

March 8, 2024

Financial Services Regulatory Authority of Ontario (FSRA)
Submitted via the FSRA website

Re: FSRA's Consultation on Strengthening the Protection of Vulnerable Consumers

We are pleased to provide comments in response to this consultation.

FAIR Canada is a national, independent, non-profit organization with a reputation for independent and thoughtful commentary on public policy matters. We dedicate ourselves to advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators.
- Relevant research focused on retail investors.
- Public outreach, collaboration, and education.
- Proactive identification of emerging issues.¹

We Support FSRA's Proposal

We support FSRA's proposed approach to better protect vulnerable consumers. We also commend FSRA for addressing this issue, as outlined in its 2024-2025 Statement of Priorities. Focusing on vulnerable consumers will help to ensure a more inclusive financial system, reduce financial mistreatment, and boost consumer confidence in financial services.

In this letter, we:

- Highlight the need to address vulnerability today.
- Support FSRA's definition of vulnerability.
- Encourage FSRA to consider incorporating related initiatives from other regulators.
- Suggest a more consumer-focused approach to FSRA's regulation in general.

We expand on these issues below.

Vulnerable Consumers are a Growing Demographic in Ontario

We support FSRA's efforts to address vulnerability in the financial services sector. FSRA's research has shown that vulnerable consumers are:

¹ Visit www.faircanada.ca for more information.

- More likely to face barriers in accessing financial products and services, including receiving poor customer service.²
- Less confident, less trusting, and less satisfied with financial products and services.³

FAIR Canada has been at the forefront of efforts to improve outcomes for vulnerable investors. In 2017, we partnered with the Canadian Centre for Elder Law (CCEL) to produce a seminal Report on Vulnerable Investors (the Report).⁴ In preparing the Report, we consulted with a range of stakeholders who shared the view that more needed to be done to address vulnerability among financial consumers.

As more people in Ontario age, vulnerability is becoming a bigger concern. In 2021, almost 18% of Ontario's population were adults aged 65 and over.⁵ This number is expected to keep rising and hit 24% by 2043.⁶ As we age, we worry about waning physical and mental capacity, the need to rely more on others, and possible elder neglect or abuse. These challenges make us more vulnerable, including to financial abuse.

Alongside its aging population, Ontario has seen a rise in immigration in recent years. In 2022, Ontario had a record high of 227,424 international immigrants and experts expect the numbers to remain high.⁷ These new immigrants might not know how to navigate Ontario's financial services and social systems, or they might face language and cultural barriers. As a result, they could be more vulnerable.

Addressing the needs of vulnerable consumers within FSRA's regulatory orbit will help to:

- Protect Ontarians who are at greater risk of financial mistreatment.
- Build trust in the financial sector.

Vulnerability is an Evolving Concept

FSRA's definition of vulnerability must be comprehensive and flexible to:

- Capture diverse circumstances that can make individuals vulnerable.
- Ensure the framework can adapt to changing conditions and effectively address vulnerabilities.

We support FSRA's definition because it considers several factors that could increase the risk of becoming vulnerable, such as age, health condition, language barriers, and being a new immigrant. It also recognizes that vulnerability may be short-term.

This approach is in line with FAIR Canada's Report. Vulnerability must focus on the different social conditions that may make someone vulnerable. Regulators should recognize that older people might have

² [FSRA 2022 Consumer Research Study](#), p. 4.

³ Ibid.

⁴ FAIR Canada and CCEL, [Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity](#), November 2017.

⁵ Fraser Institute, [The Implications of an Aging Population for Government Finances in Ontario](#), November 9, 2021, p. 1.

⁶ Ibid.

⁷ Financial Accountability Office of Ontario, [Labour Market Outcomes of Immigrants in Ontario and its Major Cities](#), November 8, 2023.

a higher risk of vulnerability. However, it is also important not to assume that all elderly people are vulnerable and need protection.

FSRA's approach is also consistent with that of the Autorité des marchés financiers (AMF). The AMF recognizes that several factors can contribute to vulnerability, such as mental illness, social isolation, or having a sick family member. The AMF's approach also notes that vulnerability may be permanent or temporary.⁸

Other Measures to Protect Vulnerable Consumers

We are pleased that FSRA has reviewed the work of other regulators to address vulnerable consumers. This includes the work of the Canadian Securities Administrators (CSA) and the Canadian Investment Regulatory Organization (CIRO).

To better protect vulnerable consumers, the CSA and CIRO:

- Require their registrants to make reasonable efforts to obtain Trusted Contact Person (TCP) information.⁹ A TCP has no legal authority. Rather, they are someone the advisor can contact, for example, when they suspect a caregiver is financially abusing their client or the client may have reduced mental capacity. A quick call to the TCP could help to ease any concerns.
- Allow investment firms to place a temporary hold on transactions if they reasonably believe the client is being financially abused or has capacity issues.¹⁰
- Created training resources for firms and individuals serving vulnerable populations.¹¹ These resources contain best practices for working with older or vulnerable clients and red flags of financial abuse.

The Ontario Securities Commission also developed free “white label” educational resources relating to serving older and vulnerable investors. Firms can adapt, brand, and provide these materials to their representatives.¹²

FSRA should consider how its regulated businesses can use these practical tools to help vulnerable investors. Notably, financial advisors who are also CIRO-registered are already subject to the vulnerable investor framework under the CIRO rules and National Instrument 31-103.

⁸ AMF, [Protecting Vulnerable Clients – A Practical Guide for the Financial Services Industry](#), May 2023, p. 4.

⁹ National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103), section 13.2.01 and [CSA Notice of Amendments to National Instrument 31-103 Registration Requirements and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements and Ongoing Registrant Obligations to Enhance Protection of Older and Vulnerable Clients](#), July 15, 2021.

¹⁰ NI 31-103, section 13.19.

¹¹ See for example: [CSA Staff Notice 31-354 – Suggested Practices for Engaging with Older or Vulnerable Clients](#), June 21, 2019.

¹² Ontario Securities Commission, [Resources for Working with Older and Vulnerable Clients \(White Label Materials\)](#).

Adopting a Consumer-Focused Perspective

Finally, we urge FSRA to develop a more consumer-focused regulatory approach more generally. This includes finding ways to:

- Eliminate regulatory complexity to make the system easier for consumers to find and use the financial services they need with more confidence.
- Establish clear standards of business practices that support and lead to better consumer outcomes.
- Close regulatory gaps that make it difficult to pursue conduct that harms consumers.

We welcome FSRA's efforts to address the needs of vulnerable consumers. We are pleased to support these efforts in any way we can. We intend to post this submission on our website and understand that FSRA may post on its website. Should you have any questions or wish to discuss any aspect of our submission, please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Erica Young, Head of Policy, at erica.young@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
President, CEO, and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights