Kenmar Associates
Investor Protection and Education

Securities regulators and the protection of seniors August, 2013

This short article provides an overview of what Canadian Regulators are doing to protect the elderly. If the measures prove adequate, we're not going to see millions of seniors living on Social Security who are not expecting that to be their standard of living. If you're interested in this subject please read our paper T**he Best interests Standard and the Elderly** available at www.canadianfundwatch.com.

Introduction

Mercer Bullard, president of US- based Fund Democracy and professor of law at the University of Mississippi, asserts that the United States is on the verge of a "senior crisis" posed by the risk of seniors' outliving their assets and their declining ability to manage their money as they age. These are people who have been particularly impacted by substantial reductions in interest rates because the cash flow coming from their investments often is a significant supplement to whatever RRSP/RRIF, pensions and Social Security they have. Seniors are especially vulnerable to offers of yield-chasing and high-risk products. The increasing sophistication of financial products combined with longer life expectancy is creating an environment in which "advisor "abuse and fraud can thrive.

A recent Forbes article **Retirement Crisis Enabled By Financial Services Fibs** http://www.forbes.com/sites/johnwasik/2013/08/05/retirement-crisis-enabled-by-financial-services-fibs/ stated " There's no question that Americans are undersaving for retirement. Depending upon the source, they are far behind where they should be. According to Helaine Olen, FORBES blogger, financial journalist and author of "Pound Foolish: Exposing the Dark Side of the Personal Finance Industry," it's the purveyors of mutual funds, annuities and money management who are aiding and abetting the crisis: For the first time in living memory, it seems likely that living standards for those over the age of 65 will begin to decline as compared to those who came before them -and that's without taking into account the possibility that Social Security benefits will be cut at some point in the future. The culprit?…the 401(k), along with the other instruments of do-it-yourself retirement."

While anyone can be a victim of investment fraud or an unsuitable investment, seniors have less time to recover from a financial loss. Elder abuse involving investments or securities can occur in a number of ways:

- An investment offered to a senior that is fraudulent or simply unsuitable for the senior's risk tolerance or loss capacity
- Theft of funds by those in a position of trust
- Aggressive sales tactics used by sales representatives including "Free lunch" seminars

See more at: http://www.investright.org/seniors_persons_with_disabilities.aspx#sthash.8IutNslD.dpuf

As boomers age, the coming years will also see the largest-ever intergenerational transfer of wealth. The amount of money involved means that financial elder abuse and related issues is likely to grow in importance.Some areas where we see advisor malpracices include: (a) Products that have withdrawal penalties or otherwise lack liquidity, such as deferred variable annuities, equity indexed annuities, DSC mutual funds; (b) Mortgaging home equity for investment purposes; (c) Return of Capital funds and (d) Using retirement savings, including early withdrawals from RRSP's, to invest in high- risk investments.Complaint investigators need to assign a higher weight to liquidity, changes in tax status,goals and Loss capacity in their suitability determinations when dealing with retirees. One big concern is that retirees will live longer yet fewer and fewer of them will be able to rely on traditional corporate pension plans to fund their retirement. Therefore,the financial decisions made by those who are at or nearing retirement are more important than ever before. That's where regulators come in.

Here's an overview of what regulators are doing to protect seniors.

The Canadian Securities Administrators

In early 2013 the CSA passed a rule that will require investment dealers to provide enhanced cost disclosure and personalized rate of return information. This will greatly assist seniors and investors generally in assessing if the advice they are getting is producing the desired results. The CSA. provide a list of senior -specific brochures:
(a) Protect your money: Avoiding frauds and scams http://www.securities-administrators.ca/uploadedFiles/General/pdfs/Protect_your_money_EWeb_2012.pdf
(b) Scam artists pursue adults over 50 http://www.securities-administrators.ca/uploadedFiles/General/pdfs/Scam%20Artists%20Pursue%20Adults%20over%2050.pdf
(c) Sandwich Generation: Are you caught in the middle? http://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA%20Sandwich%20generation%20ENGLISH%20Final201201.pdf
These are available on the CSA website in English and French.

The CSA is also driving hard to require Portfolio Managers, Exempt Market Dealers and Scholarship trusts to be OBSI participants .This too will add to the protection of seniors.

The Ontario Securities Commission

The OSC 2013-2014 OSC priority list does not include senior-specific investor protection initiatives per se as a top priority. However the OSC is taking the lead on several initiatives that will directly and indirectly help protect seniors. The primary initiatives are mutual fund fees and embedded trailer commissions and the introduction of a Best interest standard for advisors. Industry opposition is fierce so this will be a long protracted battle unless regulators provide bold leadership.

The OSC Office of the Investor's 2013 Annual report provides an overview of key initiatives that should benefit all investors including seniors http://www.osc.gov.on.ca/en/Investors_inv_news_20130730_annual-rpt.htm . The OSC provides funding and support to improve the financial literacy of Ontarians, primarily thorough the Investor Education Fund (IEF), the largest financial literacy trainer of teachers in Canada. The IEF website GetSmarterAboutMoney.ca is Canada's most popular financial literacy website. The IEF has also developed a number of videos aimed at seniors, which will be released in the fall. The OSC is the only regulator in Canada with an Investor Advisory Panel. According to the Annual report "The OSC Investor Advisory Panel (IAP) submitted valuable input on several policy issues and released a study in March 2013, "Strengthening Investor Protection in Ontario – Speaking with Ontarians".".

Given the importance of the relationship between advisers and investors the OSC and the CSA published a consultation paper on the introduction of a statutory "Best interest" standard for advisers when they provide advice to retail clients. The OSC hosted three stakeholder roundtables in June and July to advance the discussion on this topic. The OSC are intensifying their enforcement presence and exploring new opportunities to safeguard both investor and market participant trust in our markets. The OSC have also launched OSC in the Community as a new way to talk directly with investors and civic leaders in their communities. They have visited seven cities and plan to visit more this fall and winter starting with Windsor, Ottawa and Barrie. The OSC in the Community sessions have been well attended by seniors (OSC partnered with the Kingston Seniors Centre earlier this year and they have at least two more seniors centre visits planned for this Fall) and received extensive media coverage, as well as tips provided at these sessions are highlighted in a recent Investor News (http://www.osc.gov.on.ca/en/Investors_inv_news_20130722_osc-in-the-community.htm).

The OSC have also formally reached out to CARP The *Canadian Association of Retired Persons* www.carp.ca to establish relationships and will be working with their local chapters in the fall to raise awareness of their work in their communities.

The British Columbia Securities Commission

The BCSC InvestRight program reaches out to the province's pre-retirees and retirees face-to-face at seminars and tradeshows, online through the websites *InvestRight.org* and *BeFraudAware.ca*, and in the media using news releases, Investor Alerts and Investor Watches, and public awareness advertising. In 2012, BCSC staff presented 43 seminars to over 2,650 people in communities across the province. The BCSC also participated in 11 trade shows and seniors forums, reaching an additional 1,650 people. They delivered many of these face-to-face presentations in Cantonese, Mandarin, and Punjabi through a partnership agreement with the City of Surrey, one of Canada's fastest growing cities and home to a very large proportion of BC's Asian and South Asian populations. Now entering its third year, Be Fraud Aware, an award-winning multi-media campaign is the first comprehensive investor education campaign of its kind, using traditional and social media and reaching British Columbians 50+ in multiple languages. It focuses on promoting the warning signs of investment fraud and, coming in the Fall of 2013, empowering investors to speak up against it. By virtue of channel selection and use of older actors, BeFraudAware clearly targets pre-retirees and retirees. In addition to their involvement in CSA Investor Index research conducted since 2006, the BCSC has conducted its own research to better understand BC investors. In 2012, this included the National Fraud Vulnerability Report, which looked specifically at investors 50+ and what makes them vulnerable to investment fraud.

The Alberta Securities Commission

The ASC has several strategic investor education initiatives that build public awareness and encourage the use of helpful ASC tools and resources. This includes alerting the public to potential misconduct or fraud in the market, and leveraging and expanding community partnerships and connections.
Below are some examples of how they have successfully reached the senior and older population:
Information resources

- ASC offers 24 free brochures to the public and last year over 10,000 copies were sent out to government, community organizations, active investors, seniors and the general public. As well, the main Courses and Resources page in the For Investors section of the ASC website garnered over 4,500 visits with over 16,000 downloads of brochures in this section.
- Specific resources for seniors include:
  - Investment fraud: How to protect your retirement. A DVD toolkit with three accompanying factsheets (covering the topics of affinity fraud, cold calls, and advertising). Designed specifically for seniors groups and care-givers to use. We mailed a copy of this toolkit to all seniors centres and organizations province-wide, as well as to all library branches.
  - Brochures available include: Sandwich generation: Are you caught in the middle?; Scam artists pursue adults 50+; Boiler room scams: Could you be vulnerable?; Red flags of investing fraud and others.

- The ASC air a weekly Consumer Update radio show on avoiding investment fraud on over 20 stations throughout the province with a focus on smaller rural communities and on talk radio stations, which are popular with seniors.

Community partnerships and outreach

- This past year, the ASC reached out to seniors and those who support them at number of venues including the Kerby 55+ Expo 2012 (Calgary), Grey Matters 2012 conference (Edmonton) , Senior Power 2012 EXPO (Strathmore), Glenrose Rehabilitation Hospital (for health care workers in Edmonton as well as 24 remote clinics that tuned in via phone). We also partnered with a private consultant to publish ASC information in her October e-newsletter (distributed to hundreds of Albertan seniors or caregivers) and arranged ASC listings in the annual Directory of Senior Services from SAGE (Seniors Association of Greater Edmonton).
- The ASC is an active member of the Fraud Prevention Alberta (FPA) network where they share

investment fraud materials and knowledge with member organizations. The ASC conducts presentations for staff at various law enforcement and consumer organizations, such as the Better Business Bureau, so they can efficiently refer investment fraud inquiries and calls to the ASC. The ASC also ensure that these organizations are familiar with the free resources the ASC has available so they can order and distribute them during their community presentations. For example:

    - The ASC actively partner with the Wise Owls seniors fraud program of Alberta Rural Crime Watch - this past year, they distributed ASC resources to 520 seniors at nineteen presentations at various seniors clubs and residences throughout Alberta.
    - The ASC work with various law enforcement bodies such as the RCMP Calgary Commercial Crime Section – Securities Unit and the Calgary Police Service to distribute ASC information and resources at various public fraud prevention events that seniors and other Albertans frequent (e.g. over 800 seniors picked up ASC materials from Fraud Prevention Events during March which is Fraud Prevention Month).

- The ASC has given presentations on how to avoid investment fraud and protect your retirement at various seniors centres across the province, including Red Deer, Lethbridge, Canmore and Whitecourt. The ASC have also conducted presentations via the RISE video conference learning network through libraries in Southern Alberta, whereby seniors in rural communities were able to participate in a live presentation by the ASC on avoiding investment fraud (at another central location) by web cam at their local library.

The Nova Scotia Securities Commission

The Investor Education & Communications group of the NSSC provides continuous investor education to the entire province. In order to full fill the NSSC's mandate they partner with various government and community groups. For senior initiatives specifically, they have partnered with the Department of Seniors, MSVU Centre for Aging and Consumer NS. Through these relationships, they have attended expos and events where they talk to seniors and other audiences to help them become informed investors. The FCNB created a two page seniors pocket guide for investors: http://www.nbsc-cvmnb.ca/nbsc/docs/2010-06-08%20EIFFA%20Pocket%20Guide_Final_EN-web.pdf which the NSSC have adopted. Seniors can also check out the *before you invest* website www.beforeyouinvest.ca where they have written posts on senior investing initiatives.

Financial Services Commission of Ontario

The Financial Services Commission of Ontario is a regulatory agency of the Ministry of Finance that regulates insurance, pension plans, loan and trust companies, credit unions, caisses populaires, mortgage brokering, and co-operative corporations in Ontario. Its website contains a wide variety of consumer resources primarily for the insurance sector. See the document on Segregated funds http://fsco.gov.on.ca/en/insurance/ivics/Documents/Guideline_G2.pdf FSCO has participated in a number of recent activities designed to raise awareness about fraud targeting seniors, many in partnership with the Toronto Police Service. Here's some key activities they've been involved with:

- In November 2012, staff, along with Det. Sgt. Cameron Field from the Financial Crimes Unit formed a working group that brings together organizations involved in public outreach on financial crime and consumer protection, such as government ministries and agencies, law enforcement, industry associations, banks, insurance companies, law firms, crime prevention groups and victim services (our group now contains representatives from over 20 organizations). Their first joint effort was for Fraud Prevention Month 2013. Fraud Prevention Month is a nationally recognized month in Canada that takes place in March of each year.

- In March, the Toronto Police Service made "Fraud and Seniors" the focus of their Fraud Prevention Month 2013 Campaign, and FSCO was involved in the campaign in a number of ways. For this campaign, the Toronto Police Service's Financial Crimes Unit partnered with students from the Seneca College Graphic Design Program and had the students create digital and print material to be used during Fraud Prevention Month to raise awareness about fraud targeting seniors. To provide the students with much-needed background on frauds targeting seniors, in fall 2012, two FSCO staff members attended the students' class at Seneca and gave presentations on the types of frauds seen at FSCO that often involve seniors. The material the students designed for the Fraud Prevention Month 2013 campaign can be viewed here: http://www.torontopolice.on.ca/financialcrimes/fraudpreventionmonth.php

- FSCO and Toronto Police coordinated a media event on February 28, 2013, to kick off Fraud Prevention Month. Both the Superintendent and I spoke at the event. The event featured senior victims of fraud, the Seneca students and the campaign material they designed, a panel of senior representatives from a dozen of the agencies that are part of the above-mentioned working group and information displays from these agencies (including FSCO). The Ontario Minister of Consumer Services also spoke at this event. The event was well-attended by mainstream media in the GTA. A clip of the event and the senior victims who spoke at it can be viewed here via the CTV website: http://toronto.ctvnews.ca/video?clipId=874706&playlistId=1.1175888&binId=1.815892&playlistPageNum=1

- FSCO staffer Kristen Rose and Det. Sgt. Cameron Field co-moderate a weekly online chat on Twitter called #fraudchat, which aims to increase public discussion about fraud and scams. They regularly address frauds targeting seniors, and for Ontario Seniors' Month in June, FSCO partnered with the Crime Prevention Association of Toronto to run a month-long series of these online chats that focused exclusively on scams targeting seniors, such as door to door and telemarketing scams. News Release at http://www.torontopolice.on.ca/newsreleases/pdfs/26706.pdf

