



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

May 29, 2019

Financial Consumer Agency of Canada  
427 Laurier Avenue West, 6th floor  
Ottawa, Ontario K1R 1B9

Sent via email to: FCAC.Seniors-Aines.ACFC@fcac-acfc.gc.ca

**RE: Response to request for comment on the FCAC draft code of conduct for delivery of banking products and services to seniors**

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FAIR Canada is pleased to provide comments on the Financial Consumer Agency of Canada (FCAC) draft code of conduct for delivery of banking products and services to seniors. These comments follow our submissions dated February 6, 2019 on the initial Consultation on creating a voluntary code of conduct for banks.

**1. General Comments**

1.1 FAIR Canada welcomes the introduction of increased protections for seniors in the area of the provision of banking products and services by the FCAC.

1.2 FAIR Canada is concerned about the increasing number of frauds and misrepresentations against vulnerable members of society including senior citizens.

1.3 **The FCAC proposes that the Code be “voluntary” but then states that the FCAC is responsible for the “oversight and enforcement” of the Code. The Code proposes establishing a committee of stakeholders, under the auspices of the Canadian Bankers Association (CBA) which is a lobby group for the banks. We recommend that:**

- 1) **The Code be non-statutory rather than voluntary;**
- 2) **The Code be under the auspices of the FCAC which is responsible for the “oversight and enforcement”;** and
- 3) **The Committee be a committee of the FCAC with the stakeholders to include the ones identified in the draft Code.**

- 1.4 As a non-statutory Code it will not have the force of law. However, as it represents a consensus of opinions of, the banking industry and government, banks should be required to comply with the Code. Where a bank simply does not comply with the Code, the FCAC could ask it to comply, failing which it could be identified as failing to comply and perhaps be reprimanded. If the Code is entirely “voluntary” it is not clear how the FCAC could “enforce” compliance (see section 5.2). Similarly, the Code provides that the “Banks will...” do certain things, but if the Code is entirely voluntary, it is not clear how they are mandated to appoint a Senior’s Champion or comply with the principles of the Code.
- 1.5 We believe that this version of the draft code adopts some of our comments on the prior version in an adequate manner. We detail below some of our concerns with the current version.

## 2. Specific Comments

- 2.1. We would like for there to be a definition of “senior” included to make sure that there is clear language about who will be covered by the code. The Code currently defines a senior as a “Canadian who is close to 60 years of age or older” and the use of the language “close to 60” is not clear enough.
- 2.2. As noted in our February 2019 submission we continue to be concerned about the issue of seniors being victims of financial abuse and otherwise failing to adequately access banking products and services in a manner that sufficiently addresses the needs of seniors. There could be increased obligations on banks to provide accessible services to seniors in the area of physical accommodation such as larger text and accessible locations but there should also be increased awareness of seniors preference to deal with bank tellers over ATMs or use online banking tools and there should be increased staff training on this issue.
- 2.3. The creation of a voluntary code of conduct alone is insufficient as for a code to be truly effective there must be an enforcement mechanism such as a monitoring agency or organization that fulfills an auditing function. The Code should be controlled by the FCAC not the CBA. A Code such as this is best suited to be implemented and enforced by a governmental body not a trade association and lobby group.
- 2.4. The creation of an advisory committee is useful but may lack proper authority to be a strong enforcement mechanism. Once the banks have signed on to be covered by the Code then there should be a corresponding obligation that the banks must comply with the Code. Also, the advisory committee should include seniors on the committee to ensure their voices are heard and not just “organizations representing seniors or matters that affect seniors” as that does not ensure a senior will be the representative.

- 2.5. The requirement for a five year review is important but a strong code of conduct would have built in the ability to provide improvements on an ongoing basis such as a feedback loop proposed by Ivanka Mamic.<sup>1</sup> Ongoing improvement allows for stakeholders to have greater access to the governance mechanism rather than wait for a specified time to make changes. Allowing for ongoing change allows for the code to be reformed in real time rather than at certain designated times which mean that the code could become outdated.
- 2.6. We agree with the Kenmar Associates submission that a better term for “Seniors Champion” is “Seniors Advocate”. We also agree with the Kenmar Associates submission that Principle 7 of the Code with the requirement that “banks will publicly disclose their compliance with the Code” that the publication of the standalone report mentioned in Principle 7 should be available online and easily accessible. **As FAIR recommended during the recent conference call, the standalone report of all of the banks should be available on the FCAC website in addition to being available on the website of each individual bank.** This allows for ease of access for seniors and others to locate the standalone report more easily by going to one website rather than multiple websites to find the information.

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

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Please feel free to contact Ermanno Pascutto at [ermanno.pascutto@faircanada.ca](mailto:ermanno.pascutto@faircanada.ca).

Sincerely,



Ermanno Pascutto

Executive Director, FAIR Canada

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<sup>1</sup> See Ivanka Mamic, Implementing Codes of Conduct: How Businesses Manage Social Performance in Global Supply Chain, (Geneva: Greenleaf Publishing, 2004).