

OSC Staff Notice 11-779 *Seniors Strategy*

March 20, 2018

Introduction

As part of our continued efforts to deliver strong investor protection and responsive regulation, the Ontario Securities Commission (OSC, or we) has developed a Seniors Strategy (the Strategy) and corresponding action plan to respond to the needs and priorities of Ontario seniors. The Strategy which is appended to this Notice outlines some of the new initiatives the OSC is pursuing in relation to older individuals and our plans to continue to build on existing initiatives.

Purpose

The OSC's vision is a stronger and more secure financial future for all Ontario seniors. We seek to achieve this through a comprehensive approach that recognizes that there are multiple tools in our toolkit, including policy, operational changes, research, education and outreach. The Strategy also reflects the fact that we can't do it alone: the way to achieve our vision is dependent in part on engagement and partnerships with stakeholders, including the financial industry, working together to achieve our shared goals.

The financial lives of older Canadians have grown increasingly complex relative to previous generations. As a regulator, we believe that we have a role to play in ensuring that the needs of older Ontarians are appropriately met by the province's securities industry.

In November 2017, the Government of Ontario published *Aging with Confidence*, its renewed action plan for dealing with some of the broader challenges faced by many Ontario seniors, listing new initiatives that build on its 2013 action plan for seniors.¹ Under the plan, the Government of Ontario establishes a vision to help older individuals remain independent, healthy and active, safe and socially connected, and lays out a framework for supporting that vision through guiding principles that focus on inclusion, diversity, safety, and self-determination. The OSC Strategy reflects this vision and its principles, building on it in a securities regulatory context.

Substance

We look to achieve our vision of a stronger and more secure financial future for all Ontario seniors through a Strategy that is *inclusive*, *social* and *responsive*. These three principles will shape our policy-making, operational changes, research, education and outreach initiatives with respect to older Ontarians.

¹ Ontario, *Aging with Confidence: Ontario's Action Plan for Seniors* (November 2017), https://files.ontario.ca/ontarios_seniors_strategy_2017.pdf

The key elements outlined in the Strategy include:

- Developing a flexible and responsive framework to address issues of financial exploitation and cognitive impairment among older investors, which includes:
 - a requirement that registered firms and their representatives make reasonable efforts to obtain the name and contact information for a client’s “trusted contact person” that may be reached if there is a concern about a client’s behaviour or transactions in a client’s account;
 - enabling registered firms and their representatives (for example, through a safe harbour) to place a temporary hold on disbursements from a client’s account or make a disclosure to a trusted contact person when they:
 - have a reasonable belief that financial exploitation or fraud has occurred, is occurring or will be attempted; or
 - have a reasonable belief that a client’s judgement may be impaired;
 - guidance for registered firms and their representatives when engaging with older clients, such as collecting sufficient information about a client, supervising client accounts and communicating effectively with clients and supporting their decision-making as they age.
- Addressing registered firms’ and their representatives’ use of confusing and misleading titles, designations, and marketing practices, including issues related to older investors.
- Strengthening OBSI and exploring how the dispute resolution process can better respond to the issues of older investors.
- Breaking down silos and working with other regulators and organizations toward a common goal of designing policies and programs that serve the interests of older individuals in areas such as powers of attorney and privacy laws.
- Building capacity among our staff to continually improve the ways in which we work with older investors and undertake various enhancements to our operational activities.
- Further research on the challenges and issues faced by different segments of older investors, which is vital to ensuring that our policy-making, education and outreach activities remain responsive to the circumstances and needs of older Ontarians. This includes working with the Behavioural Insights Team to examine behavioural barriers related to retirement planning and possible intervention tactics to overcome those barriers.
- Enhancing our education and outreach activities to provide tools and resources for older investors, their families and caregivers who support them, as well as their registered firms and representatives, and improving the ways in which we deliver information through written materials, digital publications and in-person engagement. Among other things, this will include:
 - developing a series of white label resources (such as forms, discussion guides and educational materials) for firms to adopt and deploy to their representatives and clients;
 - creating a “resource hub” to aggregate and organize resources available to older Ontarians in a central online location; and
 - implementing an education and outreach strategy for new Canadians that includes a focus on older investors.

In developing the Strategy, we consulted with a number of stakeholders, including the Seniors Expert Advisory Committee (SEAC, an OSC advisory committee composed of experts in financial services, medical sciences, law, seniors advocacy, and other fields), the investment industry, retail investors, and community groups reached through our OSC in the Community program as well as other outreach and engagement initiatives. We also drew significantly from the findings of a roundtable focused on seniors' issues that we held together with our Investor Advisory Panel in 2014, and performed extensive research and consultation with our regulatory counterparts both here in Canada and abroad.

We will provide an update on our progress in implementing the Strategy in one year and will continue to monitor and assess changes among older demographics through further research and stakeholder consultation. Over this period, we expect that registered firms and their representatives will review and develop ways to improve their own practices with respect to older investors and play a significant role in the broader, ongoing conversation with respect to the needs and priorities of older investors.

