

Via email

Sept. 30, 2016

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British Columbia Securities Commission  
The Manitoba Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Nova Scotia Securities Commission  
Ontario Securities Commission  
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**CANADIAN SECURITIES ADMINISTRATORS CONSULTATION PAPER 33-404  
PROPOSALS TO ENHANCE THE OBLIGATIONS OF ADVISERS, DEALERS, AND  
REPRESENTATIVES TOWARD THEIR CLIENTS**

[http://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20160428\\_33-404\\_proposals-enhance-obligations-advisers-dealers-representatives.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.htm)

As a family member who has seen systemic violence perpetrated against the savings of my parents, by an investment culture that is seeking to emulate the racketeering practices that are seen by the historical de-regulated examples of Enron and Wells Fargo, I am pleased to have the opportunity to provide input into the regulatory priority setting process which so greatly affects the quality of lives of seniors. I first and foremost want the whole service sector in Canada to understand and internalize the Universal Declaration of Human Rights - and to understand and memorize Article 29 of that Declaration - and henceforth ban the idea of mindlessly sending people with grievances to a quagmire of un-motivated and apathetic "resources" that refuse to acknowledge any duty to help to focus and document the veracity of complaints. Article 29 of the UDHR holds that we have a duty to the community to ensure that everyone's rights are protected. That is the opposite from the self-regulating crimes against the elderly in Canada - purely as a maximization of profit in the shortest term strategy.

My father Harold C. Blanes and I, are glad to see there is less dependence on disclosure

to investors and the transaction, and more obligations placed on dealers and advisors to provide good advice. We see merit in the OSC Seniors Advisory Committee. We also would feel that a follow up process on reports to regulators and service agencies that serve the needs of people who have been traumatized by criminal practices - should become a standard feature of an accountable - and authentic - governance system.

We generally agree with all of the targeted reforms. In fact, we have been led to believe that these practices are routinely being applied to the advice they receive. It is disturbing to find out that there is no explicit requirement to consider product/account costs against the client's investment needs and objectives. Similarly, the fact that there is no explicit requirement that registrants take reasonable steps to update KYC information at least once a year casts doubt on the quality of the advice. Perhaps most disturbing of all is the observation that: *"The self-regulatory and industry organization investor complaint experience shows there is consistent and ongoing non-compliance with many of the current key regulatory requirements, with the unsuitability of investment recommendations being the primary basis for complaints to OBSI for the past five years, case assessment files for IIROC for the past three years and allegations in MFDA enforcement cases for the past three years"*. In the case of Harold C. Blanes, the regulators have been made aware of the fact that a brokerage had no Know Your Client form on Mr. Blanes - nor would one be appropriate since he was in an order taking relationship - not an advice-seeking role. Yet this company - while he was hospitalized mysteriously moved his GIC application into an "unavailable" status and created an imaginary "moderate risk" status - then while he was in a coma, moved him to "high risk" that was not found out until he got disclosure of his records by launching a Supreme Court of BC action.

It is not only the CSA that has observed deficiencies in Canada's wealth management industry. SIPA and FAIR Canada also have detailed numerous issues. Now a new report from JD Power provides still more evidence that reforms are needed. According to the study, despite Canada's wealth management industry promoting a goals-based approach to advice, nearly half of full service Canadian investors say their advisors fail to deliver on even the first stage of that process, which helps them set goals that reflect their risk tolerance, according to the J.D. Power 2016 Canadian Full Service Investor Satisfaction Study,<sup>SM</sup> released today. The study identifies three broad stages of goals-based investing: setting personal goals; implementing a strategy to achieve those goals; and monitoring progress. Only slightly more than half (54%) of investors indicate their advisor helped set goals and discussed risk. **Barely one-third (34%) say their advisor effectively delivered on all three stages.**

<http://www.jdpower.com/press-releases/jd-power-2016-canadian-full-service-investor-satisfaction-study>

An IIROC report ***Managing conflicts in the best interests of the client*** noted that when it came to compensation-related conflicts, most firms sampled lacked a meaningful process to identify, deal with, monitor and supervise compensation-related conflicts. For example, most firms did not have mechanisms in place to identify advisors who recommend products that yield higher fees and bonuses, when there are other suitable but less expensive alternatives available. They also did not have a process in place for implementing additional monitoring of advisors approaching compensation thresholds based on the amount of revenue generated. The report states: **Although most Dealer**

**Members responded that they always put clients' best interests first, we found little supporting documentation as far as compensation-related conflicts were concerned. .."**

[http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3\\_en.pdf](http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf)

