

Submission to the OSC on Priorities for Fiscal 2017



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Ontario Securities Commission
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ONTARIO SECURITIES COMMISSION NOTICE 11-771 - STATEMENT OF PRIORITIES REQUEST FOR COMMENTS REGARDING THE STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2017

CARP is pleased to have the opportunity to provide input into the regulatory priority setting process which so greatly affects the quality of lives of seniors in Ontario. CARP is a national non-profit, non-partisan association with 300,000 members across Canada, most of whom are retired, with above average education, income and net worth. Most are concerned about out-living their money in retirement and about their children and grandchildren, whom they see as not saving enough for retirement – like a lot of Canadians.

Financial well-being is integral to quality of life as we age, and the access to quality investment advice and services is important to all of us living out our life in dignity and comfort.

CARP believes these goals of the Ontario Securities Commission are critical for the investment protection and retirement security of all Canadians as we age:

1. Deliver strong investor protection -- *The OSC will champion investor protection, especially for retail investors*
2. Deliver responsive regulation -- *The OSC will identify important issues and deal with them in a timely way*
3. Deliver effective compliance, supervision and enforcement - *The OSC will deliver effective compliance oversight and pursue fair, vigorous and timely enforcement*

However, CARP sees a significant gap between these aspirational goals and the reality of existing rules and regulations, especially as they pertain to one of Canada's most vulnerable group of investors: seniors.

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Investor protection for seniors who live in this province is inadequate. Ontario seniors deserve more. Collectively, we in Ontario can do better. And as a regulator, you can cause change to happen.

Canada's current investment environment often puts common retail investors at a disadvantage due to:

1. the complexity of financial products;
2. the common misconception that the investment industry is uniformly well-regulated in keeping with the investor's best interests; and
3. the lack of legal recourse and financial restitution in cases of professional fraud or misconduct.

The extent of the disadvantage is laid bare by a poll of CARP members: A third of them had suffered a loss from unsuitable investment advice.

It was with some degree of hope that CARP greeted the seniors' roundtable sponsored by the OSC in September 2014. At that roundtable, the overwhelming majority of participants called for immediate action to strengthen investor protection for seniors: ban misleading titles, implement best interest, etc. Many participants were dismayed to learn of the inadequacy of the current system and angry to learn about exploitation of seniors by those who would prey on the vulnerable. All but a very few participants called for immediate action to raise the bar and require a best interest standard for seniors.

Here we are, more than 18 months on. There has been no change in protections for and outcomes of seniors. We are deeply disappointed.

We are also disappointed that the priorities for the coming year reflect no urgency for the better protection of seniors. The immediate protection need include: 1. standards which demand seniors' interests are put first, ; and 2. timely and independent restitution process when seniors' are victims of financial abuse including unsuitable advice -because let us be clear, this is what we are talking about - abuse.

CARP believes is it time for the OSC to take a leadership role in protecting the assets of vulnerable seniors. Too many investment advisors act against their clients' best interests. Far too few investment advisors and firms suffer consequences commensurate with the damage to the health and financial security of ill-advised seniors.

Align the OSC with the Interests of Investors

First and foremost, CARP believes the OSC must be true to its mission:

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To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

This mission speaks to the outright protection of investors. Fair and efficient capital markets that earn investor confidence also depend on the protection of investors. Past communications, such as the speech given by former OSC Chairman Howard Wetston on March 27, 2014 at the Toronto Board of Trade clearly indicate that the priorities of the OSC are on supporting free capital markets and promoting such markets in Canada.

If the OSC is to pay more than lip service to the protection of our most vulnerable Canadians, then there must be a clear focus on investor protection in word and deed.

Conflicts of Interests

When it comes to regulation of investments, the interests of clients frequently conflict with the interests of advisors and their firms. Investment firms have a vested interest in steering investors to investments that pay them high fees.

With billions of dollars under investment, firms offering investment products form a strong and extremely effective lobby group for their interests.

Retail investors, in comparison, are at a disadvantage. They do not have the same level of financial knowledge nor are they organized to stand up for their rights. It is critical that the OSC stand up for retail investors on their behalf.