Questions

If you have any questions or comments about the Notice, please contact:

Tyler Fleming
Director
Investor Office
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: tfleming@osc.gov.on.ca

Denise Morris
Manager, Policy
Investor Office
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: dmorris@osc.gov.on.ca

Doug Sarro
Senior Advisor, Research and Regulatory Innovation
Investor Office
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Email: dsarro@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION

Seniors Strategy

March 20, 2018

OSC STAFF NOTICE 11-779



ONTARIO
SECURITIES
COMMISSION

CONTENTS

ONTARIO SECURITIES COMMISSION

Seniors Strategy

- 3** **Executive summary**

- 7** **Literature review**

- 20** **Environmental scan**

- 38** **The way forward**
 - 39** **Policy**
 - 45** **Operations**
 - 47** **Research**
 - 48** **Education and outreach**

- 52** **Conclusion**

- 53** **Appendix A:**
Seniors Expert Advisory Committee member biographies

- 55** **Notes**

I.

EXECUTIVE SUMMARY

It is time to change the conversation around older investors.

As part of our continued efforts to deliver strong investor protection and responsive regulation, the Ontario Securities Commission (OSC) has developed a strategy and action plan to respond to the needs and priorities of Ontario seniors.

In November 2017, the Government of Ontario published *Aging with Confidence*, its renewed action plan for dealing with some of the broader challenges faced by many Ontario seniors, listing new initiatives that build on its 2013 action plan for seniors.¹ Under the plan, the Government of Ontario establishes a vision to help older individuals remain independent, healthy and active, safe and socially connected, and lays out a framework for supporting that vision through guiding principles that focus on inclusion, diversity, safety, and self-determination. The OSC Seniors Strategy reflects this vision and its principles, building on it in a securities regulatory context.

The OSC's vision is a stronger and more secure financial future for all Ontario seniors. We seek to achieve this through a comprehensive approach that recognizes that there are multiple tools in our toolkit, including policy, operational changes, research, education and outreach. The strategy also reflects the fact that we can't do it alone: the way to achieve our vision is dependent in part on engagement and partnerships with stakeholders, including the financial industry, working together to achieve our shared goals.

It is important that the OSC develop a seniors strategy because, as a regulator, we must be responsive to the needs and priorities of older Ontarians and recognize the challenges that investors often face in the financial services market as they age.

The data tells us that Ontarians are living longer than ever, and older Ontarians make up a growing portion of Ontario's population: the Ontario government has projected that one in four Ontarians will be aged 65 or older by 2041.² At the same time, the financial lives of individuals aged 65 and older are becoming more complex, with incomes coming from more potentially volatile sources, higher debt levels and a greater share of their assets in less liquid assets, such as real estate, than was the case 20 years ago.³

These trends indicate that Ontarians will be called upon to make complex financial judgments later in life, and with higher stakes, than may have been the case for previous generations. But for many people, aging can also be accompanied by health, mobility, or cognitive changes that may affect their ability to make these judgments later in life, as well as their susceptibility to financial exploitation and fraud.

We recognize that these trends give rise to heightened concerns about the ability of older investors to access financial products and services that respond to their needs as they age. That said, it is also important to avoid the ageist tendency of regarding all seniors as "vulnerable" or unable to protect their own interests. While much of this document discusses changes and risks that may

become relevant to individuals as they age, it is important to recognize that these factors may affect different individuals at different points in their lives, and to significantly different degrees.

We look to achieve our vision of a stronger and more secure financial future for all Ontario seniors through a strategy that is *inclusive*, *social* and *responsive*. Being *inclusive* means recognizing that seniors are not a homogenous group – that policy responses and education and outreach initiatives must take into account, among other things, differences in mobility, vision, hearing, and literacy, including financial literacy. We also need to recognize that financial decisions are *social* in nature, in that individuals tend to consider the effects of their actions on others and seek others' advice before taking action; this means designing policy and programs in ways that engage these individuals and help them meaningfully participate in conversations about aging and retirement planning. Being *responsive* means delivering timely and relevant support and resources to investors, as well as the people they work with when making financial decisions, which in turn means paying close attention to emerging trends and changes in circumstances affecting the financial lives of older individuals.

In developing this strategy, we consulted with a number of stakeholders, including the Seniors Expert Advisory Committee (SEAC, an OSC advisory committee composed of experts in financial services, medical sciences, law, seniors advocacy, and other fields), the investment industry, retail investors, and community groups reached through our OSC in the Community program as well as other outreach and engagement initiatives. We also drew significantly from the findings of a roundtable focused on seniors' issues (the Seniors Roundtable) that we held together with our Investor Advisory Panel in 2014,⁴ and performed extensive research and consultation with our regulatory counterparts both here in Canada and abroad.

This strategy builds on our existing work to better understand and serve the interests of older investors, including our establishment of SEAC, our work to strengthen the Ombudsman for Banking

Services and Investments (OBSI) as an independent and impartial service for resolving financial consumer complaints, the Canadian Securities Administrators' (CSA) policy project to enhance the obligations that regulated dealers and advisers (often referred to in this document as "registered firms") and their representatives have with their clients so that the interests of clients come first, our diverse education and outreach initiatives that speak directly to investors through a variety of channels, and our ongoing research into the changing needs and priorities of investors.

