, 1998). Indeed, in the period leading up to the 2008 global financial meltdown in Canada, when \$32 million of non-bank, or third-party, sponsored asset-backed commercial paper (ABCP) was frozen, the practices in the U.S. sub-prime mortgage fiasco were mirrored, in which reliance on self-regulated markets stripped away key safeguards intended to protect investors. The events surrounding Northern Rock in the UK and the collapse of the Royal Bank of Scotland also mirrored the situation in Canada and the U.S., where self-regulation was

deeply entrenched in market regulation (Begg, 2009; Ryder *et al.*, 2014). Regulators – both SROs and state regulators – washed their hands of these issues until it was too late. All national oversight authorities, by allowing the sales of sub-prime assets globally, were clearly shirking their responsibilities. They relied on self-regulation. So, this begs the questions: Why does self-regulation not work in finance? Is it a structural problem?

Financial markets and their regulation are intertwined with the political systems in which they operate (Levitin, 2014; Lokanan, 2015). As legislation and regulation are the byproducts of the political systems in place, they reflect the prevailing political ideologies of powerful interest groups (Braithwaite, 2013; Hedberg, 2015; Levitin, 2014). Political ideologies do not fall from the sky; they are manufactured by sympathetic think tanks through sponsored research and disseminated as discourse to legitimize the dominance of the financial structure espoused by political elites. Some political systems use this discourse to their advantage and support regulatory frameworks that will allow the elite (i.e. powerful interest groups) of that cadre to favour certain types of market regulation and disregard others. The political system and its elite will determine not only the regulatory approach, but whether the implementation of government regulation to curb market misconduct is feasible at all (Levitin, 2014, p. 217). Nowhere is this more evident than in Canada, where self-regulation has played a compensatory role as a result of the impasse between the federal and provincial governments in implementing a national regulator.

Others argue that the notion of a self-regulated market only serves as a hegemonic construction for the political elites to maintain the status quo (Brockman and McEwen, p. 1990; Brockman, 1998; Hedberg, 2015; Lokanan, 2015; Ryder *et al.*, 2014). This “esoteric politics” of finance sees the interaction of regulatory agencies and special interest groups working together

to maximize their own self-interests. Together they decide which strategy to pursue and which interventionist agencies (that are state funded) should be used as conduits to pursue that strategy (Braithwaite, 2013).

Despite the “social interaction” of finance with political elites and their influence on the character of policy supply, many have argued that self-regulation is superior to government regulation (Braithwaite, 2013; Gunningham and Rees, 1997; Simpson, 2002). The argument here is that industry participants benefit from the “specialized knowledge” of SROs (Brockman and McEwen, 1990) to design practical rules governing the industry (Gunningham and Rees, 1997); that they are “better informed about business practices and the potential for misconduct (organizational ‘hot spots’)” (Simpson, 2002, p. 100); they are in a better position to increase efficiency in operation through the rule-making process (Sinclair, 1997); and they have flexibility to adapt to changing market circumstances (Braithwaite 2013). Are these benefits in conflict with Stigler’s (1971) assumption that industry demands that government regulation maximizes its self-interests and disguises the problems associated with a system of self-regulation? Not necessarily.

In the case of the securities market, Stigler’s (1971) proposition makes particular sense when there are strong enough incentives for industry members to cooperate with political elites to set market standards. It may be the case that some Member firms want to shirk their duties to comply with government regulations and give themselves a competitive edge over rival firms. Removing the incentive of a free ride (i.e. shirking compliance) or making it more difficult for the regulator to detect and punish firms for non-compliance makes collective actions more favourable and industry-controlled rules quite feasible (Williams, 2004, p. 9). Thus, where the expected value to the parties as utility maximizers is high, the transaction costs are quite low and

oversight is uncertain, the self-interested nature of regulation is not only predictable, but also consistent with the economic theory of regulation (Williams, 2004, p. 9).

5. Methodology

Data for the present study came from the IDA's tribunal cases which were made available by Simon Fraser University in British Columbia. The cases were retrieved from the *Quicklaw* database and covered a time period between 1984 and June 2008. Cases decided by the IDA across Canada were identified by typing the search term "Investment Dealers Association" into the Securities Regulation Tribunal Decisions database in *Quicklaw*. The search term "Investment Dealers Association" was sorted by its relevance and retrieved 1,934 cases. I then carefully perused each case to identify the ones that were heard by an IDA hearing panel. Out of the 1,934 cases retrieved from the database, I found 708 that were heard by an IDA hearing panel between 1984 and June 2008. I had to eliminate 39 cases because they were not relevant to the study.⁴ These cases were set aside because they were atypical and would not have impacted the results in any way. The final dataset consisted of 556 cases dealing with individual offenders and 1,694 offences.⁵

5.1. Limitations of the Study and Analysis

Like any other study, this analysis has some limitations. Firstly, only one case was examined on the role of SROs in the securities industry. Due to time and resource inefficiencies, a study of the MFDA was beyond the scope of this paper. As such, the generalizability of the findings cannot be assessed. Secondly, the data for the present study only includes enforcement outcomes from disciplinary actions taken against the IDA's registrants. The data does not include the inactions of the IDA for any offences that were reported for the time period being examined and cases that were referred to the criminal justice system and the securities commissions for further

actions (see Karpoff *et al.*, 2004, pp. 8-9). Given that the data did not include information about the true severity (or occurrences) of all offences, regardless of the IDA's reaction to the offences, the way in which the IDA reacted to all of the complaints brought against registrants cannot be effectively evaluated (see also Gande and Lewis, 2009; Dyck, Morse, and Zingales, 2010).