A recent OSC report airs concerns over advice to seniors. The Report states: *"Through recent compliance reviews or investor complaints, CRR and the Investor Office, have detected concerns related to the provision of investment advisory services or sales of products to vulnerable investors; in particular, senior investors, but also investors with other vulnerabilities (e.g. a diminished cognitive capacity, a severe or long term illness, a physical disability, mental health problems, a language barrier). Senior investors, especially those who may have diminished capacity, are vulnerable to investment advice that is unsuitable, investment fraud and financial abuse. OSC staff is concerned with issues related to senior investors because: they are growing as a demographic, both in terms of population and also in terms of household investable assets, they are relying on investments to fund retirement costs, and in some instances agreeing to invest in high-risk products to generate a desired level of income, and they may have a reduced investment time horizon to recover from financial losses, they may not understand the risks and investment features of the product they have invested in. We are prepared to take serious regulatory action when we find unsuitable investments."*

<http://www.wealthprofessional.ca/news/osc-report-airs-concerns-over-advice-to-seniors-other-regulatory-red-flags-211059.aspx> Report at

[http://www.osc.gov.on.ca/documents/en/Securities-Category3/20160721\\_sn\\_33-747\\_annual-report-dealers-advisers.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3/20160721_sn_33-747_annual-report-dealers-advisers.pdf)

As set out in Consultation Paper 33-404, the best interests standard "would require that a registered dealer or registered advisor shall deal fairly, honestly and in good faith with his or her clients and act in his or her clients' best interests." The registrant's conduct would be held to that of a prudent and unbiased firm or representative, acting reasonably. Harold Blanes supports the immediate adoption of a best interest standard for registrants.

Seniors overwhelmingly indicate that they believe their investment advisor is already required to act in their best interest. If this is the belief among Canadians, but not the reality, there is a serious problem. This problem is perhaps best summarized by Ed Waitzer, former Chairman of the Ontario Securities Commission, when he repeated the following quote:

*If the product sold is that of advice, then that advice should be in the best interest of the client. Anything else is fraud, because the seller is delivering a service different from what the consumer thinks he or she is buying.*

Dehumanized and ignored defrauded clients understand that some oppose the imposition of this long-overdue standard on the basis of existing mechanisms in place to protect investors. Some believe that a best interests standard would create legal uncertainty. The problem with the current system is that it creates a false sense of certainty for investors who already believe registrants are acting in their best interests

when it comes to advice bearing on their financial viability into the future. While we do not agree that the best interests standard would create uncertainty, if uncertainty is to exist, registrants are better positioned to deal with that uncertainty than are the victims of poor investment advice.

The elderly are the fastest growing segment of our society and they are also the financial backbone to our country's economy. They are living longer and need to save more than ever before. Many don't have Defined Benefit pensions or indeed, any Company pension plan, to fall back on.

Three trends - a huge number of people suddenly turning older, the prospects of longer lives but fewer guarantees of financial security, and at the same time a substantial percentage of our national wealth in the hands of seniors - have the makings of a perfect storm, a demographic tsunami. Financial abuse of seniors is a rapidly growing problem, often being called the "Crime of the 21st Century." This is backed up by IIROC, MFDA and OBSI statistics that show that seniors are disproportionately represented among complainants. All investors are vulnerable under certain circumstances but seniors face so many unique challenges that most regulators define seniors as Vulnerable investors. See APPENDIX 1 for details regarding this vulnerability.

## **SPECIFIC Recommendations**

**Know Your Client** The proposed changes clarify the existing obligations of KYC. It is important that registrants should implement policies and procedures to ensure that both the client and the registrant that reviewed the KYC information with the client sign and date the information and it be approved by supervision. People need to have the uses to which the KYC will be put explained to them. Risk profiling should be included in the targeted reforms given the serious issues evidenced in the OSC Investor Advisory Panel sponsored PlanPlus report.

We suspect a standardized NAAF/KYC template would be useful. One key information element should be contact coordinates for a Trusted Person.

We would also like to stress that the data about clients' net worth and cash flow should be as accurate as possible. If a client's cash-flow and debt-management information is inaccurate, advisors could be - without intending to - providing inappropriate advice. Someone carrying 18%+ credit card debt should be advised to pay it off before investing more money in the market. Cash flow and debt, in addition to net worth, show risk capacity (the amount of risk the client the client can handle) and not just risk tolerance. Not all forms provide debt and cash flow entry blocks, so this should be corrected.

A defective KYC leads to inappropriate advice to investors. The Small Investor Protection Association [www.sipa.ca](http://www.sipa.ca) has issued a Report *The Know Your Client Process Needs an Overhaul*

<http://sipa.ca/library/SIPASubmissions/500%20SIPA%20REPORT%20-%20KYC%20Process%20Needs%20Overhaul%20-%20201607.pdf> which provides constructive suggestions for improvement. We strongly encourage the CSA to review this report and unpublished IIROC research and take the necessary corrective actions. The discretion, the complexity of the processes and the asymmetry of knowledge and experience place the professional advisor and the firm in a position of great responsibility and the elderly investor in a

vulnerable position. KYC information should formally be updated at least once per year.