Key elements outlined in this strategy include:

- Developing a flexible and responsive framework to address issues of financial exploitation and cognitive impairment among older investors, which includes:
 - a requirement that registered firms and their representatives make reasonable efforts to obtain the name and contact information for a client's "trusted contact person" that may be reached if there is a concern about a client's behaviour or transactions in a client's account;
 - enabling registered firms and their representatives (for example, through a safe harbour) to place a temporary hold on disbursements from a client's account or make a disclosure to a trusted contact person when they:
 - have a reasonable belief that financial exploitation or fraud has occurred, is occurring or will be attempted; or
 - have a reasonable belief that a client's judgement may be impaired;
 - guidance for registered firms and their representatives when engaging with older clients, such as collecting sufficient information about a client, supervising client accounts and communicating effectively with clients and supporting their decision-making as they age.
- Addressing registered firms' and their representatives' use of confusing and misleading titles, designations, and marketing practices, including issues related to older investors.



- Strengthening OBSI and exploring how the dispute resolution process can better respond to the issues of older investors.
 - Breaking down silos and working with other regulators and organizations toward a common goal of designing policies and programs that serve the interests of older individuals in areas such as powers of attorney and privacy laws.
 - Building capacity among our staff to continually improve the ways in which we work with older investors and undertake various enhancements to our operational activities.
 - Further research on the challenges and issues faced by different segments of older investors, which is vital to ensuring that our policy-making, education and outreach activities remain responsive to the circumstances and needs of older Ontarians. This includes working with the Behavioural Insights Team to examine behavioural barriers related to retirement planning and possible intervention tactics to overcome those barriers.
 - Enhancing our education and outreach activities to provide tools and resources for older investors, their families and caregivers who support them, as well as their registered firms and representatives, and improving the ways in which we deliver information through written materials, digital publications and in-person engagement. Among other things, this will include:
 - developing a series of white label resources (such as forms, discussion guides and educational materials) for firms to adopt and deploy to their representatives and clients;
 - creating a “resource hub” to aggregate and organize resources available to older Ontarians in a central online location; and
 - implementing an education and outreach strategy for new Canadians that includes a focus on older investors.
- We recognize that appropriately addressing the full scope of issues affecting older investors may require work beyond these elements and that there is more that we can learn and do to continually improve the way we respond to the interests of older investors. As such, we see this strategy as a living document: a roadmap for targeted approaches to address older investors’ needs. We recognize that, in our efforts to remain flexible and responsive to the changing needs of older individuals, we must be open to adapting our roadmap over time to meet these needs.
- We will provide an update on our progress in implementing this strategy in one year and will continue to monitor and assess changes among older demographics through further research and stakeholder consultation. Over this period, we expect that registered firms and their representatives will review and develop ways to improve their own practices with respect to older investors and play a significant role in the broader, ongoing conversation with respect to the needs and priorities of older investors. We look forward to continuing this dialogue with the financial sector as well as investors, community organizations, government, and other stakeholders as we move forward with implementing the various initiatives contemplated by this strategy.



II.

LITERATURE REVIEW

The discussion below summarizes findings from research relevant to the financial lives of older Canadians. After briefly addressing the challenge of defining what it means to be a “senior” in 2018, this section describes current data with respect to the economic and social circumstances of older Canadians.

This data indicates that Canadians will be called upon to make complex financial decisions later in life, and with higher stakes, than may have been the case for previous generations. It also indicates that, while older Canadians may be better equipped to address this complexity than may have been the case in the past, maintaining financial knowledge later in life remains a challenge.

This section then discusses challenges that many older Canadians are likely to face at some stage in their lives, and that may impact their ability to make difficult financial decisions later in life and leave them more susceptible to financial exploitation and fraud. These factors range from behavioural biases that affect people of all ages, such as overconfidence, to changes in cognition and health that are often associated with advancing age.

A. Who is a “senior?”

Before understanding the factors that may affect the financial lives of seniors, it is necessary to clarify what one means by the word “senior.” The term is often associated with people who have reached a particular age – Statistics Canada, for example, uses age 65 as a marker for when an individual should be considered a senior, and *Investing As We Age*, a 2017 study by the OSC’s Investor Office, found that

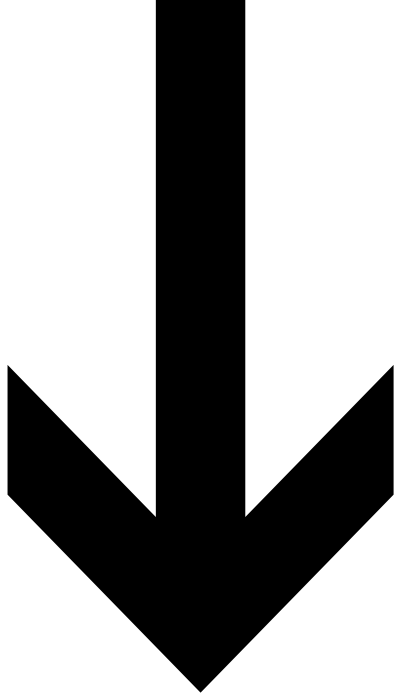
76 per cent of Ontarians aged 65 and older view themselves as seniors.⁵

The study also found, however, that many Ontarians do not view “senior” as a binary, “in or out” category: some said that they see themselves as seniors only sometimes, such as when accessing certain discounts and benefits or when experiencing issues with health or mobility.⁶ When turning to focus on how they would define someone else as a senior, a majority of respondents said they viewed someone age 65 or older as a senior, but others pointed to factors relating to health or life stage, such as retirement, as also relevant for determining whether someone is a senior.⁷