Thirdly, the data does not contain extraneous cases that dealt with procedural issues such as notice of reinstatement, stay of proceedings, requests for adjournments, adjourned motions, adjourned hearings and hearing to set a date and motion application (e.g., see Karpoff *et al.*, 2004, pp. 7-8). Nevertheless, the available data will allow for an evaluation of the effectiveness of the IDA in the enforcement of complaints that made their way through its disciplinary system. Hence, it is important to note that the data includes enforcement outcomes only; that is, disciplinary actions taken by the IDA against individual registrants.

Fourthly, due to the nature of the data, it was not possible to do any proportionality test of the penalties imposed on the brokers for their wrongdoing. The manner in which the data is reported by the IDA does not indicate the penalties that were imposed for a particular offence. Rather, the penalties are imposed as aggregates for a series of offences committed by the registrant. For example, a registrant may be prosecuted for discretionary trading, unsuitability, failure to cooperate and unauthorized trading for which he or she may be fined \$10,000, with costs of \$5,000, and with terms and conditions attached. Given this reported outcome, it is difficult to say how much can be attributed to any particular offence in fines. Consequently, it was not possible to run a proportionality test to tease out how self-regulation works in Canada.

6. Findings

6.1. *Offences Committed by Market Participants*

Table 1 Offence Committed by Individual Offenders and Member Firms

Offences	Individuals	
	Responses	
Quasi-Criminal Offences	N	Percent
Fraud	36	2%
Forgery	53	3%
False Endorsement	5	.3%
Misappropriation of Funds	90	5%
Securities Act breach	67	4%
Total	251	14%
Conflict of Interest Offences		
Unauthorized or Improper use of information	6	.4%
Unauthorized or Improper Disclosure and/or Use of Client Information	6	.4%
Undisclosed/Unauthorized Accounts	24	1%
Undisclosed Personal Business	7	.4%
Undisclosed Personal Business with Client	84	5%
Attempt to Settle Client Claim for Compensation	47	3%
Failure to Ensure Client's Orders are given Priority	6	.4%
Total	180	11%
Improper Sales Practices		
Unsuitable Recommendations	222	13%
Failure to Know Your Client	79	5%
Failure to Update NAAF	22	1%
Order not within Bounds of Good Business Practice	71	4%
Churning	8	.5%
Discretionary Trading	232	14%
Unauthorized Trading	55	3%
Unauthorized Distribution of Sales Literature	17	1%
Unauthorized Third Party Instructions	54	3%
Outside Business Activities	33	2%
Total	793	47%
Internal Control Offences		
Capital Deficiencies	4	.2%
Failure to Establish and/or Maintain Adequate Internal Controls	10	.6%
Failure to Supervise	51	3%

Offences	Individuals	
	Responses	
Fail to Obtain and Maintain Minimum Required Margin	18	1%
Record Keeping Violations	51	3%
Total	134	8%
Cooperation, Membership, and Misrepresentation		
Failure to Cooperate	39	2%
Misrepresentation Credentials to Association upon Registration/Transfer	7	.4%
Allowing an Unregistered Person to Trade	19	1%
Conducting Business While Suspended	3	.2%
Misrepresentation	130	8%
Total	198	12%
Other	138	8%
Overall Total	1694	100%

Table 1 presents details of the type and number of offences committed by individual offenders.⁶ The most frequent type of offence committed by individual offenders was Improper Sales Practices, which made up approximately 47% of all of the offences. Discretionary trading (232, 14%) followed by unsuitable recommendations (222, 13%), were the most common offences in this category. Misrepresentation of facts to clients or Member firms was the next most common offence, accounting for 130 (8%) of all of the offences. Misappropriation of funds from clients' accounts rounded off the top four offences, comprising 90 (5%) of all offences committed by individual offenders. With the exception of misrepresentation, one commonality of the other three offences is that they are the ones that result in losses to clients' accounts. Note also that only a small sample of firms/individuals is ever caught under any regulatory regime and, as such, the proportion of offences could be greater than the findings revealed.¹ These results are not surprising and they are indications that self-regulation in Canada does not correct various types of market failure in the securities industry.

¹ I would like to acknowledge one of the anonymous reviewers for highlighting this point.

Broker and brokerage misconduct, which resulted in losses due to discretionary trading and suitability offences, generally involved elements of deception by both the investment advisor and Member firm (IDA, 2006, p. 32). Perhaps the investment advisor “is not completely open and honest as to the type of trading taking place within the client’s account” (IDA, 2006, p. 32). It is also quite possible that this deception goes unnoticed because of an uninformed investing public, members of which have no idea that their financial advisors are not allowed to trade in their accounts without prior written approval. Or, it may be that clients did give verbal consent, but such consent was either abused or misconstrued by their financial advisors to mean that they had full authority to engage in discretionary trading in their clients’ accounts. Whatever the reason, “[w]hen taking an order from a client, advisors are prohibited from using their discretion to determine factors such as quantity, security, price or time...These decisions must come from the client” (IIROC, 2012, para. 8).