Recommendations to Protect Seniors from Continued Financial Abuse

With the aging of our population, the rise in life expectancy and the increasing proportion of wealth in the hands of seniors, the need for action has never been more urgent.

We therefore make the following recommendations:

1. Make Adoption of Best Interest Legislation a Priority

CARP strongly favours adoption of best interest legislation. This legislation must also include appropriate penalties for advisors and their firms for breaches of a best interest standard. CARP believes that advisors who act against the best interests of their clients should lose their ability to sell and advise with respect to investment products. CARP believes firms that failure by dealers to ensure their advisors act in their clients' best interest should be compelled to provide financial restitution to clients who suffer as a result.

2. Create a Distinct Initiative to Address Protection of Seniors

Given the critical socio-economic issues involved, it is our strong conviction that a dedicated senior's investor protection initiative is urgently needed and is in the Public

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Interest.

Seniors are especially vulnerable to the financially devastating impact of adviser abuse, frauds and scams. Seniors are more susceptible to physical (e.g. hearing, vision) and cognitive (e.g. memory, context) impairments that need to be accommodated.

Seniors are also more vulnerable because their trust in sales representatives and advisors is unduly high. As a result, seniors are increasing their susceptibility to defective advice.

We recommend that the OSC establish a Seniors and Vulnerable Investors Committee. We urge the OSC to consider establishing a Seniors and Vulnerable Investors Committee. This committee would be a resource to assist the OSC in (a) developing timely and appropriate investor protections for seniors and vulnerable investors and (b) commenting on the effectiveness of prevailing investor protections. We anticipate the committee would comprise of members from the seniors/vulnerable investor demographic and representatives from elder law, estate law and behavioural finance as well as investor advocates and experts on aging, dealers and regulators. The committee structure has proven to be of value to the OSC and there is no reason to believe this committee would be anything but productive and cost-effective.

3. **Legislate Protection of Seniors from Financial Exploitation**

Other jurisdictions have adopted legislation to protect seniors¹. It provides regulators with new tools to help detect and prevent financial exploitation of vulnerable adults.

Protective legislation should:

- Require mandatory reporting of actual or attempted financial exploitation of seniors.
- Ban communication with third parties without appropriate permission.
- Allow advisors or their firms to temporarily delay disbursements where they suspect financial exploitation by an advisor or someone with a Power of Attorney over the senior's accounts.

4. **Address Issues with Powers of Attorney in Ontario**

CARP recommends uniform rules for Powers of Attorney in Ontario. CARP strongly opposes enabling advisors to act as Powers of Attorney for their clients.

5. **Collect unpaid fines**

Regulatory fines are only an effective tool in ensuring adviser and dealer compliance if

¹ For example, members of the North American Securities Administrators Association (NASAA) have voted to adopt [An Act to Protect Vulnerable Adults from Financial Exploitation](#).

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they are collected. Collection of the \$300 million² of fines unpaid to the OSC must be a priority. CARP also recommends the OSC support the measures necessary to collect the millions of dollars in fines owed to the Mutual Fund Dealers Association and the Investment Industry Regulatory Organization of Canada (IROC). To the extent that these fines cannot be collected, then the OSC should seek new powers to collect fines for future regulatory findings.

6. Make the Ombudsman for Banking Services and Investments (OBSI) More Effective

CARP believes 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. CARP would be pleased to meet with the OSC to discuss recommended changes in further detail.

The 30,000 members of CARP are not dismissive of the other priorities that the OSC has within its scope. However, we cannot conceive of anything more important than protection of those amongst us who are vulnerable and who need you to act in order for them to be protected. The OSC has a mandate to protect all investors and in particular those who are vulnerable; we seek immediate actions to make real change to existing industry protective practices in order to live up to the OSC's mandate.

We urge you to reframe your approach to the protection of seniors to effect immediate change that addresses and corrects the current failures of the current system.

Ontario seniors deserve better.

CARP agrees to posting of this letter on your website for public viewing.

Sincerely,

Wanda Morris
VP Advocacy and COO

² The amount owing is \$307,148, 437 as per the April 2016 report of the Small Investors Protection Association, [Unpaid Fines, A National Disgrace](#).