It is unsurprising that many Ontarians viewed age as the most relevant marker for determining whether someone is a senior. Age is often used as a rough marker for knowing when one is expected to reach certain life milestones, such as pursuing an education, joining the labour force, starting a family, or retiring.⁸ Perhaps in part because of this, age also is often a requirement for accessing benefits, from pensions and income supports to seniors’ discounts at supermarkets and other stores; or as a threshold for additional responsibilities, such as seniors’ driver testing; or as the basis on which particular activities are restricted, as with mandatory retirement.⁹

In collecting and analyzing data with respect to seniors, age can be a useful simplifying metric, and this literature review makes significant use of data that focuses on Canadians aged 65 or older.

That being said, our consultations with stakeholders and research on this topic have made clear to



The OSC Investor Office's 2017 *Investing As We Age* study found that 76% of Ontarians aged 65 and older view themselves as "seniors."

76%

us that, for the OSC's purposes as a regulator, age should not be viewed as the only indicator for determining whether a person is a senior. Relying on age alone fails to capture the specific characteristics, lifestyles and personal and financial needs of each investor. With life expectancies lengthening, the health of individuals who reach the age of 65 improving, and the share of individuals continuing to participate in the labour force at age 65 increasing,¹⁰ it becomes increasingly important not to treat Canadians aged 65 and over, or seniors, for that matter, as a single, homogenous group.

It is also important to avoid the ageist tendency of regarding all seniors as "vulnerable" or unable to protect their own interests. While much of this document discusses changes and risks that may become relevant to individuals as they age, it is important to recognize that these factors may affect different individuals at different points in their lives, and to significantly different degrees. It is also important to recognize that older Canadians often lead healthy and productive lives well into their "senior" years. For example, older Canadians occupy positions of significant responsibility within the capital markets: a 2014 study on directors of publicly traded companies in Canada found that these directors have an average age of 63, and that 17 per cent of these directors are aged 71 or older.¹¹

Some organizations have instead taken a "life stage" approach to identifying individuals who could be considered seniors, looking for changes



in life circumstances (such as entering retirement) to determine when investors may be considered seniors. The Investment Industry Regulatory Organization of Canada (IIROC), for example, has defined “senior clients” as those “who are retired or about to retire.”¹² The Investment Industry Association of Canada (IIAC) similarly defines “senior investors” as “investors who have retired or are nearing retirement,” noting that “the term ‘senior investor’ does not readily lend itself to a simple numerical age measure, as tempting as that may be for simplicity of application.”¹³ As IIAC notes, however, in any event, both “a client’s age and life stage are critical components of an investor’s KYC [know your client] profile and firms cannot meet their regulatory obligations without considering these factors.”¹⁴

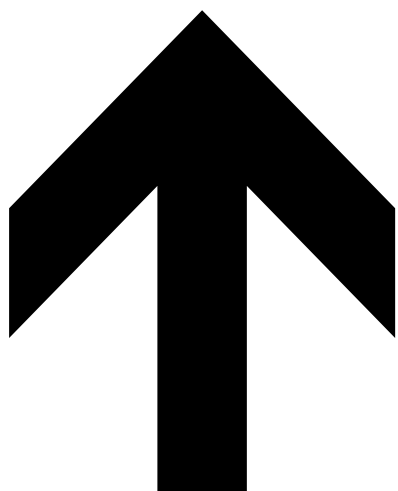
B. Older Canadians: A snapshot

The financial situation of the typical Canadian age 65 and older has changed significantly over the past 20 years. As levels of public pension and other retirement benefits have stalled in real terms, older Canadians have sought to fill the gap with income from employment and private pensions and savings—sources of income that depend in large part on older Canadians’ continued health and employment, as well as the outcomes of their personal investment decisions. At the same time, their balance sheets have become more leveraged and less liquid, with debt levels rising faster than asset levels, and a greater portion of older households’ assets in real estate.

While, as a whole, older households’ balance sheets remain resilient—overall debt levels remain relatively low and older households still hold significant quantities of more liquid, financial assets—the trends outlined above mean that older individuals, in managing their wealth, may need to make significant financial decisions later in life to a greater extent than may have been required of previous generations.

Incomes increasingly from potentially volatile sources

Household expenses typically fall when one retires or reaches retirement age, but they do not