**Advisor Proficiency.** Applying these reforms will have no positive impact to the financial consumer, unless assurance is provided that the advisor has been equipped with the necessary support tools/systems, knowledge, skills and abilities to act in the client's best interest. Without appropriate proficiency standards, a best interest standard is meaningless. Advisors need training in how to develop and document an Investment Policy Statement, a key tool in improving client-advisor communications perform and perform a accurate suitability analysis. For RRIF accounts, we believe they will need additional training to competently advise on de-accumulating accounts used by retirees.

**Relationship Disclosure** Investors must be informed as to the nature, scale and scope of the advice they will receive for the fees paid. It is insufficient for a disclosure merely to state the firm "may" limit investment recommendations without specifically disclosing the extent to which the firm in fact does so. There should be a documented finding that the limitations and restrictions do not prevent advisors from providing advice in those investor's best interest. Greater clarity will allow retail investors to make more informed decisions of the type and scope of advice they need, if they need personalized advice at all or if the cost of advice brings sufficient value.

**Dealer Sales Practices** NI81-105 *Mutual Fund Sales* was released back in 1998. It likely is in need of an update to reflect prevailing compensation/inducement practices and sales communication channels such as social media and the internet. It still refers to the now defunct IDA! It is very important that regulators routinely enforce NI-105 violations. We are particularly concerned about "Free lunch" seminars and misleading ads .

OSC Staff Notice: 33-743 - ***Guidance on sales practices, expense allocation and other relevant areas developed from the results of a OSC targeted review of large investment fund managers***  
[http://www.osc.gov.on.ca/en/SecuritiesLaw/sn\\_20140619\\_33-743\\_guide-sales-expense.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw/sn_20140619_33-743_guide-sales-expense.htm) is interesting to explore. This Staff Notice provides guidance after finding numerous breaches of NI81-105. In previous reviews, similar guidance has been provided regarding breaches. And so the endless guidance cycle continues. It is our view that this cycle is not effective. Unless dealers are held to account for breaches via regulatory enforcement sanctions and fines, there will be no improvement in dealer and fund manufacturer behaviour. A better solution would be to simply prohibit many of these archaic conflict ridden practices altogether. NI81-105 was written at a time in the early development of mutual funds when dealers did not promote their services as advice and advisors were called salespersons. A modern wealth management industry should shun many of the sales practices permitted under-105. Cooperative marketing activities should be among the first to go. Until 81-105 is updated , it absolutely should not be applied to other products.

**Manage titles and designations** The wealth management industry is using made up and meaningless titles to deceive investors. Titles like *Retirement Expert* are especially harmful. The regulators should narrow down the list to a few meaningful ( to clients) titles and routinely enforce their use. The SEC was so worried about the deception it released a Bulletin "*Senior" Specialists and Advisors: What You Should Know About*

**Suitability** The "suitability" regime does offer some protections for investors, but it's certainly inadequate in today's investing world. Other jurisdictions have moved beyond the suitability regime. In practice, it really just boils down to not providing unsuitable recommendations. The wide spectrum of "suitable" choices complicates complaint disputes for investors. Shrewd dealers can and do deflect liability in all but the most obvious cases of unsuitable advice. If the CSA truly want world class investor protection they need to ensure that the investment advisor is considered a fiduciary or at least works to a Best interests standard. The Suitability regime is the soil that allows conflicts-of-interest to thrive. The Cummings report and other independent research clearly shows that conflicts-of-interest result in non-optimum investment recommendations. Product cost is pushed aside as a suitability factor while professional risk profiling is virtually non-existent as evidenced by the PlanPlus report. The result? --salesperson recommendations are skewed towards higher cost products resulting in lower investor returns and impaired retirement security. Accordingly, we support the targeted reform making cost an explicit parameter of suitability and the inclusion of the proposed overarching Best interests principles. In the final analysis the only things that are suitable are:

- 1) Contracts that adhere to Sections 361-363 and Section 380 of the Criminal Code of Canada; and
- 2) The Common Law of Contract that holds equal benefit of all parties to the contract and absolute full understanding and knowledge of all conditions. Any attempt to get signatures when a person is just released from hospital after being in critical condition in an intensive care unit for weeks, needs to be reviewed for the volitional authenticity of the contract. In Harold Blanes' case, the broker hid a GIC contract since 2007 and when he challenged the management of this company - the management in the Kelowna office were claiming that the client had a faulty memory and they disavowed having a GIC contract with the client. The regulatory system has demonstrated itself to be so plagued by regulatory capture that all they can say is: "We sympathize - but our hands are tied." How many other clients have had to endure the soul-destruction of this aiding and abetting crime role for regulators?