The Mutual Fund Dealers Association

In April, the MFDA issued a Bulletin http://www.mfda.ca/regulation/bulletins13/Bulletin0563-C.pdftting laying out its regulatory priorities, and recommending that dealers assess their supervisory structures, risk management practices, and policies and procedures in these areas to determine if adequate internal controls are in place. The areas enumerated in the Bulletin include: exempt securities, outside business activities, trade and supervisory inquiries, leveraging, branch review programs, blank-signed forms/altering documentation, complaint handling, and seniors' issues. In terms of exempt securities, it stresses that dealers must have adequate internal controls, as well as policies and procedures, related to sale of these sorts of products. Given the added risks of certain exempt securities, such as hedge funds and limited partnerships, the MFDA stresses that it is important that "a reasonable level of due diligence" is performed prior to their approval for sale. Dealers must also ensure compliance with the exemption criteria, and they are required to ensure suitability as well. In terms of leveraging, the Bulletin stresses that dealers should have policies in place to ensure they meet their leveraging suitability obligations, including criteria for assessing the suitability of a client's use of leverage and describing appropriate circumstances for recommending the use of leverage.

The Bulletin also stresses that protecting senior investors is "an area of focus and a strategic initiative" for the MFDA. It says firms should consider certain senior-specific issues in their supervisory work, including: reviewing new account and KYC paperwork, suitability reviews, marketing and advertising, and the use of business titles specifically directed towards senior investors (to ensure they don't mislead clients). It suggests that firms should consider developing specific procedures to supervise activity with senior investors. Additionally, it notes that dealers are responsible for maintaining policies and procedures to ensure the fair and prompt handling of client complaints, and it sets out what those policies should include. This may be a particular issue for seniors, it suggests, as they may have physical limitations that would make it difficult to submit a formal written complaint; so, it suggests that dealers should be prepared to assist senior clients in documenting their verbal complaints.

Cases are screened at opening in Case Assessment and upon escalation to Investigations, as well as periodically throughout the rest of the Enforcement process. The MFDA case screening guidelines focus on qualitative factors when screening cases. The guidelines allow the MFDA to identify and prioritize complaints that involve seniors (defined as investors 60 years of age and over), as well as other vulnerable groups such as those with very limited financial resources or language, literacy or disability issues. This initiative provides for a continued emphasis on addressing issues related to seniors in cases brought to formal disciplinary hearings going forward.

The MFDA have conducted training for its Members, highlighting third party research on seniors which identified factors that might contribute to increased vulnerability of some seniors such as accessibility considerations, decision making processes and diminished capacity. The training also highlighted how aging might make some seniors more vulnerable to risks such as unsuitable advice, conflicts of interest, undue influence and financial abuse. They are currently increasing these efforts and will be providing additional, more extensive training and education to Members and Approved Persons on these and other topics involving seniors, accessing internal and external training resources. This will include specific training for Members in October, 2013.

The MFDA have also developed client materials to help clients, including seniors, understand the need for the collection of KYC information. Their risk-based criteria for the selection of client files for review during the Compliance examination process includes a factor for the selection of client files involving senior clients.

The Investment Industry Regulatory Organization of Canada

In the IIROC Annual Report 2012 CEO report we are told: "...With changing demographics and an aging population, there is increased risk that seniors may become the target of unscrupulous behaviour and may be sold investments and products that are not suitable for them. We have therefore made seniors' issues a regulatory priority by revising our compliance modules to better identify and track seniors-related business practices and making improvements to firms' supervisory controls in this regard. We have revised our enforcement case selection criteria to give greater priority to complaints and investigations involving seniors. these enhancements to our case selection process have also allowed us to focus more effectively on cases involving unsuitable investments. ..” http://www.iiroc.ca/news/Documents/IIROC_AR_2012_CEO_report_en.pdf If these initiatives are diligently applied , seniors should benefit.

Specifically , IIROC Enforcement staff have and continue to participate in training and seminars that address and highlight seniors' issues. IIROC have made seniors' issues a regulatory priority by revising their compliance modules to better identify and track seniors-related business practices and making improvements to firms' supervisory controls in this regard. Their Business Conduct Compliance department examines for seniors' issues in the context of suitability, know your product, and conflicts-of- interest during regular compliance examinations at IIROC-regulated dealers. IIROC offers training to IIROC-regulated firms and registrants through various Member Education Services to better understand seniors' issues. For example, IIROC have produced and offered webcasts focused on vulnerable clients, accredited investors and recently (July 2013) on enforcement trends (which highlighted a number of cases involving seniors and unsuitable recommendations). IIROC is currently producing a specific webcast focusing on seniors' issues.

Like the OSC, IIROC is engaging organizations like CARP to help them better understand and respond to the different needs of this important segment of the population. They have featured seniors' issues in targeted educational resources they produce for IIROC-regulated firms. Additionally, IIROC have conducted focus groups with investors with a particular focus on those approaching retirement to determine the impact of business titles and financial designations used in the industry.IIROC is developing a glossary of common financial designations and certifications that will be launched on their website in English and French in the Fall of 2013. This initiative, together with proposed guidance directed to IIROC -regulated firms on the use and supervision of business titles and financial designations, will help improve transparency and provide seniors and less sophisticated investors with a better understanding of the proficiencies related to various designations.