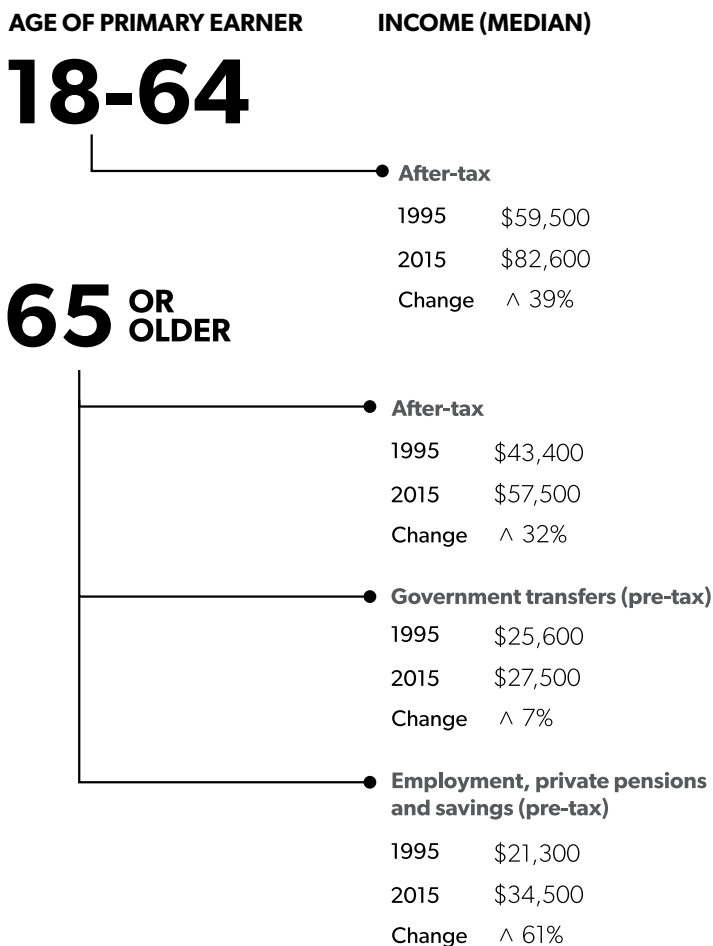
disappear: as a result, older Canadians generally seek to maintain a level of income sufficient to maintain the standard of living they enjoyed in their peak working years, through a combination of government benefits; private pensions, savings, and other assets; and continued full-time or part-time employment.

Over the past two decades, families with a primary income earner aged 65 or older kept pace, for the most part, with increases in incomes enjoyed by families with a primary earner aged 18-64, indicating that many older Canadians have succeeded in maintaining their standard of life in retirement. In 1995, the median income of a family with a primary earner aged 65 or older was 73 per cent that of a family with a primary earner aged 18 to 64; this percentage fell slightly to 70 per cent in 2015.¹⁵

But the composition of older Canadians' incomes has shifted significantly over this period. The role of government benefits in helping older Canadians replace their working-age incomes has diminished over time, as increases in these benefits have not kept pace with increases in the incomes of working-age families: between 1995 and 2015, the median after-tax income of families with a primary earner aged 18-64 increased by 39 per cent, but the median income from government transfers for families with a primary earner aged 65 and older grew by only 7 per cent.¹⁶ Canadians aged 65 and older have been bridging this gap with higher employment income and income from private pensions and savings: median income from these sources among families with a primary earner aged 65 or older rose by 61 per cent between 1995 and 2015.¹⁷

At the same time as Canadians aged 65 and older have come to rely to a greater extent on market income, the composition of this category of income has also been changing: the share of Canadian workers enrolled in defined benefit pension plans, and registered pension plans more generally, has fallen,¹⁹ and the share of Canadians aged 65 and older in the labour force has increased.²⁰ While recent changes to the Canada Pension Plan are projected to enhance public pension benefits for

Median incomes of Canadian families, compared (2015 constant dollars)¹⁸



many younger Canadians, increases in benefits for those who are now beginning to approach retirement age (i.e., those who will turn 60 in 2025) are projected to be relatively modest.²¹ Accordingly, these changes are unlikely to substantially affect the makeup of older Canadians' incomes over the near-to medium-term.

In short, older Canadians' incomes are less likely to come from fixed sources—such as government benefits or defined benefit pension plans—than was the case 20 years ago, and more likely to come from sources that are more volatile, such as private savings and investments, including in home equity, continued employment, and defined contribution pension plans. The stability of these sources of income depends on broader market conditions as well as older Canadians' ability to continue working and the outcomes of their personal investment choices, both before and after retirement.

Balance sheets increasingly leveraged and illiquid

At the same time that older Canadians' sources of income became less stable, their balance sheets became more leveraged. While total assets held by Canadian households aged 65 and older rose by 6.6 per cent per year between 1999 and 2016, total debts rose by 11.1 per cent per year—the fastest rate of growth of any age group—and the percentage of households in this age group holding some form of debt rose from 27.4 per cent to 42 per cent over this period.²² Total assets owned by households aged 65 or older still far exceed total debts owed overall, but many households are feeling the impact of rising debt: the percentage of “highly indebted households” (with debts of more than 350 per cent of household incomes) aged 65 and older nearly doubled from 2.9 per cent over 2005–2007 to 5.5 per cent over 2012–2014.²³

Real estate was responsible for much of the growth in older Canadians' asset values, rising by 8.1 per cent per year between 1999 and 2016, and representing 41.2 per cent of the assets held by households 65 and older as of 2016.²⁵ Households 65 or older were the only age group to see their homeownership levels rise over the past decade.²⁶ While real estate assets can be of significant help in financing retirement, this asset class is less liquid, and therefore more difficult and potentially costly to sell, than financial assets such as exchange-traded funds (ETFs), mutual funds, stocks, and bonds. Accessing home equity requires

substantial planning and the exercise of judgment by older homeowners, both in determining when to access this equity and how to do so (whether by downsizing or by taking out a reverse mortgage or home equity line of credit).²⁷