These principles will be especially useful as new products are developed, new account types introduced and in unique situations where rules are inadequate. See ***Suitability from a Retiree Perspective***: Kenmar Associates , <http://www.canadianfundwatch.com/2013/08/suitability-from-retiree-perspective.html>

**Make Tax an integral component of advice** Tax issues are integral to a KYC/suitability analysis. For retirees, non--investment considerations such as tax, government benefit programs and estate planning are key aspects of the advice relationship. That implies a need for increased advisor tax knowledge. Where should assets be located? Should the client convert his/her RRSP to an annuity? Should they contribute to a RRSP or a TFSA? Should the client borrow to invest? Which products are most tax- efficient? The best possible way to pay less tax is if the financial advisor takes tax matters into consideration. With Canada's high personal income tax rates, income taxes are a key consideration in investment decisions and financial planning. Retired

investors count on after-tax income from investments to cover some or all their living expenses.

**Improve Dealer Complaint handling** We believe that much better redress mechanisms are needed to protect seniors. Current dealer complaint handling is adversarial and unfair to complainants. Investment losses hurts seniors more than any other group, because when seniors lose their life's savings, they lack the time to rebuild a nest egg. There's no second chance for recovery. Fair and timely complaint investigation is a critical dealer obligation to clients and is entirely consistent with a Best interests Standard of Care. IIROC and MFDA complaint handling rules need an overhaul coupled with robust enforcement. Financial services should be designed so that they make the hard times easier – whereas, in reality, some of the threats vulnerable retail investors face when interacting with financial services make an already stressful situation worse, and result in further harm for consumers.

**Act on OBSI Independent Reviewers recommendations** As regards OBSI, we agree with the CBC when they released a report saying that OBSI is not an authentic Ombudsman. We see in the the independent reviewer's report that at least 17 examples of utter lawlessness and systemic impunity for violations of indictable laws - that affirm the gross error of allowing self-regulation of the industry. If there was a willingness for the industry to police itself - that would be a different matter. What we have, in reality as a gross abdication of adherence to the law - and regulators saying "We are not allowed to look at the criminal code". To reiterate - we have to have a clear commitment to put the criminal code and the common law of contract in its full scope as the primary regulative tools. If the industry can accept that and conform to British Common law practices of maintaining records and reasons for judgements - then we would begin to be making a valid overhaul in the practices that are totally unacceptable currently.

<https://www.obsi.ca/assets/2016-Independent-Evaluation-Investment-Mandate-1465218315-e9fa5.pdf> In 2015, 18% of non-backlog complainants who OBSI considered should receive compensation received less than OBSI recommended (on average \$41,927 less); including 3.5% who were at risk of receiving nothing. We expect the percentage when OBSI is not involved and retail investors are on their own to be far worse. It is a key reason that the regulatory system is not providing clients the anticipated regulatory outcomes.

The recommendations are consistent with the needs and wants of retail investors. The report concludes that "*OBSI is not a true industry ombudsman, it is a dispute-resolution service.*" Perhaps most importantly, the report recommends that OBSI move beyond cases by case dispute resolution and take a strategic approach using intelligence from casework. We support that role for OBSI.

Harold and Alan Blanes believe that OBSI needs fundamental changes in governance, investor participation and operational processes. Seniors need and deserve a fair, efficient and trustworthy Ombudsperson who can provide a definitive outcome. Any practices that obstructs fair and efficient resolution of disputes, such as the creation of internal ombudspersons by investment firms, should be banned.

Specifically, Harold Blanes recommends:

1. binding decisions with right to review under stipulated conditions
- 2.. at least one designated investor representative on the Board of Directors
- 3 a formal complaint system for complaining about OBSI practices
- 4 published cycle time target in absolute days not in a probabilistic manner 80%/180 days
- 5 a mandate to investigate systemic issues like UK Financial Ombudsman Service
- 6 a mandate to provide a report annually re opportunities for industry to improve its processes and practices- ie function as a true ombudsman
7. conduct an independent review of OBSI every three years
8. IIROC and MFDA to revise their complaint handling rules to interface better with OBSI and address investor advocate identified deficiencies.

We encourage the CSA to negotiate an omnibus agreement with CCIR and/or others as appropriate so that investment portfolios containing investment-like products can be dealt with by OBSI. Splitting a complaint up as between OLHI and OBSI is harmful to investors and is inconsistent with contemporary portfolio construction principles.

Some changes in process are necessary to accommodate seniors and other vulnerable investors.eg priority processing, assistance with complaints, POA issues, suitability criteria tailored to elderly complainants (eg DSC).