Financial advisors have a fiduciary duty to make sure that any recommendations that they make are suitable for their clients (IDA, 2006, p. 27). These recommendations must be assessed “based on factors that include the client’s financial situation, investment knowledge, investment objectives and risk tolerance” (IIROC, 2012, para. 13). It is the job of the financial advisors to conduct their due diligence to make sure that the recommendations made for clients are in accordance with these stated criteria. The due diligence requirement puts the onus on financial advisors to be judicious in their selection of investment products. However, the high proportion (13%) of suitability offences casts doubt on whether financial advisors are, in fact, conducting their background research when selecting suitable investments for their clients (Goldin, 2010, p. 40).

6.2. *Enforcement Profile for Individual Offenders*

Penalties imposed will be categorized into three time periods: before the increase in fines (1984-1993); after the increase in fines (1994-2003); and on the addition of a Public Member to Chair Hearings (2004-June 2008). To make for easier comparison, the time periods will be labelled as follows: 1984 to 1993 (Period 1); 1994 to 2003 (Period 2); and 2004 to 2008 (Period 3). The range of disciplinary sanctions is set out in sections 20.33 and 20.34 of the IDA's By-Laws and may include one or any combination of the following:

- (i) a reprimand;
- (ii) a fine up to \$1,000,000 for Approved Persons and \$5,000,000 for Members per offence or an amount equal to three times the pecuniary benefit obtained as a result of any contravention, whichever is greater;
- (iii) suspension of a Member's rights and privileges or of an Approved Person's approval to act as a partner, director, officer or employee of a Member, possibly on terms;
- (iv) termination of a Member's membership and the accompanying rights and privileges or revocation of an Approved Person's approval;
- (v) expulsion of a Member from the Association or prohibition of an Approved Person's approval for any period of time; and
- (vi) imposition of terms and conditions on a Member or conditions on a subsequent approval or continued approval of an Approved Person, as the Hearing Panel considers appropriate in the circumstances (IDA, 2006, p. 4).

Table 2 Total Fines, Costs, and Disgorgement and other Non-Monetary Penalties Imposed on Individual Offenders

Year	Fines	Cost	Disgorgement	Dismissal	Bans	Suspension	Supervision	Rewriting License	Reprimand	Terms & Conditions	Total Decisions
"Period1"											
Before the Increase in Fines (1984-1993)											
1984	\$3,500							3	2		3
1985	\$3,500						1	1			1
1986	\$4,000	\$1,950				1			2	1	6
1987	\$2,000	\$1,500							1	2	3
1988	\$24,000	\$4,500				2		4	3	1	6

Year	Fines	Cost	Disgorgement	Dismissal	Bans	Suspension	Supervision	Rewriting License	Reprimand	Terms & Conditions	Total Decisions
1989	\$58,500	\$18,700				3		13	2		17
1990	\$138,250	\$18,840				2		15	9		28
1991	\$69,000	\$18,416			2		4	8	1	2	15
1992	\$164,000	\$82,480			1	1	2	11	3		23
1993	\$137,500	\$26,920		1	1	2	3	8		1	14
Total	\$604,250	\$173,306			4	11	10	63	23	7	116
Total % Non-Monetary Penalties					3%	9%	8%	53%	19%	6%	100%
"Period 2"											
After the Increase in Fines (1994-2003)											
1994	\$98,000	\$10,515				2	2	7	1	1	7
1995	\$108,000	\$22,250			1	4	8	10		1	12
1996	\$232,500	\$70,746		2	5	7	1	16		4	27
1997	\$185,000	\$58,000			5	3	4	22		2	30
1998	\$192,500	\$29,000	\$1,272		1	4	5	15		5	21
1999	\$369,000	\$99,200	\$142,659		5	4	11	21	1	7	29
2000	\$1,111,000	\$203,640	\$162,702	3	5	9	16	28	1	18	47
2001	\$850,500	\$116,817	\$34,223		3	4	4	17		14	24
2002	\$2,154,000	\$304,524	\$33,616	1	5	10	16	22		21	40
2003	\$2,379,250	\$471,161	\$314,120	2	10	9	9	16	1	14	39
Total	\$7,679,750	\$1,385,853	\$688,592		40	56	76	174	4	87	276
Total % Non-Monetary Penalties					9%	13%	17%	40%	1%	20%	100%
"Period 3"											
Addition of Public Member to Chair Hearings (2004-June 2008)											
2004	\$3,972,000	\$743,514	\$570,907	1	18	22	19	33	1	30	61
2005	\$2,012,500	\$417,298	\$652,294	1	12	9	14	20	1	13	38
2006	\$2,852,500	\$433,974	\$458,298		6	8	8	10		4	21
2007	\$1,747,712	\$434,567	\$129,653	2	9	12	15	19		10	39
2008	\$80,000	\$51,836	\$131,836		1		1	2			5
Total	\$10,664,712	\$2,081,189	\$1,942,988		46	51	57	84	2	57	164
Total % Non-Monetary Penalties					15%	17%	19%	28%	1%	19%	100%

Table 2 sets out the penalties imposed on individual offenders by the IDA hearing panels.

A first glance at the data shows that the aggregate fines steadily increased from 1984 to 2004.