Real estate played a role not only in the growth of older Canadians' assets, but in the substantial and rapid growth in older Canadians' debt levels over 1999–2016. Mortgage debt grew by 11 per cent annually over this period, and represented 67.6 per cent of the debt held by households aged 65 or older as of 2016.²⁸ Growth in mortgage debt was outpaced, however, by growth in amounts owed under lines of credit (which include home equity lines of credit), which rose by nearly 15 per cent between 1999 and 2016, representing a further 19 per cent of total debt owed by these households as of 2016.²⁹

Low interest rates are likely one driver of higher debt levels. Interest rates fell significantly in the wake of the 2007–08 financial crisis and, in part due to slower growth in the labour force and in global investment spending, interest rates are expected to remain relatively low over the coming years.³⁰ Lower interest rates have significant effects on households' economic choices, creating incentives to take on higher debt and reducing incentives to save. It should be unsurprising that debt levels among Canadian households of all ages have risen and savings levels have fallen, relative to historical levels.³¹ Low interest rates also spur increases in

Balance sheets of Canadian households aged 65 and older, selected line items (2016 constant dollars)²⁴

	1999		2016		Increase per year (%)
	\$ (millions)	% of total	\$ (millions)	% of total	
Total assets	1,040,747	100.0%	3,102,752	100.0%	6.6%
Real estate	341,237	32.8%	1,279,522	41.2%	8.1%
Private pension assets	375,610	36.1%	977,512	31.5%	5.8%
Financial assets, non-pension	207,100	19.9%	541,054	17.4%	5.8%
Total debts	20,671	100.0%	123,592	100.0%	11.1%
Mortgages	14,105	68.2%	83,592	67.6%	11.0%
Lines of credit	2,319(1)	11.2%	23,564	19.0%	14.6%

(1) Use with caution due to the high sampling variability associated with the estimate.

asset prices, helping drive significant increases in Canadian home prices over the past decade,³² and leading many Ontarians to pivot toward relying on their homes as a source of wealth in retirement—the OSC’s *Investing As We Age* study found that nearly half of pre-retired Ontario homeowners aged 45 and older were relying on rising home prices to provide for their retirement.³³ Savers may also respond to low interest rates by engaging in a “search for yield,” moving their savings out of low-yielding products such as savings accounts and Guaranteed Investment Certificates (GICs) into higher-risk, more volatile investments. This search for yield may also make savers more susceptible to fraudulent “get rich quick” scams.³⁴

Intergenerational pressures are likely another driver of higher debt levels. Undergraduate tuition in Ontario has risen by, on average, 57 per cent over the past decade (from \$5,388 in the 2007-08 school year to \$8,454 in the 2017-18 school year),³⁵ and housing costs have also risen steadily, with new house prices in Ontario rising by 35.2 per cent (and 42.5 per cent in Toronto) between December 2007 and December 2017.³⁶ Parents have played a key role in helping their adult children overcome these financial challenges so that they could establish households of their own. This support often comes in the form of financial assistance:

- 60 per cent of Canadian parents with children under 25 report directing some of their retirement savings toward their child’s education.³⁷
- 43 per cent of millennial first-time home buyers report receiving financial help with their down payment from their parents (compared to 12 per cent of baby boomers who reported receiving help when buying their first home).³⁸

But assistance can also come in the form of parents’ letting adult children stay in the family home longer so that they can build up savings more quickly:

- As of 2016, more than 2 in 5 Ontarians aged 20 to 34 (42.1 per cent) were living with their parents, compared to 35 per cent in 2001.³⁹
- Multi-generational households are the fastest growing type of household in Canada.⁴⁰

- In 2016, over half (50.3 per cent) of grandparents aged 45 and older living with their grandchildren reported having some financial responsibility in their household.⁴¹

Parents report that this support has encumbered their retirement plans: 62 per cent of baby boomers say that providing for their “boomerang” children is preventing them from saving enough for retirement, and over half (58 per cent) report being financially stressed.⁴²

Better educated and more engaged in their communities

While older Canadians’ financial situations have become significantly more complex over the past 20 years, their capacity to deal with this complexity arguably has increased considerably. Older Canadians are more educated than ever before: the proportion of Canadians aged 55 and over with a university degree rose from 9 per cent in 1996 to 20 per cent in 2016, while the proportion of those with only a high school diploma or less fell from 68 per cent to 45 per cent.⁴³ Higher education levels are linked to better health, less social isolation, and other indicators of wellbeing,⁴⁴ and data on older Canadians appears to support this relationship. Overall, most older Canadians are in good mental health and have a positive outlook on life, tending to report less psychological distress than younger Canadians.⁴⁵ In addition, 87 per cent of Ontarians aged 65 and older report feeling “a lot” younger than their actual age.⁴⁶

Older Canadians are more likely to be working than was the case in the past: the percentage of Canadians 55 and older participating in the labour force rose from 24 per cent in 1996 to 38 per cent in 2016, hitting a record high.⁴⁷ In 2015, one in five Canadians aged 65 and older (19.8 per cent) reported working during the year, generally in part-time or part-year employment.⁴⁸ Higher employment in part reflects higher education levels, better health, and higher wages.⁴⁹ The rise in two-income households also helps explain this increase, as one income earner may delay retirement so that they can retire at the same time as their spouse.⁵⁰ But working later in life may not be positive for everyone: it may also reflect older Canadians’ having to cope with higher debt levels, insufficient retirement savings, and the need to provide financial support for their adult children.⁵¹

