

**The Bre-X Fraud:
Business Panel Assigns Responsibility Widely**

**BDO Dunwoody CEO/Business Leader Poll
by COMPAS in the Financial Post
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1.0 Introduction

In the wake of the not guilty verdict in the trial of Bre-X chief geologist, John Feldherhof, for insider trading, the COMPAS panel of CEOs and business leaders was asked for its thoughts on the gigantic fraud.

Overwhelming majorities believe that Canada would be far better off emulating tougher U.S. laws:

- To an extraordinary degree, panelists feel that it was a “tragedy” that banks and brokers profited from transactions and underwriting fees without having legal responsibility for insuring that the advice they gave about the firm was well-founded;
- In the same spirit, an overwhelming majority feel that Canada should follow U.S. legal practice and allow investors to “sue banks and brokers for damages if their advice turns out to have been a misrepresentation; banks and brokers should not get away with saying they were hoodwinked too;”
- Panelists believe that our inability to mete out justice undermines the attractiveness of our country as a place to invest;
- While believing that weak securities laws impeded our regulators, panelists nonetheless do not believe that the Ontario Securities Commission did the best job it could under the circumstances; and
- A number of panelists single out the TSX for condemnation in their volunteered comments, saying that the Exchange’s listing of Bre-X obliged index-driven funds to invest in the fraudulent firms and misled investors into thinking that the company was solid despite the absence of any real history of production.



These are the key findings from the current web-survey of the panel of CEOs and business leaders undertaken for the *Financial Post* under sponsorship of BDO Dunwoody LLP.

2.0 Much Blame to Go Around

As evidenced in table 2, panelists

- Are nearly unanimous in their view that it was tragic that banks and brokers got off without any legal responsibility;
- Are overwhelmingly of the view that Canada should emulate U.S. laws allowing investors to sue if bank or brokerage advice turns out to have been a misrepresentation;
- Are overwhelmingly of the view that our inability to mete out justice undermines our country's position as a place to invest;
- Are overwhelmingly of the view that stronger U.S. securities laws help explain why the U.S. is more appealing as a place to invest; and
- Do not believe that the OSC did its best under the circumstances.

The following verbatims provide a flavour of panel sentiment about where and how responsibility should be distributed:

OSC appears to have pursued wrong charges against Felderhof. The real offence was fraud, not insider trading, and if he wasn't aware then he should have been. He possessed reports warning of the presence of foreign gold in samples, yet apparently he did nothing.

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possessed reports warning of the presence of foreign gold in samples, yet apparently he did nothing.

What is inexcusable - and has not been adequately addressed - is the fact that a highly speculative company with no production profile, and no history of earnings (let alone no current income) was included in the TSX 300 Index by the bright lights running the exchange and the OSC. This act alone gave the issue high credibility, and forced index funds and pension funds into highly inappropriate speculation. That too was a crime in my book, one that has never been acknowledged.

Brokers and bankers must be made responsible for the advice they give. They engage in far too much promotion for financial gain at their clients' expense.

Canada has a reputation as a good place to be to commit white collar crime. Bre-X is a good example of that.

Fraud is fraud. Governments and regulators should be aggressively pursuing all involved to extract any assets they have to put back into shareholders hands, and put all of those involved in the fraud in jail where they belong. Thus far, it appears that government, judiciary and regulators have done nothing but condone this fiasco.



Table 2: (Q1) On a 7 point agree-disagree scale where 7 means agree strongly and 1, the opposite, how much do you agree with the following varied opinions¹ on various aspects of the situation...RANDOMIZE

| | | | | | | | | |
|--|----|----|----|----|---|---|---|-----|
| It's a tragedy that banks and brokers make millions in transaction and underwriting fees without having any legal responsibility for insuring that the advice they gave about Bre-X was well-founded | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 5.8 | 41 | 24 | 21 | 6 | 1 | 3 | 3 | 2 |
| Canadian securities laws should follow U.S. practice and allow investors to sue banks and brokers for damages if their advice turns out to have been a misrepresentation; banks and brokers should not get away with saying they were hoodwinked too | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 5.2 | 29 | 19 | 21 | 10 | 8 | 9 | 1 | 2 |
| In this case of corporate fraud, as in other cases, Canada's inability to mete out justice undermines investors' confidence in Canada as a place to invest | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 5.2 | 28 | 19 | 26 | 11 | 4 | 6 | 5 | 1 |
| Stronger U.S. laws against corporate fraud help make U.S. stock markets more attractive places to make investments | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 5.1 | 25 | 17 | 28 | 12 | 6 | 5 | 4 | 3 |
| The real problem is the weakness of our securities regulators | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 4.9 | 16 | 22 | 28 | 10 | 7 | 7 | 5 | 5 |
| No changes to our laws or securities regulators are needed because investors | | | | | | | | |

¹ As you know, Bre-X was the biggest mining fraud in history. One of its senior executives died. Another died or may have disappeared. Bre-X's chief geologist, John Felderhof, was just recently found not guilty of insider trading for selling \$84 million of Bre-X stock before the fraud came to light. On a 7 point agree-disagree scale where 7 means agree strongly and 1, the opposite, how much do you agree with the following varied opinions¹ on various aspects of the situation...RANDOMIZE



| | | | | | | | | |
|--|---|----|----|----|----|----|----|-----|
| should remember <i>caveat emptor</i> – it is up to the individual investor to realize that if a business story is too good to be true, it probably is not true | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 3.5 | 6 | 10 | 18 | 11 | 12 | 19 | 19 | 5 |
| The Ontario Securities Commission did the best job it could given the state of the laws governing our securities markets | | | | | | | | |
| Mean | 7 | 6 | 5 | 4 | 3 | 2 | 1 | DNK |
| 3.5 | 3 | 13 | 15 | 16 | 15 | 14 | 16 | 8 |

3.0 Methodology

The COMPAS web-survey of CEOs and leaders of small, medium, and large corporations was conducted August 1 – 3, 2007. Respondents constitute an essentially hand-picked panel with a higher numerical representation of small and medium-sized firms.

Because of the small population of CEOs and business leaders from which the sample was drawn, the study can be considered more accurate than comparably sized general public studies. In studies of the general public, surveys of 111 are deemed accurate to within approximately 9.3 percentage points 19 times out of 20. The principal and co-investigator on this study are Conrad Winn, Ph.D and Tamara Gottlieb.

