



Canadian Foundation *for*  
Advancement *of* Investor Rights  
Fondation canadienne *pour* l'avancement  
*des* droits *des* investisseurs

## **FAIR Canada Welcomes Release of the Ontario Securities Commission's Seniors Strategy, OSC Staff Notice 11-779**

**Released Tuesday, March 20, 2018**

FAIR Canada commends the Ontario Securities Commission ("OSC") for giving priority to the growing concerns related to vulnerable older investors with the release of its Seniors Strategy. We look forward to working with the OSC and other stakeholders on next steps and associated initiatives.

FAIR Canada is pleased to see that the Seniors Strategy addresses:

- Issues of financial exploitation and cognitive impairment through developing a framework for investment firms and their representatives to play a critical role in abuse prevention and mitigation;
- Misleading and confusing titles, designations and marketing practices;
- The ability of the Ombudsman for Banking Services and Investments ("OBBI") to secure redress for investors and improving the complaint system for Canadians, especially for seniors who make up a large proportion of complainants; and
- The need for education and training for firms and their representatives as well as educational materials for older Canadians.

In addition, we support an inclusive approach involving provincial and federal governments, self-regulatory organizations such as the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA"), the Office of the Privacy Commissioner of Canada and the Ontario Public Guardian and Trustee (and their provincial counterparts) working together, in a collaborative fashion, in order to better protect, empower and support older Canadians.

FAIR Canada and the Canadian Centre for Elder Law released a joint report in November 2017 entitled "*Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity*" (through funding from the Law Foundation of Ontario Access to Justice Fund). The joint report examined the issue of how elder financial abuse, undue influence and mental capacity challenges are serious and growing social concerns and examined how the investment industry could play a key role in addressing these issues. The joint report received strong support from many stakeholders including the OSC's Investor Advisory Panel and the Investment Funds Institute of Canada.

Going forward, FAIR Canada urges the OSC and the Ontario government, federal government, and other provinces and securities regulators to work collaboratively to:

- I. Address financial exploitation, undue influence and diminished mental capacity by consulting further with a view to adoption of the **six recommendations** contained in the joint report:
  1. Require investment firms to make reasonable efforts to obtain the name and contact information of a **Trusted Contact Person** for each client, who can be contacted in case

of suspicion of abuse or diminished mental capacity, so long as they themselves are not suspected of financial abuse or exploitation of the client.

2. Allow a **Temporary Hold on Trades and Disbursements** of funds or securities when there is a reasonable suspicion of financial abuse or where the client has lost the capacity to provide instructions.
  3. Provide a **Legal Safe Harbour** for investment firms and financial service providers who appropriately report suspicions of financial abuse or mental incapacity.
  4. **Create a Conduct Protocol** setting out the steps firms and financial services representatives should take to identify and protect vulnerable clients including mandatory reporting of suspected financial abuse of vulnerable investors to the appropriate securities regulator.
  5. **Mandate Specific Education and Training** in the areas of elder abuse, undue influence, mental capacity issues, enduring powers of attorney and ageism.
  6. Require that investment firms **Become Familiar with Outside Resources and Responders** and learn how and when to appropriately refer a case of suspected elder financial abuse, undue influence or diminished mental capacity to local responders.
- II. Provide better tracking and reporting structures regarding elder financial abuse and investment fraud.
  - III. Improve the internal complaint handling rules for investment firms and mutual fund dealers and implement binding decision-making for OBSI.
  - IV. Implement a **meaningful statutory best interest standard** so that investors, including older investors, receive the objective, professional financial advice they need and expect.
  - V. In conjunction with a statutory best interest standard, **restrict the use of titles** to three categories:
    - “Investment Advisor” or “Financial Advisor” for those complying with the statutory best interest duty;
    - “Portfolio Manager” for those exercising discretionary authority (including robo-advisors) and subject to a fiduciary duty; and
    - “Salesperson” for those who are not able to comply with the statutory best interest standard.

The OSC Seniors Strategy is an important initiative and step toward dealing with critical issues facing vulnerable investors. FAIR Canada looks forward to working with the OSC and other stakeholders in a collaborative fashion, participating in future consultations and to the adoption of meaningful recommendations for the benefit of vulnerable investors including older Canadians.

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