Women living alone compared to women living as part of a couple⁵⁶

65 OR OLDER

YEAR	LIVING ALONE	LIVING AS A COUPLE
2001	38.3%	44.4%
2016	33.0%	51.4%
Change	▼5.3%	▲7.0%

80 OR OLDER

2001	56.1%	19.9%
2016	48.6%	27.6%
Change	▼7.5%	▲7.7%

Older Canadians also contribute to their communities and families as volunteers and caregivers. Thirty-eight per cent of Canadians aged 65–74, and 27 per cent of those aged 75 and over, volunteered in 2013; older Canadians who volunteered contributed higher hours on average than most other age groups, with volunteers aged 65–74 and 75 and over spending the highest and third-highest number of hours volunteering, respectively, of any age group.⁵²

Older Canadians are more likely to live in their own homes, and less likely to live alone, than was the case in the past. As noted above, Canadians aged 65 and over were also the only age group in Canada whose rate of home ownership increased over the past decade, rising from 72.2 per cent in 2006 to 74.6 per cent in 2016.⁵³ This is, in part, due to differences in life expectancy, with women aged 65

and older substantially more likely to live alone than men in the same age group (33 per cent, compared to 17.5 per cent), though recent gains in male life expectancy are helping to narrow this gap.⁵⁴ As reflected in the table above, between 2001 and 2016, the proportion of women aged 80 and older living alone fell by 7.5 percentage points, while the share of those living as part of a couple rose by 7.7 percentage points.⁵⁵

Contrary to stereotypes, older Canadians are using technology in greater numbers than ever before: internet use among 65- to 74-year-olds rose from 65 per cent in 2013 to 81 per cent in 2016, and internet use among those aged 75 and older rose from 35 per cent to 50 per cent over this period.⁵⁷ In addition, substantial percentages of older Canadians own smartphones, including 18 per cent of Canadians aged 75 or older as of 2016.⁵⁸

A 2014 Statistics Canada study found that women aged 65 and older had the lowest financial knowledge scores out of women of any age group, and that men aged 65 and older had the lowest financial knowledge scores out of men of any age group other than 18- to 24-year-olds.

Challenges with financial planning, education, literacy, and numeracy persist

Having achieved a higher level of education early in life does not necessarily mean that an individual is planning for their financial future: the Investor Office's 2017 *Investing As We Age* found that only 14 per cent of Ontarians age 45 or older have a formal, written retirement plan, while 54 per cent have no retirement plan at all.⁵⁹ It also is no guarantee that an individual will maintain, later in life, the level of financial knowledge necessary to make informed financial decisions. Changes in cognition that occur as individuals age have been associated with a decline in financial literacy.⁶⁰ These changes do not, however, affect individuals' confidence in their ability to manage their own finances, and many do not reach out for help with financial decisions.⁶¹

Research carried out in Canada appears to support these findings. Canadians aged 65 and older still tend to underperform, compared to younger Canadians, when it comes to financial knowledge. A 2014 study found that women aged 65 and older had the lowest financial knowledge scores out of women of any age group, and that men aged 65 and older had the lowest financial knowledge scores out of men of any age group other than 18- to 24-year-olds.⁶² This study also found a significant gender gap between men and women aged 65 and older, with only 11.6 per cent of women (compared to 18.5 per cent of men) answering correctly five key financial knowledge questions.⁶³

The Investor Office's 2017 *Investing As We Age* study indicates an inverse relationship between financial knowledge as found by Statistics Canada and reported financial confidence: despite their lower financial knowledge scores, Canadians aged 65 and older were more likely than Canadians aged

45–64 to report feeling that they have a “good” or “excellent” understanding of investing.⁶⁴ A significant gender gap persisted, however, with only 31 per cent of women aged 65 and older, compared to 55 per cent of men in this age group, reporting this level of knowledge.⁶⁵

Low financial knowledge makes the roles of registered firms and their representatives even more important to helping older Canadians meet their financial goals. *Investing As We Age* found that a majority of investors aged 65 and older work with at least one registered firm;⁶⁶ research has also found that registered firms and their representatives have a significant influence on their clients' investment choices,⁶⁷ and that investors working with a registered firm place significant trust and confidence in that firm and its representatives.⁶⁸ However, as discussed below, older investors face significant challenges and risks that many registered firms and representatives may feel ill-equipped to address for a variety of reasons, including feeling that they lack the appropriate training and concern that existing policies and processes do not provide sufficient guidance regarding an older client's instructions and financial decisions.