When one examines the total fines imposed for each period, it is evident that the fines imposed in

Period 1 were lower than the fines imposed in Periods 2 and 3. Given that the maximum fines that could have been imposed in Period 1 were \$100,000 per offence for individual offenders, it is logical that the fines imposed in Period 1 would be lower than the fines imposed in Periods 2 and 3, when the maximum fines that could have been imposed on individual offenders increased to \$1,000,000 per offence. That said, a closer look at the data shows that the aggregate fines imposed in Period 3, when a public member was added to chair hearing panels, increased by over \$2.9 million from Period 2. This occurred even though data for Period 3 only covered approximately 4.5 years and dealt with 164 cases, as opposed to the 10 years covered and 276 cases heard in Period 2. The inverse relationship between the fines imposed and the number of cases heard from Period 2 to Period 3, indicates that the IDA's hearing panels across Canada were imposing harsher fines on individual offenders when a public member was added to chair disciplinary hearings.

Also evident from Table 2 is that the costs that the delinquent registrants were required to pay increased steadily from Period 1 to Period 3. What is noticeable from the data is the magnitude of the increase in aggregate costs over the three Periods. The aggregate costs that were ordered increased by approximately 9 times the amount from Period 1 (\$173,306) to Period 2 (\$1,385,853), and almost doubled from Period 2 to Period 3 (\$2,081,189). However, the number of cases heard in Period 3 (N=164) were much lower than the number of cases heard in Period 2 (N=276), yet the aggregate costs awarded to the IDA for conducting the investigations in Period 3 were higher than the aggregate costs awarded in Period 2. One possible explanation for this outcome is that the IDA's investigators were spending more time investigating complaints and preparing them for hearings. It could also be the case that the cost of litigating

and prosecuting cases, from initial complaint to final disposition, increased with the complexity and seriousness of the complaints or that the cost structure was adjusted upward.

Disgorgement orders were more pronounced in Period 3 than in Period 2. As can be seen in Table 2, the aggregate disgorgement of ill-gotten gains was zero in Period 1, but increased to \$688,592 in Period 2. One possible explanation for disgorgement being zero in Period 1 was that it may not have been available as an option for hearing panels to consider when imposing sanctions. Disgorgement increased by approximately 2.5 times the amount from Period 2 (\$688,592) to Period 3 (\$1,942,988). The increase in disgorgement from Period 2 to Period 3 might be reflective of the fact that hearing panels were placing more emphasis on it as a sanction than before.

Of the non-monetary penalties, permanent bans made up 3% (N=4) of penalties in Period 1 and increased to 9% (N=40) in Period 2 and 15% (N=46) in Period 3. Given that permanent bans are reserved for the more egregious cases, one can conclude that the increases in the number of bans in Periods 2 and 3 were because individual registrants were committing more serious offences in these periods or that the panels started to treat these cases more seriously than in Period 1.

A careful look at the non-monetary penalties indicate that rewriting the license and terms and conditions were the sanctions most frequently imposed on individual offenders. These findings are important because they suggest that the threat of prosecution and more severe sanctions is meaningless for some industry players and is used as a bargaining device to gain an unfair advantage in the industry. Rewriting some form of a conduct and practice exam consistently declined from 53% (N=63) in Period 1, to 40% (N =174) in Period 2 and 28%

(N=84) in Period 3. Terms and conditions made up 6% (N=7) of the non-monetary penalties imposed in Period 1, increased to 20% (N=87) in Period 2, and then decreased slightly to 19% (N=57) in Period 3. Also notable from Table 2 is that the percentage of reprimands decreased from 19% (N=23) in Period 1, to 1% in Periods 2 (N=4) and 3 (N=2) respectively. What this trend indicates is that the hearing panels chaired by a public member were less likely than the hearing panels that were not chaired by a public member to impose sanctions that required offenders to rewrite a licensing exam. However, with the exception of Period 1, both the hearing panels chaired by a public member and the hearing panels not chaired by a public member attached terms and conditions as part of the penalties.

The percentage of suspensions and supervisions imposed also increased from Period 1 to Period 3. The number of suspensions made up 9% (N=11) of all of the penalties imposed in Period 1, and increased to 13% (N=56) and 17% (N=51) in Periods 2 and 3. The average number of months per suspension order was 30. However, there were 10 cases in which suspension orders were specified for 10 years and 1 case in which the suspension order was for 12 years. When these cases were removed from the data, the average number of months per suspension order was reduced to 21. The percentage of supervision orders also increased from 8% (N=10) in Period 1, to 17% (N=76) in Period 2 and 19% (N=57) in Period 3. The average number of months per supervision order was 12. The implication of these findings is that the hearing panels chaired by public members were more likely to attach periods of supervision and suspension to individual offenders' penalties than the hearing panels that were not chaired by a public member.

7. Discussion and Conclusion

Can the enforcement of misconduct by the IDA be adequate enough when the Association is the regulator which regulates self-interested economic actors (i.e., its members)?

If one is to measure the IDA's effectiveness according to the number of cases filed, the penalties imposed and the fines collected, then self-regulation is clearly not working. As the results have shown, additional enforcement of regulatory standards, either through an increase in the maximum fines that may be awarded or by designating an external public member to chair hearings, resulted in higher fines or more serious penalties. Both the nature of using an SRO in the Canadian securities industry as well as the fragmentation of enforcement into multi-provincial and multi-jurisdictional agencies exacerbated the problem.