The Financial Consumer Agency of Canada

The FCAC has a limited regulatory mandate over Federal financial institutions. The mandate includes (a) ensuring that the market conduct of federally regulated financial entities complies with federal legislation and regulations ; (b) promoting the adoption of policies and procedures designed to implement legislation, regulation, voluntary codes of conduct and public commitments by federally regulated financial entities and (c) monitoring federally regulated financial entities' compliance with voluntary codes of conduct and their own public commitments . Enforcement is light with just $212,000 reported as Administrative penalies in the 2012 Annual Report..The FCAC do have regulatory authority over Principal Protected Notes . Their rule on PPN's is at http://www.fcac-acfc.gc.ca/eng/consumers/rights/invest/princplprotectnotes-eng.asp In 2012, there were no complaints about PPN's according to their Annual report.Their main initiatives however seem to be financial consumer education and financial literacy.This is very well done and assists all financial consumers including seniors.

Following the Budget 2013 announcement, the FCAC has undertaken work to improve financial literacy for current and future seniors taking into consideration the unique challenges they face.

These initiatives focus on consumer education and are comprised of:

2 new life events: "Living in Retirement" as well as a "Death of a Spouse or Partner".

- The "Living in Retirement" life event will provide information on various financial issues relevant to seniors, including: financial abuse of seniors and fraud, loss of independence - preparing financially (including Powers of Attorney) and getting help from a financial professional.
- The "Death of a Spouse or Partner" life event will include topics such as: making changes to joint banking arrangements, settling the estate, claiming survivor benefits, claiming life insurance benefit and reviewing financial plan.

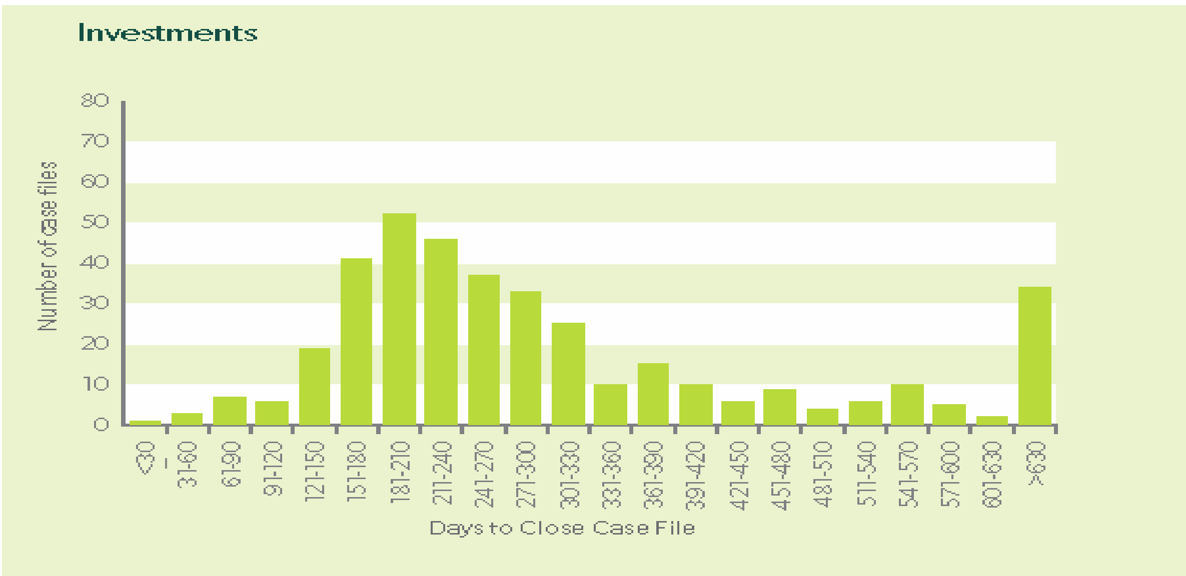
A "Financial Goal Planner", which will include a Saving for Retirement module. This tool will help users estimate their expenses in retirement and the level of savings required to support their projected retirement lifestyle.

FCAC also plans to develop a web portal that will regroup existing financial education resources (governmental and non-governmental). This “one-stop” shop portal will also include a specific filter for seniors.

In 2012 , the FCAC was empowered by the Ministry of Finance to establish a dispute reolution for banks including a standard for approving external dispute resolution bodiies for banks. Two banks, RBC and TD have resigned from OBSI and are now part of the FCAC system. The Federal system has been condemned by SIPA , FAIR and the Consumers Council of Canada among others. See their News Release http://www.consumerscouncil.com/index.cfm?PAGEPATH=&ID=44859 Under the Finance/FCAC system , banks can hire their own external dispute resolver as long as it is FCAC approved. Financial consumers especially seniors have expressed discomfort with this system.This Federal legislative action is already impacting OBSI adversely .