An Australia study from ASIC's Consumer Advisory Panel (CAP) *Compensation for retail investors: the social impact of monetary loss* (REP 240) <http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-240-compensation-for-retail-investors-the-social-impact-of-monetary-loss/> into the social impacts of investors suffering losses due to licensee misconduct was commissioned to better understand the personal consequences of investors not being fully compensated. The impact of the monetary loss was immediate on investors without a financial buffer, for others the first six months from when they discovered their loss were critical. Most investors received none, or only a few cents on the dollar back .Investors had little knowledge of existing avenues of redress, such as their financial service provider's internal dispute resolution system or the external dispute resolution scheme they belonged to .Investors were reluctant to commence legal action to recover their monetary loss, particularly where they blamed themselves .Some investors suffered 'catastrophic loss' as their loss was 'so significant their life will never be the same'. Some felt prolonged anger, uncertainty, worry and depression.

We also believe that regulators must reconcile the OBSI fairness standard with industry / SRO rule based approach. We suspect it will be problematical because dealers do not, generally speaking, resolve complaints fairly, honestly and in good faith as required by OSA. The process is adversarial and loaded with conflicts of interest.

If the CSA and industry cannot adequately respond to the independent review recommendations, a statutory Ombudsman like the UK FOS may be needed. In fact, it was the industry itself that persuaded the Minister of Finance not to do so because the industry could be trusted to set up a well-oiled Ombudsman service. See **Canada's Banking Dispute resolution System** 2012 report by the Consumers Council of Canada



delineating the history of OBSI

[http://www.consumerscouncil.com/site/consumers\\_council\\_of\\_canada/assets/pdf/cccbankingdisputeresolution.pdf](http://www.consumerscouncil.com/site/consumers_council_of_canada/assets/pdf/cccbankingdisputeresolution.pdf)

## **Other Recommendations**

**Enhance Enforcement:** Without diligent enforcement, all the rules of the world and even a best interest standard will not protect the retail investor. The SRO's spend too little resources on prosecuting dealers. Even when they do, sanctions are modest in comparison to the harm done to investors. Dealers need to be held accountable for the actions and inactions of their representatives. This includes personal financial dealings, off- book transactions and abuse of regulatory arbitrage. Collection of fines from individuals is very small and as a result there is minimal impact re: deterrence (Per the 2015-16 IIROC Annual Report , IIROC assessed \$2,399,069 in discipline penalties against individuals and just \$1,547,500 in discipline penalties against firms . Only 16 % (\$373,680) of fines assessed against individuals were collected). Altogether , securities regulators are owed nearly \$1 billion, a truly astonishing figure. If the SRO's applied root cause analysis , we feel most of the enforcement effort would be directed at dealers rather than dealer representatives .

Canadians have unduly lost millions of dollars due to mis-selling of return of capital funds, leveraged ETF's, Reverse churning, DSC early redemption penalties and leveraging including Home Equity loans as well as high cost products. Seniors appear to be a special target. Better and more timely enforcement would make a huge dent in the amount of losses incurred and thus lead to better retirement income security for Canadians. Please refer to the penalties for theft in the Psalms as referenced by the Harold and Alan Blanes submission to the OBSI Public Consultation from February 2016. Psalm 22 advises that if an ox is stolen - it requires several times the ox as the appropriate restitution. So long as any gain is made to a deceptive broker for fraudulent misrepresentation, this only serves as an incentive to continue bad faith dealing. The industry needs to start to understand that the violated client needs restitution of orders of magnitude more than the loss in order to make brokers know that deception is absolutely prohibited, and will prove drastically uneconomic to even try to get away with it.

<https://www.obsi.ca/en/resource-room/public-consultations/independent-evaluation-of-obsi-investment-related>

**Change Fund Facts Risk Disclosure :** Mutual funds are popular with seniors. We are therefore concerned that the deceptive disclosure of risk in Fund Facts will mislead investors and be used by dealers to defend complaint cases against investors. These ratings have been demonstrated to be misleading and not robust but are used in pre-sale solicitations to justify fund purchases. All investor advocacy groups have criticized this disclosure. We recommend that the CSA abandon the approach based on the standard deviation and consider some of the more robust suggestions by advocates , professional advisor Associations and industry participants.

**Adopt a Canadianized version of NASAA Model Act:** In February of this year, the North American Securities Administrators Association (NASAA) announced that its membership has voted to adopt a model act designed to protect vulnerable adults from

financial exploitation. The model, entitled "An Act to Protect Vulnerable Adults from Financial Exploitation," provides new tools to help detect and prevent financial exploitation of vulnerable adults.

<http://www.nasaa.org/38777/nasaa-members-adopt-model-act-to-protect-seniors-and-vulnerable-adults/> We urge the CSA or provincial legislatures to introduce a provision that would permit dealers to temporarily block transactions if the transaction appears suspicious.