The theoretical justification that SROs function to serve the public interest is not substantiated in the case of the IDA. Given this outcome, it is apropos to query: at whose behest does the regulator act? The evidence in this study suggests that when the interest of the public clashes with the interests of the IDA's members, the IDA puts its members first. The IDA's "responsibility to the public gets downplayed, or eliminated, with no safeguard in place to prevent this from happening" (Rosen and Rosen, 2010, p. 30). The argument that the IDA evolves to serve special interest groups (i.e. industry players) may be attributed to some of the fundamental problems underlying SROs and industry regulation (see Stigler, 1971; Posner, 1974). Since SROs are funded by their members, there might be a disincentive to impose penalties that are proportionate to the offences (Hedberg, 2015; Lokanan, 2014a; Perri and Brody, 2011). Perhaps the close connections with industry professionals put pressure on the IDA to function in the best interest of its members and the industry, rather than the investing public (Baines, 2012; Barnett, 2013; Dal Bó, 2006; Hedberg, 2015; Lokanan, 2015; Peltzman, 1976). It could also be the case that the IDA was more interested in protecting the reputation of the securities industry, which may serve to reduce the incentive to impose proportionate penalties. The IDA's preference for favouring the interests of its members incapacitates its administrative

functions and “significantly enfeebls the credibility of enforcement” (see Hedberg, 2015, p. 4). Given these outcomes, it is quite possible that the capture of the IDA by elements of the industry may explain why the Association did not impose more severe sanctions to curb the wayward practices of registrants, leading, as a result, to the substantial dilution of its rules governing market participants (Becker, 1983; see also Lokanan, 2015).

The inherent conflict of interest in having SROs regulating the very industries of which they are a part continues to irk investors’ advocates, who accuse them of being complicit in capital market misconduct in order to protect particular interest groups (i.e. advisors from larger Member firms) from criminal sanctions (FAIR Canada, 2011a, 2011b; Lokanan, 2014b; McCaffrey and Hart, 1998). The findings would seem to suggest that the IDA’s members have seized control of its enforcement functions such that less formal sanctions are imposed for offences that are criminal in nature (see also Stigler, 1971; Peltzman, 1976). Those in charge of the regulatory landscape in Canada need to take stock of the fact that quasi-criminal offences made up 14% of all the offences, of which fraud, forgery and the misappropriation of funds accounted for 10%. These are rather significant findings because they show that the IDA is internally dealing with cases that consist of criminal elements, instead of sending them to the RCMP’s Integrated Market Enforcement Team (IMET) for further investigation. The IDA can only pursue regulatory action on market participants. It does not have the statutory authority to pursue criminal prosecutions of cases that have criminal elements attached to them. The fact that the IDA internally prosecuted such a significant proportion of Quasi-criminal cases, should raise red flags with those in charge of safeguarding Canada’s capital markets, with regard to whether unscrupulous individuals masquerading as financial advisors are eluding criminal enforcement

and, by extension, more “serious penalties, including jail, and the stigma of a conviction” (Hyndman, 2007, p. 5).

Industry interest groups are not the only barrier to “optimal” enforcement. The myriad of regulators operating in the securities industry can also act as powerful interest groups, who write and enforce regulation to maximize their own ideological interests (Lokanan, 2014b; Williams, 2012). Since regulators are authorized to act in the public interest (i.e. for both the active “masses” and the “special interest” groups), they have monopolistic power and their actions can be more damaging than those of powerful interest groups (Becker, 1983; Peltzman, 1976; Stigler, 1971). The fragmentation of Canada’s securities regulation is at the root of the problematic outturns of having regulators as utility maximizers in the country.

It would appear that the actions of the IDA, IMET and the provincial commissions tend to favour themselves more than the investing public. The argument advanced by Bhattacharya (2006) that fragmentation leads to poor regulation, overlooks the inter-agency conflicts that flow from the relationship between these three regulators (Lokanan, 2015). Some of the cases that the IDA dealt with were multi-jurisdictional cases in which multiple agencies were required to take actions (Williams, 2012, p. 82). No one agency (i.e., the IDA, IMET and the securities commissions) possesses the degree of scaling needed to address these matters. As such, the issue comes down to what cases these agencies have jurisdiction over and what portion of the activity they are willing to enforce (Williams, 2012, p. 82). In the more serious quasi-criminal cases that originated with the IDA, one of the key issues involved the conditions under which these cases may be passed on to the police.

The police historically have been generally very reluctant to take on cases from the SROs and, in many ways, this contributes to the extended use of self-regulation to discipline market

participants in the securities industry (Williams, 2012, p. 72). This strategic approach adopted by the police may have come as a welcome surprise to the IDA, allowing it then to enforce regulations to the advantage of its members – a vital source of financial support (see also Hedberg, 2015; Ryder *et al.*, 2014). The particularistic interests of the police to serve its own enforcement needs means that the investing public suffers, while the “special interest” groups (seeking self-aggrandising regulation) benefit from the IDA’s lax enforcement (see Posner, 1974).

With case flow depending on the strategic interest of IMET, it is not surprising that the IDA retained and prosecuted many of these cases even though there were clear indications of fraudulent activities. Indeed, it is likely that the harm to investors associated with these forms of fairly conventional criminal activities is dwarfed by the much larger problem of unsuitable investment advice as well as unauthorized and discretionary trading (Baines, 2012). These cases often involve legal ambiguities and grey areas that make them less suitable for formal disciplinary action (Lokanan, 2014a). The light sanctions imposed by the IDA for the Quasi-criminal and Improper Sales Practice offences sap “enforcement virility” (Task Force, 2006, p. 19) and reinforce the perception that the Association is a “captured” regulator that works for those interest groups it is supposed to regulate (see Dal Bo, 2006; Lokanan, 2015; Peltzman, 1976).

