



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

February 06, 2019

Financial Consumer Agency of Canada  
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Ottawa, ON, K1R 1B9  
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**RE: FCAC Consultation on a Voluntary Banking Code of Conduct**

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We are writing to provide comments with respect to the consultation by the Financial Consumer Agency of Canada (“FCAC”) on creating a voluntary code of conduct for banks in their delivery of products and services to seniors in Canada. These written comments follow our participation in the roundtable on this topic organized by the FCAC and held in Toronto on January 30<sup>th</sup>, 2019.

FAIR Canada is a national, charitable organization dedicated to putting retail investors and financial consumers first. As a voice for Canadian investors and financial consumers, FAIR Canada is committed to advocating for stronger individual investor and financial consumer protections. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

Further to our comments at the roundtable, FAIR Canada believes the FCAC would benefit from reviewing and considering the [Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity](#), a joint publication of FAIR Canada and the Canadian Centre for Elder Law (with financial support from The Law Foundation of Ontario) in connection with the FCAC’s development of a code of conduct to guide banks in their delivery of products and services to seniors in Canada.

In particular, we note the six measures recommended in the Report which are paraphrased (in order to align with the role of the FCAC and subject matter of this consultation) in summary form as follows:

1. **Trusted Contact Person (“TCP”)**: The FCAC should develop a rule that requires banks to make reasonable efforts to obtain the name and contact information of a trusted contact person for all individual clients, regardless of the client’s age, at the time of opening a new account, or, in the case of existing accounts, the next earliest occasion that the bank updates a client’s profile. This should be reviewed at least annually with the client. If the client does not have a trusted contact person, or does not wish to provide one, then there is no obligation that they do so.

2. **Temporary Hold on Disbursements:** The FCAC should develop and implement a rule that authorizes qualified individuals within a bank to place a temporary hold on disbursements of funds from the account of a vulnerable client, where the qualified individual reasonably believes that financial exploitation or undue influence of the vulnerable client has occurred, is occurring, or will be attempted, or where the qualified individual reasonably believes that the vulnerable client has lost the capacity to provide instructions. Provision should be made for routine payments through the accounts, in accordance with the principles used by the provincial Public Guardians and Trustees or best practice, so long as these routine payments do not significantly deplete the assets.
  
3. **Legal Safe Harbour:** The FCAC and the federal and provincial governments should develop and implement a legal safe harbour that shields banks and their representatives from regulatory liability if they act in good faith and exercise reasonable care in making a disclosure about a client to his or her designated TCP, a specified government agency, or other designated reporting body. In addition, a regulatory legal safe harbor should be extended to the bank and their representatives for placing a temporary hold on disbursements from the account of a vulnerable client, provided the bank and its representatives act in accordance with the regulatory requirements including the applicable provisions of an approved conduct protocol. Canadian governments at the provincial and federal levels should undertake legislative law reform to provide for a legal safe harbour from civil liability where the regulatory requirements are met including reform of the Personal Information Protection and Electronic Documents Act (PIPEDA) legislation to accomplish this. In the meantime, courts should give administrative deference to the banking regulatory regime when determining whether there is any civil liability (including breach of privacy laws) arising as a result of placing a temporary hold on disbursements, or disclosures to third parties as set out above, to the bank and/or its representatives in accordance with the framework and requirements set out in the Report.
  
4. **Conduct Protocol:** The FCAC should develop and publish a ‘Conduct Protocol’ that defines key terms and sets out the steps banks and their representatives should take to identify and protect vulnerable clients. Establishing this Conduct Protocol will allow banks to design their own appropriate policies and procedures, while having the reassurance of the regulatory required Conduct Protocol as the core of their response.
  
5. **Education and Training:** Banks should be required to ensure that their representatives and staff have competency-based training in the areas of elder abuse, undue influence, mental capacity issues, enduring powers of attorney and ageism and have the required proficiencies. The FCAC should be involved with banks in establishing the content and competencies required of representatives and legal and compliance personnel at banks

in the areas relevant to vulnerable investors who may be subject to elder abuse, financial exploitation, undue influence, mental capacity issues, and ageism and also have education on enduring powers of attorney, and substituted and supported decision-making. The FCAC should play a role of ensuring that minimum proficiency in this area is set and met.

- 6. Banks Become Familiar with Outside Resources and Responders:** Banks need to learn how and when to appropriately refer a case of suspected elder financial abuse, undue influence or diminished mental capacity to local responders. As there is no single place for reporting these issues in Canada, banks will need to learn the provincial or territorial responders in each area, and make that information widely available to staff.

We trust that the forgoing recommendations and the Report itself will be helpful to the FCAC in its efforts to create a voluntary code to guide banks in their delivery of products and services to seniors in Canada.

We thank you for the opportunity to provide our comments and views in this response. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at 647-256-6693 / [frank.allen@faircanada.ca](mailto:frank.allen@faircanada.ca).

Sincerely,



Frank Allen  
Executive Director  
Canadian Foundation for Advancement of Investor Rights