Ombudsman for Banking Services and Investments

OBSI is not a regulator but it is an important element of the investor protection system. It provides free dispute resolution services. It is under constant attack by banks and investment dealers. In its 2012 Annual Report http://www.obsi.ca/images/Documents/Annual_Report/EN/obsi_ar2012_en.pdf it reported about half of the people who complain to OBSI are seniors (48% in 2012).There aren't really any *new* trends; the issues they reported on last year remain the same .With the growing ranks of seniors we can foresee that seniors issues will become more prevalent.To help seniors better manage their financial affairs, OBSI released a list of common issues and problems they see affecting them. A frequent theme of these complaints is that the faith the senior placed in somebody was either unwarranted or somehow violated. Seniors are generally more trusting of others, and unfortunately this sometimes leads to financial problems down the road. While trust in others is admirable, it is important to heed that old expression: Trust, but verify. OBSIalso point out that for many of these individuals, the financial harm they suffer when a bank or investment firm makes a mistake is magnified by having fewer years to make up the losses and fewer income or job opportunities. If compensation is warranted, OBSI may be a senior's only hope for fair compensation, as going to court may take too long and is often uneconomic given the amount of money involved.Our concern is that OBSi complaint cycle times are far too long . Viz



Benchmark	Number of investment case files	Percentage of total
≤180 Days	77	20.2%
>180 Days	304	79.8%
TOTAL	381	100%

These extended cycle times aggravate and frustrate elderly complainants.The board must provide management with adequate budget so it can perform effectively.Additionally , the OBSI Board is proposing to get away from investigating systemic issues and to require Segregated fund owners to split their complaint and send it to OLHI.This will most definitely adversely impact the elderly.

U.S. Securities and Exchange Commission

The SEC has providea an excellent brochure Working With Senior Investors http://www.sec.gov/investor/seniors/workingwseniors.pdf It is targetted at investment dealers and identifies the issues and business practices that will make dealing with senior investors a Win-Win for dealers and investors. The SEChave prepared an excellent brochure *A Guide For Seniors Protect Yourself Against Investment Fraud* http://www.sec.gov/investor/seniors/seniorsguide.pdf The SEC also did a study of " Free lunch " seminars and found them to be essentially marketing/sales pitches. The 2007 report PROTECTING SENIOR INVESTORS: REPORT OF EXAMINATIONS OF SECURITIES FIRMS PROVIDING "FREE LUNCH" SALES SEMINARS is available at http://www.sec.gov/spotlight/seniors/freelunchreport.pdf.

U.S.Financial Industry Regulatory Authority

FINRA Regulatory Notice 07-43
http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p036816.pdf deals with seniors issues.The FINRA Notice cautions firms that they must consider a customer's "age, life stage and liquidity needs." FINRA also advises firms that they should consider a customer's primary expenses (for example, a mortgage), sources of income (and whether it is fixed), amount of retirement savings (and how they are invested), extent of health insurance coverage, and whether the customer will be relying on investment assets to pay for anticipated and unanticipated health costs.In its notice FINRA also discusses risk -- market risk, inflation risk and issuer credit risk -- and why firms "should carefully consider the risk of a product with the age and retirement status of the customer in mind." For example, FINRA cautions firms that older investors may be tempted to "reach for yield to maximize retirement income without the appreciation of the concomitant risk." FINRA states that firms must fully understand the investments that they recommend, must present a "fair and balanced picture of the risks, costs and benefits" associated with their recommendations, and must recommend only those investments that are suitable. The notice also reminds firms that they and their advisers must refrain from making an unsuitable recommendation even if the customer has expressed an interest in that recommendation. Importantly, the notice contains a warning to financial services firms that a customer's net worth alone is not determinative of whether a particular product is suitable for that investor, even when the investor qualifies as an accredited investor.

U.S. SEC, NASAA and FINRA

The SEC, NASAA, and FINRA issued a joint report on September 22, 2008, entitled, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors: (http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf). The report defined “senior investor” as retirees and people nearing retirement, rather than defining the term as a particular age group. http://www.thinkadvisor.com/2012/01/01/best-practices-for-working-with-senior-investors

North American Association of Securities Administrators

NASAA have adopted **NASAA MODEL RULE ON THE USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS** http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf

Consumer Financial Protection Bureau (U.S)

The CFPB has prepared an important research report entitled *Senior Designations for Financial Advisors: Reducing Consumer confusion and risks* http://files.consumerfinance.gov/f/201304_CFPB_OlderAmericans_Report.pdf . “The recommendations in this report seek to reduce consumer confusion and protect consumers by improving the: (1) dissemination of information and consumer education around senior designations; (2) standards for the acquisition of senior designations; (3) standards for senior designee conduct; and (4) enforcement related to the misuse of senior designations. The Bureau believes that adoption of these recommendations will help older consumers avoid financial advisers who would misuse their designations to sell inappropriate investment and financial products.”.