The view of public administration evolving from the Stiglerian approach emphasises the point that regulators can be swayed by their own self-interests (Dal Bo, 2006, p. 205; see also Posner, 1974; Stigler, 1972). The self-interested nature of regulators as utility maximizers is reflected in the organizational tension involving the provincial securities commissions and the IDA. Perennial themes in this conflict are the turf battles and the inter-agency politicking that

reflect fundamental differences over who has jurisdiction over some of the more complex cases. A vituperative accusation by the IDA has been that the securities commissions are prone to stepping on its turf and assuming control of cases which are rightfully in its jurisdiction (Williams, 2012, p. 75). Exacerbating this tension is that the IDA, by virtue of its legislated and jurisdictional authority, has been limited to enforcing violations on its own members. This arrangement has created difficulties, especially when the alleged misconduct extends beyond the IDA's jurisdiction into the securities commissions' regulatory sphere. The more complex cases involving claims where Member firms have sold unregistered securities has had critical implications for the IDA, because the Association was dependent on the securities commissions to substantiate a broader claim of action and proceed against these registrants. This uncertainty reflects the enduring tension between the IDA and the securities commission: an inter-agency divide deepened by enforcement priorities across the provincial securities commissions (Williams, 2012, p. 77). The securities commissions, as the suppliers of regulations, and their reluctance to work with the IDA to maximize public welfare show that the actors of these agencies have their own self-interest, which may come into conflict with their regulatory mandates (Dal Bo, 2006; Peltzman, 1976; Stigler, 197). So, although the IDA may (in some cases) want to affect regulation, sub-optimal regulation has more likely been the order of the day.

Future research needs to take stock of these findings and extend the analyses to other industries to make the results presented here more generalizable and improve our understanding of the theory and practices of self-regulation more generally. In reference to self-regulation in Canada's securities industry, researchers can extend the analysis to the MFDA to investigate whether it is holding market participants accountable to law and ethical standards. Others may want to use the findings presented here and offer prescriptive guidelines on how IIROC can

better fulfil its public interest mandate. This paper has set the groundwork for others to compare the IDA's enforcement performance with IIROC and examine whether investors are safer under the new regulatory regime. Perhaps a question about whether IIROC's new regulatory regime and higher enforcement budgets are making investors safer in Canada might provide new insights into its enforcement practices. Yet, others may want to compare the IDA's performance with similar SROs that operate in the securities industries in other jurisdictions. Financial Industry Regulatory Authority (FINRA) in the United States is a good place to start. This study has laid the foundation for such work.

Notes

¹ Given that the merger between the IDA and RS did not occur until June 2008, and the cases that will be used in the paper are before the merger, I will use the acronym IDA when making reference up to June 2008. IIROC will be used to refer to any activities after June 2008.

² In 2011, the Supreme Court of Canada ruled against the establishment of a single national securities regulator.

³ Space does not allow for presentation of great details on the economic theory of regulation. Instead, I draw on the extant literature to address the key premises of Stigler's (1971) theory and subsequent expansions.

⁴ The 39 cases that were eliminated dealt with jurisdictional and procedural issues such as requests to open proceedings, requests for adjournments, adjourned motions and adjourned hearings.

⁵ Some cases involved multiple offences.

⁶ Table 1 only deals with the number of offences committed and not allegations.

References

- Baines, D. (2012). "Mixed messages from regulators in Global Securities case", *Vancouver Sun*, 05 November, available at: <http://www.vancouversun.com/david+baines+mixed+messages+from+regulators+global+securities+case/7508322/story.html> (accessed 20 January, 2016).
- Becker, G. (1983), "A Theory of Competition Among Pressure Groups for Political Influence", *Quarterly Journal of Economics*, Vol. 98, pp. 371-99.
- Becker, G. (1985), "Public Policies, Pressure Groups, and Deadweight Costs", *Journal of Public Economics*, Vol. 28, pp. 330-47.
- Begg, I. (2009), "Regulation and Supervision of Financial Intermediaries in the EU: The Aftermath of the Financial Crisis", *Journal of Common Market Studies*, Vol. 47, No. 5, pp. 1107-1128
- Bhattacharya, U. (2006), "Enforcement and its Impact on Cost of Equity and Liquidity of the Market", *Task Force to Modernize Securities Legislation in Canada*, 24 May, available at: <http://www.tfmsl.ca/docs/v6%283%29%20bhattacharya.pdf> (accessed 12 April, 2016)
- Braithwaite, J. (2013), "Flipping markets to virtue with qui tam and restorative justice", *Accounting Organization, and Society*, Vol. 38, No. 6-7, pp. 458-468.
- Brockman, J. and McEwen, C. (1990), "Self-Regulation in the Legal Profession: Funnel In, Funnel Out, or Funnel Away?", *Canadian Journal of Law and Society*, Vol. 5, pp. 1-46.
- Brockman, J. (1998), "Fortunate enough to Obtain and Keep the Title of Profession: Self-regulating Organizations and the Enforcement of Professional Monopolies", *Canadian Public Administration*, Vol. 41, No. 4, pp. 587-621.
- Brockman, J. (2004), "An Update on Self-Regulation in the Legal Profession (1989-2000): Funnel In and Funnel Out", *Canadian Journal of Law and Society*, Vol. 19, No. 1, pp. 55-84.
- Brockman, J. and Rose, G. (2011), *An Introduction to Canadian Criminal Procedure and Evidence*, 4th edn, Toronto, ON: Nelson.
- Calomiris, C., & Haber, S.H. (2014), *Fragile by Design: The Political Origins of Banking Crises and Scarce Credit*. Princeton, NJ, Princeton University Press.
- CSA. (2007), "Understanding the Social Impact of Investment Fraud", *Canadian Securities Administrators*, available at: https://www.osc.gov.on.ca/documents/en/About/csa_20071002_csa-investor-studies.pdf (accessed 12 February, 2016).

