

INVESTOR ADVISORY PANEL

August 3, 2017

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Re: Support for FAIR/CCEL Consultation on Vulnerable Investors

The Investor Advisory Panel is an initiative by the OSC to enable investor concerns and voices to be represented in its rule and policy making process. Over the past few years, we have been particularly active in urging the OSC to address the unique needs and challenges seniors face when it comes to investing.

We are, therefore, pleased to see FAIR Canada partner with the Canadian Centre for Elder Law (CCEL) to advance the interests of vulnerable investors, including seniors, and to address regulatory gaps that put them at a disadvantage.

It is our understanding that FAIR Canada and the CCEL, with the support of the Law Foundation of Ontario, are developing recommendations for “*a conduct protocol to guide Canadian financial services firms and advisors on the protective action they may take for the benefit of vulnerable investors in situations of lost capacity or undue influence (including financial exploitation).*” In addition, they are seeking to make recommendations for a legal safe harbour provision – a “*model legal mechanism that would shield firms and advisors from regulatory (and potentially civil) liability where they take protective action in good faith to safeguard vulnerable investors’ interests.*”

The Panel supports this work, noting such provisions have already been adopted in the U.S. where FINRA, supported by the U.S. Securities and Exchange Commission, recently took similar steps to address the financial exploitation of seniors.

In addition to our full support for this initiative, we would like to make the following recommendations that we hope helps inform this timely and positive step forward:

Harmonization – Any recommendations stemming from this consultation should be harmonized with other jurisdictions, specifically provincial offices focused on guardianship and trusteeship.

Best interest – Recommendations must also be consistent with a best interest regime as it evolves.

Training – Any protocol developed must be supported by adequate training by client-facing staff at investment firms. Staff must also be trained in dealing with specific scenarios that could arise.

Documentation – Firms must ensure they keep clear and consistent documentation when a trusted contact is contacted or a hold on an account is applied.

Best practices – The Panel also recommends that FAIR Canada and the CCEL consult with other jurisdictions who have successfully implemented such a protocol, specifically in the U.S.

Overall, the Panel lauds this effort to implement rules that empower investment firms to detect and prevent the financial exploitation of seniors and other vulnerable investors. Having a trusted person to contact when financial exploitation is suspected and enabling firms to temporarily place a hold on account activity will help reduce the frequency and impact of seniors falling victim to abuse and fraud. The recommendations fall squarely within the mandate of investor protection.

Yours truly,

Letty Dewar
Chair, Investor Advisory Panel