Next steps

The list of initiatives is indeed impressive and innovative. It's very clear that special actions are required to protect seniors. We have a few suggestions that can move these initiatives to the next level:

Fix the NAAF/KYC system Many of the root causes of investor abuse can be found in the deficiencies of the KYC/suitability system and the apparent lack of a fiduciary duty for advice givers. A standard application form with clearly defined terms would be very helpful. Reps filling in pre-signed blank forms should be dealt with severely. People just do not understand that the new account application form is a contract and the information they provide can and will be used against them in the event of a dispute. We urge regulators to act on this long-standing issue.

Tackle the core issue of regulating advice While much of the Canadian retail financial services industry is still considered a brokerage/transaction orientated industry, it has become much more involved in promoting itself as a provider of wealth management solutions, and is developing more sophisticated retirement income planning solutions. In other words, its legacy framework is one structured around transactions, while its promoted business objectives and service solutions are service driven; the two are in conflict, with significant potential liabilities to market participants who fail to recognize the liabilities associated with such a shift. The CSA should establish a Task Force to bring this long standing debate to a conclusion. A possible solution will require the title "financial advisor" to be regulated, and require all titleholders to belong to a recognized professional association. The solution will greatly enhance consumer protection by raising the professional bar for all advisors. By requiring advisors to maintain membership in a recognized association, financial consumers could easily review the advisor's credentials and complaints history. In addition, advisors would be required to:

- meet clearly specified proficiency standards;
- satisfy ongoing continuing education requirements;
- adhere to the association's code of professional and ethical conduct; and
- maintain appropriate levels of errors and omissions insurance.

This should be a high CSA priority given Canada's age demographics and trend. It is worth reading this June 2010 speech *"Professionalism and Proficiency in the Financial Services Industry: Why it matters more than ever"* by IIROC President and CEO Susan Wolburgh Jenah discussing advisor proficiency.http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=A078DFB990F7483BAA363AEC8BECA208&Language=en

Repair Fund Facts Fix the risk disclosure. Require FF to be made available to investors before purchase. By knowing investment strategy, risks and fees associated with owning a mutual fund, better financial outcomes will prevail. Risk mis-rated funds have been adroitly used by dealers to defend the sale of unsuitable investments leaving hapless investors with a loss and reduced chances of compensation.

Implement procedures to collect fines imposed. It's important that people who break the rules actually be sanctioned. According to MFDA and IIROC reports only a small percentage of fines levied are collected from individual. Without diligent collection, the credibility of enforcement is greatly impaired. There is no deterrence impact. If these SRO's require more powers to enable collection, the CSA should grant them. (we also recommend that age should be a factor in setting penalty guidelines)

Treat misleading advertisements more seriously. A few big fines will help cut down this nasty practice which too often leads to unsuitable investments being bought by the elderly. Reporting annually on deficiencies is not changing behaviour. “Free lunch” seminars. also merit attention .At these seminars, participants are provided with a sales pitch and sales materials that describe possible investment strategies. These seminars sometimes offer unsuitable sales of securities for attendees...Prepare a Guide like this one for Ontarians http://www.law.cornell.edu/wex/investor_protection_guide_investment_seminars_free_lunch .

Assess the distribution of structured products Structured products, due to their very nature, can be difficult for senior investors to understand. This can lead to them being mis-sold, particularly when investors are searching for yield. IOSCO has noted that several events, including the 2008 default on products following the failure of Lehman Brothers, highlighted the problems retail investors can face when dealing with structured products. In particular, we believe regulators should be concerned about investors' understanding of these products, their design and disclosure, suitability criteria ,promotion standards, potential for mis-selling especially to retirees and post-sale product controls. That is why we believe that replacing the current Suitability standard with a Best Interest standard is inevitable.

Investigate sale of specialized ETF’s The 2012 Ombudsman for Banking Services and Investments (OBSI) annual report indicates that unsuitable investments and advice continue to be the biggest source of investment industry complaints. OBSI says that leveraged exchange traded funds (ETFs) continue to be a focus of investment suitability complaints. "In some cases we are finding that investment advisors are not aware of the risks and characteristics of the investments they are recommending. In the case of leveraged ETFs this is resulting in some investment advisors not trading the products appropriately and making unsuitable investment recommendations to their clients," it says. The added complexity of leveraged and inverse exchange-traded products makes it essential that brokerage firms have an adequate understanding of the products and sufficiently train their sales force before the products are offered to retail customers. Firms should be required to conduct reasonable due diligence and ensure that their representatives have an understanding of these hard to understand products. Doubly so for recommendations to retirees.

Restrict Crowdfunding to sophisticated investors We worry that these high-risk investments may result in a trail of losses for senior investors who aren't used to navigating the less transparent, more complex start-up market. Fraud would also be a major concern. Like Labour Sponsored Investment funds, the likelihood of a positive outcome is low. Sounds like an accident waiting to happen with the elderly likely the biggest victims. In testimony before the U.S. Senate Banking Committee, Columbia Law School Professor John Coffee declared that as drafted the "crowd-funding" component of the bill "could well be titled 'The Boiler Room Legalization Act of 2011.'" He said, "It is likely to create "few jobs... and much fraud."

Clamp down on the use of inflated “advisor” titles. These titles lure retail investors-they are misleading and deceptive. Titles using the word “Senior” can be especially deceiving. While we are pleased that IIROC is acknowledging there is an issue with titles and designations, we don’t believe it’s enough to let dealers figure out what is fair and reasonable themselves. Instead of just a guidance note from IIROC, perhaps a statute be enacted, stipulating that only those who have a certain professional designation, be allowed to call themselves a financial planner. That designation would come with a requirement for continuing education courses and be sanctioned by regulators, as is the case in Quebec. Also, provide a table on the CSA/Commission/SRO websites explaining the meaning and significance of all the designations used by dealer Reps.

Re-engineer SRO complaint handling processes to speed up cycle time and improve investor communications of progress.

Establish a investor restitution fund like the one used in Quebec.

Examine dealer complaint handling processes. Clients are not being treated fairly – responses are dismissive. OBSI reports that over 4 in 10 investment dealer complaint decisions are overturned. Who knows how many valid complaints never reach OBSI because the dealer's rejection was taken at face value? The refusal by a participating Member of OBSI to accept a recommendation without a legitimate justification should be considered a failure to participate in the dispute resolution system in good faith, and, therefore, should be considered to be acting in breach of the securities rules. The applicable securities regulator should review the matter to determine if the Member firm had a legitimate reason for not accepting the recommendation. If there was no legitimate reason and the securities regulator determines that the firm is acting not in good faith, then the regulator should take disciplinary action against the firm for not acting in good faith in its complaint handling process and its participation in OBSI. For a dealer to be complying with the requirement that it participate in OBSI, it cannot be sufficient for the Member firm to be an OBSI participant for good optics only.

Hold dealers accountable for all regulatory fines imposed on employees and agents i.e. make dealers responsible for payment if registrant doesn't pay. It's well known that regulators collect only a tiny fraction of the fines imposed on Reps. whom they hold responsible for investor abuse. We therefore argue that the deterrence value is NIL. We argue that the advisory contract is with the dealer NOT the individual Rep. Imagine if aircraft manufacturer Boeing practiced this way. An aircraft maintenance technician would be held responsible by the FAA- Boeing would be off the hook even if the plane went down. Our view is that the dealer recruits "advisers", trains them, incents them to meet sales quotas, provides the systems, policies and practices under which they operate and supervises them plus assigns a compliance officer to quality control the whole process. The dealer gains from the active selling but when the person at the bottom of the food chain gets caught, the firm walks away. This is an attack on basic fairness that ends up leaving trusting clients on their own. Dealers like it this way because they are immunized from wrongdoing and Reps like it because they know IIROC/MFDA can't collect the fines. The only loser is Main Street. Note that OBSI rightly always holds the dealer responsible for wrongdoing by "advisers" .The dealers" Trust us "marketing materials hold out the promise of integrity and fairness. It is the dealer who makes declarative statements and ads re trustworthiness and it is therefore the dealer that should be held accountable for fines. Once dealers recognize the potential liability, behaviour will change for the better.

Summing up

Regulators recognize that seniors represent a special challenge .Seniors are highly vulnerable. It's clear they have started a great number of creative investor protection initiatives.

Many seniors qualify as vulnerable because of a loss of cognitive ability, their ability to doubt or to question, their isolation and willingness to trust others. As the Canadian population ages, more advisors will be working with vulnerable clients, which means regulators , advisors and dealers need to take steps to protect these clients and their own businesses. A vulnerable client is an individual who is easily influenced, has limited investment knowledge or is unable to make independent decisions. The Mutual Fund Dealers Association of Canada (MFDA) report that about a third of cases before the MFDA involve seniors. The 2012 OBSI Annual Report states that 38.6 % of complainants are retirees which is higher than the percentage of the general population; 48 % of complainants are 60 years of age or older (8.7 % are 80 or older!). Nearly one-third of IIROC disciplinary proceedings in 2012 involved investors that were 60 years of age or older. These are disturbing numbers.

Regulators rightly are focusing their attention on protecting seniors from mis-selling and fraud. But there is another issue related to retirees. What quality of advice is available to deal with an account that functions as a pension with monthly withdrawals to meet living expenses? An account that must last for the lifetime of the client. During the accumulation years, financial advice, such as "start early" and "asset allocation is effective. In the de-accumulation phase (a.k.a. distribution), however, clients need individually tailored advice because each individual is facing specific issues with their health, finances, taxes, lifestyle , family and estate situation, so the advice must be holistic and may include insurance products. The de-accumulation phase presents challenges in dealing with multiple variables. Regulators and dealers need to ensure a cadre of specially trained / certified financial planners is available and assigned to the accounts of retirees. If unqualified dealer Reps goof up, the results could be catastrophic since there is less time available to recoup losses.

The bottom line is that Regulators are taking concrete steps to protect seniors.They are a start but there is much more to be done.Time is of the essence.

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