-
- Dal Bo, E. (2006), “Regulatory capture: A review”, *Oxford Review of Economic Policy*, Vol. 22, No. 2, pp. 203-25.
- den Hertog, J. (2010), “Review of Economic Theories of Regulation”, *Tjalling C. Koopmans Research Institute*, Discussion Paper Series 10-18, available at: http://www.uu.nl/sites/default/files/rebo_use_dp_2010_10-18.pdf (accessed October 24, 2015).
- Downs, A. (1957), *An Economic Theory of Democracy*, New York, Harper and Row.
- Dyck, A., Morse, A., and Zingales, L. (2010), “Who Blows the Whistle on Corporate Fraud?” *Journal of Finance*, Vol.,65, Iss. 6, pp. 2213-2253.
- FAIR Canada. (2011a), “Dishonest Advisors Continue to Prey on Investors in Canada”, *FAIR Canada*, 31 August, available at: <http://faircanada.ca/top-news/dishonest-advisors-continue-to-prey-on-investors-in-canada/> (accessed 24 October, 2015).
- FAIR Canada. (2011b), “A Report on a Decade of Financial Scandals”, FAIR Canada, February 22, available at: http://faircanada.ca/wp-content/uploads/2011/01/Financial-scandals-paper-SW-711-pm_Final-0222.pdf (accessed 12 June, 2015).
- Gande, A., and C. Lewis. (2009), “Shareholder-Initiated Class Action Lawsuits: Shareholder Wealth Effects and Industry Spillovers”, *Journal of Financial and Quantitative Analysis*, Vol. 44, No. 4, pp. 823-850.
- Goldin, R. (2010), *Investor Beware! - Protect Your Investment from Broker Misconduct*. Available at: <http://www.macgold.ca/investorbeware> (accessed 08 September, 2015).
- Goodhart, C.A.E., and Schoemaker, D. (1993), “Institutional Separation between Supervisory and Monetary Agencies”, *LSE Financial Markets Group Special Paper No.52*.
- Goodhart, C.A.E. (2000), “The organizational structure of banking supervision”, FSA Occasional Paper, No. 1, 25 October. Available at: <http://www.bis.org/fsi/fsipapers01.pdf> (accessed 07 July, 2015).
- Gunningham, N. and Rees, J. (1997). “Industry Self-Regulation: An Institutional Perspective”, *Law & Policy*, Vol. 19, No. 4, 363-414.
- Hamilton, T. (2007), “Why the OSC so rarely gets its man”, *The Toronto Star*, December 01, available at: http://www.thestar.com/business/2007/12/01/why_the_osc_so_rarely_gets_its_man.html (accessed 07 November, 2015).
- Hantke-Domas, M. (2003). “The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?” *European Journal of Law and Economics*, Vol. 15, pp. 165-194.

-
- Hedberg, M. (2015). "Top-Down Self-Organization: State Logics, Substitutional Delegation, and Private Governance in Russia", *Governance: An International Journal of Policy, Administration and Institutions*, doi:10.1111/gove.12140
- Hockin Panel (Thomas Hockin, Chair). (2009a). Expert Panel on Securities Regulation, available at:
http://www.expertpanel.ca/eng/documents/Expert_Panel_Final_Report_And_Recommendations.pdf (accessed 13 July, 2016)
- Hyndman, D. (2007). "Separating Fact from Fiction Canadian Securities Regulation in the 21st Century", Speech delivered to the Economic Club of Toronto (September 19, 2007), available at:
http://www.bcsc.bc.ca/uploadedFiles/About_Us/Speeches/SeparatingFactFromFiction.pdf?t=1461710735507 (accessed 23 March, 2016).
- IDA. (2006), "Disciplinary Sanctions Guidelines", The Investment Industry Regulatory Organization of Canada, available at:
http://www.iiroc.ca/English/Enforcement/Policies/Documents/IDADisciplinarySanctionGuidelines_en.pdf (accessed 14 July, 2016).
- IIROC. (2012), "Definitions of IIROC Rule Infractions", available at:
<http://www.iiroc.ca/English/Enforcement/ConsolidatedEnforcementActions/Pages/DefinitionsRuleInfractions.aspx> (accessed 24 August, 2015).
- Jenah, S. (2007), "IDA Report", available at:
<http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=416F4DE0731A46FD918348D658814591&Language=en> (accessed 12 June, 2015).
- Jenah, S. (2008), "IIROC Submission to the Expert Panel on Securities Regulation", available at:
[http://www.expertpanel.ca/documents/submissions/Expert%20Panel%20Submission%20-%20Final%20-%20Letterhead%20\(en\).pdf](http://www.expertpanel.ca/documents/submissions/Expert%20Panel%20Submission%20-%20Final%20-%20Letterhead%20(en).pdf) (accessed 23 September, 2015).
- Karpoff, J. M., Koester, A., Scott, L., and Martin, G. (2004). Database Challenges in Financial Misconduct Research. Georgetown McDonough School of Business Research Paper No. 2012-15. Available at SSRN: <http://ssrn.com/abstract=2112569> or <http://dx.doi.org/10.2139/ssrn.2112569>
- Levitin, A. (2014), "The Politics of Financial Regulation and the Regulation of Financial Politics: A Review Essay", *Harvard Law Review*, Vol. 127, 1-73.
- Lokanan, M. (2014a), "Self-regulation in the Canadian securities industry: Funnel in, funnel out, or funnel away?", *International Journal of Law, Crime and Justice*, Vol. 43, No. 4, pp. 456-480.