**IIROC SRO:** A very significant number of public interest association members have accounts with investment dealers that are regulated by the investment industry Regulatory Organization of Canada (IIROC). A recent OSC Advisory Panel report <http://www.osc.gov.on.ca/en/52056.htm> on the efficacy and effectiveness of IIROC is very troubling. The letter from the IAP, responding to IIROC's latest strategic plan, also criticizes IIROC's commitment to standing up for the interests of retail investors and condemns the self-regulatory organizations (SRO) effort to involve retail investors in its governance and policy development process. "We believe that unless IIROC, under the direction of its Canadian Securities Administrators (CSA) overseers, reforms its culture and governance, it will continue to fail in its mandate to protect investors," the IAP's letter states.

<http://www.investmentexecutive.com/-/battle-over-best-interest?redirect=%2Fsearch> Seniors depend on regulators to keep the investment industry in line and if its principal regulator is not up to the job, this leaves the elderly and other vulnerable investors exposed to wrongdoing. We urge the CSA to act promptly to deal with the issues at IIROC. They are supposed to act in the Public interest.

We are also very concerned about an IIROC proposal that would allow stockbrokers to act as executors or trustees. We recommend the CSA intervene and prohibit such an arrangement except for immediate family members.

We recommend that the CSA publish a Guide similar to the **Financial Self-Defense Guide for Seniors** - by the CFP Board. Such a Guide would help protect consumers from advisor abuse and fraud.

<https://www.google.ca/search?q=cfp+guide+protecting+senior+investors&ie=UTF-8&oe=UTF-8&hl=en-ca&client=safari>

The CSA may wish to review the results of a research project, **Vulnerable Investors and the Enforcement of Securities Laws** which will be carried out by a research team under the direction of Professor Stéphane Rousseau, Business Law and Governance Chair at the Université de Montréal. They will examine the decisions of the principal Canadian self-regulatory bodies – the Investment Industry Regulatory Organization of Canada (IIROC), the Mutual Fund Dealers Association of Canada (MFDA), and the Chambre de la sécurité financière (CSF) – over the last five years in Ontario and Quebec, with a view to determining whether and to what extent vulnerability is taken into consideration in disciplinary proceedings against dealers and their representatives. To date, decisions of self-regulatory bodies have not been fully analyzed in relation to the types of investors involved and, in particular, their vulnerability. The project will also hold roundtables with representatives of regulators, investor groups and intermediaries. The issues, findings and potential solutions proposed at the roundtables will inform the project's final report,

which will include recommendations for regulators and decision-makers and will contribute to a better understanding of how standards of conduct are enforced in the context of wrongdoing against vulnerable investors.

**Address Issues with Powers of Attorney** We recommend uniform rules for Powers of Attorney in Canada/Ontario. We strongly oppose enabling advisors to act as Powers of Attorney for their clients.

### **Summary and Conclusion**

We believe the planned targeted reforms accompanied by the proposed Best interests principles will go a long way towards making the taking of advice more safe for retail investors.

Harold Blanes and a number of other of his Canadian Legion veteran colleagues who returned from World War II believe that the best interest standard should apply to the overall financial situation of the investor, however recognizes that there are situations where a limited number of products are offered by a registrant – banks, for example. In these situations, registrants should be held to the best interest of the investor in relation to the products offered, but there is a heightened need for transparency. These registrants should be required to explicitly inform investors in writing that they only offer a select line of products and there may be other products available that are better suited to the investor. This information should be disclosed and acknowledged prior to any advice or dealings taking place.

Registrants need to be held accountable for their actions. The need is heightened with the rapid increase in the number of senior citizens. Failure to address identified problems will leave to a growing crisis in the near future. These reforms are as much socio-economic as they are regulatory .The status quo is simply unacceptable – the protection Canadian investors already believe they have needs to be explicitly provided. We urge you to address the failures in the existing system. Seniors and investors across Canada deserve better.

Thank you for the opportunity to share the concerns of many of the exploited frail elderly across Canada. We agree to public posting of this Comment Letter.

Sincerely,

Alan Blanes, for:

Harold C. Blanes, member of CARP Chapter 30 - Okanagan

### **RESEARCH DOCUMENTS**

**CARP Submission to the Ontario Government Expert Committee to Consider Financial Advisory & Financial Planning Policy**

<http://www.carp.ca/wp-content/uploads/2014/11/CARP-Submission-Ont-Gov-Expert-Committee-Financial-Advisory-Financial-Planning-Policy-Alternatives%E2%80%93Sept2015.pdf>

**Submission to the OSC on Priorities for Fiscal 2017 - CARP**

<http://www.carp.ca/wp-content/uploads/2016/06/16-05-09-CARP-Submission-to-Ontario-Securities-Commission.pdf>

**CARP calls for a Fiduciary Duty for advice givers**

<http://www.carp.ca/wp-content/uploads/2013/12/CSA-Consultation-Paper-33-403-Fiduciary-Duty.pdf?e4b50d>

**OSC IAP Seniors Roundtable: Facilitator's Report**

[http://www.osc.gov.on.ca/documents/en/Investors/iap\\_20141212\\_facilitators-report-seniors-roundtable.pdf](http://www.osc.gov.on.ca/documents/en/Investors/iap_20141212_facilitators-report-seniors-roundtable.pdf)

**Seniors, Suitability and Ethics**

[http://fpawi.org/downloads/Symposium\\_2011/2.2011\\_symposium\\_ethics\\_seniors\\_suitability\\_handout.pdf](http://fpawi.org/downloads/Symposium_2011/2.2011_symposium_ethics_seniors_suitability_handout.pdf)

**Guidance on compliance and supervisory issues when dealing with senior clients**

[http://www.iiroc.ca/Documents/2016/87c0e6d5-8054-4e88-9b56-9a079b8c35aa\\_en.pdf](http://www.iiroc.ca/Documents/2016/87c0e6d5-8054-4e88-9b56-9a079b8c35aa_en.pdf)

**The role of compliance in securities regulatory enforcement:** York U

The researchers make 30 recommendations all worthy of consideration.

<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1116&context=reports>

**PROTECTING SENIOR INVESTORS: REPORT OF EXAMINATIONS OF SECURITIES FIRMS PROVIDING "FREE LUNCH" SALES SEMINARS – U.S. Securities and**

Exchange Commission

<https://www.sec.gov/spotlight/seniors/freelunchreport.pdf>

**2009 Free Lunch Seminar Report:** AARP

<http://www.aarp.org/work/retirement-planning/info-11-2009/freelunch.html>

**Stromberg report on mutual funds (1998)**

[http://www.sipa.ca/library/SIPAdocs/Stromberg\\_InvFunds-Oct1998.pdf](http://www.sipa.ca/library/SIPAdocs/Stromberg_InvFunds-Oct1998.pdf)

**Giving Small Investors a Fair Chance:** CARP 2004

[http://www.sipa.ca/library/SIPAdocs/CARP-SIPA\\_Report\\_20040928.pdf](http://www.sipa.ca/library/SIPAdocs/CARP-SIPA_Report_20040928.pdf)

**Purse Strings Attached: Towards a Financial Planning Regulatory Framework**

.The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian consumers. "It's time all employees of the financial

planning industry in Canada face the reality—they need to employ a uniform standard of care for investors, complete with a full disclosure of how they’re being compensated,” notes Jonathan Bishop, co-author of the report. The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else’s hands by conflicts of-interest. The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors.

[http://www.piac.ca/wp-content/uploads/2014/11/pursestrings\\_attached\\_final\\_for\\_oca.pdf](http://www.piac.ca/wp-content/uploads/2014/11/pursestrings_attached_final_for_oca.pdf)

**Suitability, Minimum standards and Fiduciary Duty:** A. Teasdale CFA

<http://www.moneymanagedproperly.com/newsletters/Suitability,%20Minimum%20Standards%20&%20Fiduciary%20duty.pdf>

**Protecting Senior Investors:** IIAC

<http://iiac.ca/wp-content/uploads/IIAC-Working-to-Protect-Senior-Investors.pdf>

**Failure to address suitability processes is in itself a breach of a regulatory fiduciary duty:** Teasdale CFA. <http://blog.moneymanagedproperly.com/?p=1977>

**“Held to a Higher Standard” – Should Canada’s Financial Advisors Be Held to a Fiduciary Standard?** The implementation of a fiduciary standard would have widespread implications for the financial industry, as advisors would be required to ensure that all recommendations were in the best interest of their clients, including the minimization of all fees and expenses, which is typically at odds with the advisor’s goal of maximizing revenue from a client account. This literature review will explore the various issues associated with the fiduciary standard debate in Canada, with commentary, analysis, and perspectives from both the consumers and providers of financial advice. It also includes findings from a variety of academic sources on the subject of a fiduciary standard, and its potential impact on the financial advice industry.

<http://dtp.r.lib.athabascau.ca/action/download.php?filename=mba-15/open/punkon-aprj-final.pdf>

**Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Conflicts of Interest in Retirement Savings** | whitehouse.gov

<https://www.whitehouse.gov/the-press-office/2016/04/06/fact-sheet-middle-class-economics-strengthening-retirement-security>

**Retirement Security** - theZoomer: Television For Boomers With Zip!

Great feature story on advisors and retirement security Lawyer Harold Geller , Alan Goldhar ,Keith Ambachtsheer, John DeGoey, Cary List and investor Peter Whitehouse explain the sorry situation. A strong argument for Best interests is made.