-
- Lokanan, M. (2014b), "The Investment Dealers Association of Canada's enforcement record: Are penalties grossly inadequate", *Journal of Financial Regulation and Compliance*, Vol. 22, No. 3, pp. 235 – 251.
- Lokanan, M. (2015), "Securities Regulation: Opportunities Exist for IIROC to Regulate Responsively", *Administration and Society*, doi: 10.1177/0095399715584637
- MacNeil, C. and Soloman, E (Producers). (2008 November, 23), *Who is Guarding your Money? [Documentary]*. Canada: CBC News: Sunday Night.
- Masciandaro, D. (2004), "Unification in financial sector supervision: The trade-off between central bank and single authority", *Journal of Financial Regulation and Compliance*, Vol. 12 Iss 2, pp. 151 – 169.
- Masciandaro, D. (2006). "E Pluribus Unum? Authorities' Design in Financial Supervision: Trends and Determinants," *Open Economies Review*, Vol. 17, Iss 1, pp.73-102.
- McCaffrey, D. and Hart, D. (1998). *Wall Street Polices Itself: How Securities Firms Manage the Legal Hazards of Competitive Pressures*. New York, NY: Oxford University Press.
- Olson, M. (1965), *The Logic of Collective Action. Public Goods and the Theory of Groups*, Cambridge, MA, Harvard University Press.
- Pan, E. (2009), "Structural Reform of Financial Regulation: The Case of Canada." *Cardozo Legal Studies Research Paper No. 250*. <http://ssrn.com/abstract=1333385> (May 08, 2013).
- Patil, R. (2001), "Financial Sector: Single vs Multiple Regulators." *Economic and Political Weekly*, Vol. 36, No. 45, pp. 4255-4257.
- Peltzman, S. (1976), "Toward A More General Theory of Regulation", *Journal of Law and Economics*, Vol, 19, pp. 211-40.
- Perri, F. and Brody, R. (2011), "The sleeping watch dog: aka the Securities and Exchange Commission", *Journal of Financial Regulation and Compliance*, Vol. 19, No. 3, pp. 208 – 221.
- Posner, R. (1974), "Theories of Economic Regulation", *Bell Journal of Economics and Management Science*, Vol. 5, No. 2, pp. 335–358.
- Rosen, Al. and Rosen, M. (2010), *Swindlers: Cons & Cheats and How to Protect Your Investments from Them*. Toronto, ON: Madison Press Limited.
- Ryder, N, Turksen, U. and Hassler, S. (2014) *Fighting Financial Crime in the Global Economic Crisis: Policy, Trends and Sanctions*. Routledge: Cavendish.

-
- Simpson, S. (2002), *Corporate Crime, Law, and Social Control*. Cambridge: Cambridge University Press.
- Sinclair, D. (1997), “Self-Regulation versus Command and Control? Beyond False Dichotomies”, *Law & Policy*, Vol. 19, No. 4, pp. 529-559.
- Stigler, G. (1971), “The Theory of Economic Regulation”, *Bell Journal of Economics and Management Science*, Vol. 2, No. 1, pp. 3–21.
- Schwarz, D. (2014). Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection. *UCLA L. Rev.*, Vol. 394, pp. 366-462.
- Task Force. (2006), “The Task Force to Modernize Securities Legislation in Canada: Canada Step up”, available at: http://www.tfmsl.ca/docs/Volume1_en.pdf (accessed 06 October, 2015).
- Urquhart, J. (2008), “Fixing Canada's 'Third World' securities crime enforcement. Submission to the Expert Panel on Securities Regulation”, *Investorvoice*, available at: http://www.investorvoice.ca/CSR/CSR_Submission_Urquhart_12June08.pdf (accessed 03 March, 2016).
- Veltrop, D., & de Haan, J. (2014), “I just cannot get you out of my head: Regulatory capture of financial sector supervisors”, DNB Working Paper, No. 410, available at: http://www.dnb.nl/binaries/Working%20Paper%20410_tcm46-302769.pdf (accessed 10 July, 2016).
- Williams, A. (2004), “An Economic Theory of Self-Regulation”, Working Paper prepared for: The Political Economy Doctoral Workshop Department of Government, LSE. Available at: http://anthonydwilliams.com/wp-content/uploads/2006/08/An_Economic_Theory_of_Self-Regulation.pdf (accessed 05 November, 2015).
- Williams, J. (2012). *Policing the Markets: Inside the Black Box of Securities Enforcement*, London: Taylor & Francis Ltd.
- Yackee, S.W. (2013). Reconsidering Agency Capture During Regulatory Policy Making. In D. Carpenter and D.A. Moss (Eds.), *Regulatory Capture: Special Interest Influence and How to Limit it* (pp. 152-173). New York, Cambridge University Press.