<http://www.thezoomertv.com/videos/retirement-security/>

**The Flaws In Canada’s Financial Adviser System**

<http://www.highviewfin.com/blog/the-flaws-in-canadas-financial-adviser-system/>

**Why A Fiduciary Standard For Investment Advisers Is Urgent And Crucial**

<http://faircanada.ca/wp-content/uploads/2012/06/Why-A-Fiduciary-Standard -Kivenko.p>

[df](#)

**The value of advice: An investor viewpoint** Kenmar Associates

<http://www.investingforme.com/pdfs/reports-studies/Advice-An-Investor-View.pdf>

**The Best Interests Advice Standard** - Canadian MoneySaver

<https://www.canadianmoneysaver.ca/the-best-interests-advice-standard/>

**The Canadian Securities Administrators 2016 Investor Education Survey**

<https://www.securities-administrators.ca/aboutcsa.aspx?id=1475> revealed that there has been a steady increase since 2006 in the percentage of Canadians working with a financial advisor, from 43 % in 2006 up to 56% this year.

**How Fund Fees are the Best Predictor of Returns** : Morningstar

<http://www.morningstar.co.uk/uk/news/149421/how-fund-fees-are-the-best-predictor-of-returns.aspx>

**Global Fund Investor Experience Study : Morningstar June 2015**

<https://corporate.morningstar.com/US/documents/2015%20Global%20Fund%20Investor%20Experience.pdf>

**Why you should care about your Investment Costs:** Invisor

<http://blog.invisor.ca/care-investment-costs/>

**Report outlines best practices regarding seniors and DSC mutual funds** - IE

In December 2016 the Mutual Fund Dealers Association of Canada (MFDA) issued a [bulletin](#) on that details the results of a compliance sweep that it carried out during the year. The compliance review looked at the use of DSC mutual funds, particularly with senior clients, and dealers' supervision, suitability assessment, and disclosure practices in this area. The review uncovered several problematic practices, including: clients over age 70 that were sold DSC funds; clients who were sold funds with DSC redemption schedules that are longer than their investment time horizon; and evidence of poor disclosure of the redemption fees at certain firms. The review also found room to improve supervisory practices in this area. "Overall, there was a lack of consistency across [dealers] on how to supervise transactions involving seniors who purchased DSC funds," the MFDA bulletin notes.

<http://www.investmentexecutive.com/-/report-outlines-best-practices-regarding-seniors-and-dsc-mutual-funds>

## APPENDIX 1

**AGE VULNERABILITY** A research paper *Old Age and the Decline in Financial Literacy*

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1948627](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948627) found that households over age 60 own half of the discretionary investment assets in the United States and are increasingly responsible for generating income from these investments to fund retirement. Studies in cognitive aging show that older respondents experience a decline in cognitive processes closely related to financial decision making. They investigated

whether knowledge of basic concepts essential to effective financial choice declines after age 60. The researchers found that financial literacy scores decline by about 2% each year after age 60, and the rate of decline does not increase with advanced age. Results from regressions censored by respondent groups and financial literacy topic areas suggest that the decline is not related to cohort effects or differences in gender or educational attainment. However, confidence in financial decision making abilities does not decline with age. Unwarranted confidence and reduced abilities can explain poor credit and investment choices by older respondents, the authors conclude.

The cognitive limitations experienced by those with diminished capacity can render them unaware that they are in harm's way. That is, they are unable to read the cues in others' behaviours as menacing, exploitative or as potentially dangerous. Moreover, after the fact they may not be able to appreciate that they have been mistreated.

It's long been known that seniors are especially vulnerable to the financially devastating impact of advisor mis-selling, misrepresentation, lack of proficiency and scams. Conditions such as physical and mental health issues such as stroke, Alzheimer's/dementia, isolationism, dramatically increase vulnerability of the elderly.

Seniors are also more vulnerable because trust in advisors is unduly high, increasing their susceptibility to defective advice. Widowers or seniors distant from their families have less opportunity for "second opinions".

Seniors can be particularly vulnerable because they often have to live on fixed incomes and are having difficulty coping with low interest rates and tepid market returns. As a result, they may be tempted to chase returns by investing in risky products. Investment losses hurts seniors more than any other group, because when seniors lose their life's savings, they lack the time to rebuild a nest egg. There's no second chance for recovery.

All seniors are vulnerable. Those who are socially isolated are vulnerable because they are less likely to seek advice before a purchase, and because the sales pitch itself addresses an unmet need for social interaction, resulting in their feeling obligated to be friendly or compliant in return. On the other hand, victimization studies have found that seniors who have active social lives and experience a broad array of consumer situations may also be vulnerable simply because of increased exposure ( and of course attractive net worth). Advisors may join a club or church group simply to gain access to a network of new potential clients and their financial assets while pretending to bond with individuals.