C. Aging and financial decision-making

High education, good health, and strong connections to family and community naturally lead to optimism in one's ability to manage financial challenges. But optimism can be hazardous when it leads us to overlook the possibility that circumstances may change for the worse, and research into behavioural insights indicates that people of all ages tend to be overconfident about themselves and their choices.⁶⁹ This tendency may lead a healthy individual who is working or recently retired to ignore or underestimate the possibility



that they will experience adverse changes to their health later in life, or to assume that they will recognize changes to their health as they occur.⁷⁰ In fact, OSC-commissioned research carried out in 2015 found that six in ten Canadians aged 50 and older experienced a major life event that challenged their prior financial plans.⁷¹

Aging minds and bodies

Individuals' minds and bodies change as they age, and these changes can affect their financial decisions. Over time, the brain becomes less able to multitask, carry out mental math, and properly assess risks.⁷² It becomes more likely to make inconsistent and irrational choices,⁷³ and more likely to focus on the positive and ignore negative information.⁷⁴ It tends to rely more heavily on *crystallized intelligence* (its store of existing knowledge) relative to *fluid intelligence* (its ability to process new information and adapt to new situations).⁷⁵

These normal changes in cognition may not have a noticeable effect on one's ability to perform routine financial tasks, such as paying bills, but they can become more obvious when one faces more complex or unfamiliar contexts, such as financial planning or deciding to buy or sell investments: individuals may try to cope by considering less information before making decisions or by avoiding making decisions altogether.⁷⁶ Individuals may also become less willing or able to scrutinize the trustworthiness of others.⁷⁷

The risk of Alzheimer's disease and other forms of dementia increases substantially as individuals get older: while only 7 per cent of Canadians over 65 years of age are affected by dementia, this percentage is 35-40 per cent among Canadians over 85 years of age.⁷⁸ Dementia affects daily life:

in addition to impaired memory and difficulties with language and with processing decisions, symptoms include suspicion and anxiety, agitation over breaks in routine, frustration, and becoming easily distracted or upset by background noise.⁷⁹ It has been suggested that impaired financial decisions are "often one of the earliest clinical signs of emerging dementia."⁸⁰

Serious illness, impaired mobility, impaired vision and hearing, and concurrent use of multiple medications can all affect an individual's ability to make financial decisions.⁸¹ In 2012, 26.3 per cent of Canadians aged 65 to 74, and 42.5 per cent of Canadians aged 75 and older, reported having a disability.⁸² The percentage of Canadians reporting hearing and vision problems rises from 3.4 per cent and 2.1 per cent, respectively, among Canadians aged 65 to 74, to 12.8 per cent and 16.5 per cent, respectively, among Canadians aged 85 and over.⁸³

These risks, as well as the types of normal cognitive changes that occur with age discussed above will affect different individuals in different ways and to different degrees.⁸⁴ But on average, the associated risks and changes tend to become prevalent at a time in individuals' lives when they are likely to have accumulated greater wealth (relative to when they were younger), but also have less time to bounce back from financial mistakes or loss of assets.⁸⁵ The financial consequences of mistakes triggered by diminished capacity later in life can therefore be serious.⁸⁶ These consequences are compounded by the economic circumstances in which older Canadians find themselves: circumstances in which their levels of income depend to a greater extent on their own financial judgment than was the case in the past, and in which their balance sheets are more leveraged and thus sensitive to changes in economic and personal circumstances.

Compounding effects of social isolation

Social isolation (low quantity and quality of contact with others), as well as loneliness (the subjective feeling of lack of connection with others), can compound and accelerate declines in cognitive ability as well as broader physical and mental health.⁸⁷ As of 2008–09, 19 per cent of Canadians aged 65 and older “felt a lack of companionship, left out, or isolated from others,”⁸⁸ and a 2006 study found that over 30 per cent of Canadians in this age group are “at risk of social isolation.”⁸⁹ Social isolation has been identified as “the number one emerging issue facing seniors in Canada.”⁹⁰

While Canada’s older population has undergone significant changes over the past decade that have likely helped reduce feelings of social isolation and loneliness—including increases in the proportion of older Canadians living in their own homes and a decrease in the percentage of older women living alone⁹¹—social isolation and its possible effects on financial decision-making remain important concerns.

Caregiving by family and friends, which can range from assistance with routine tasks to making larger decisions about housing, health care and finances, can also help care receivers preserve their connection to their communities. However, it can also have negative effects on the caregiver, particularly if the caregiver is older: the caregiver may become more socially isolated as a result of the demands on time and energy involved in caregiving.⁹² In 2012, 12 per cent of Canada’s approximately 13 million caregivers were aged 65 or older, and 8 per cent of caregivers provided care for their spouse.⁹³ The 65 and older group was more likely than any other age group to spend 20 hours or more per week on caregiving tasks,⁹⁴ a sign that this group may be especially at risk of becoming socially isolated as a result of their caregiving work.

The largest group of caregivers, however, appears less likely to suffer social isolation as a result of their caregiving work. Most commonly, caregivers are adult children or grandchildren, and nearly half (44 per cent) of caregivers are between the ages of 45 and 64.⁹⁵ While pre-retired adult children or

grandchildren may have more resilient social networks that leave them less susceptible to social isolation, it must be kept in mind that caregivers of all ages often report stress and financial difficulty stemming from their caregiving responsibilities,⁹⁶ both of which may affect their own ability to plan ahead for retirement.

Caregiving responsibilities most often fall to women: a majority of caregivers are women (54 per cent), and women who are caregivers are more likely to spend 20 or more hours per week on caregiving tasks than their male counterparts (17 per cent, compared to 11 per cent of male caregivers).⁹⁷

Susceptibility to financial exploitation, fraud, and other undue influences

Having strong connections with others, including friends and family acting as caregivers, may reduce one’s susceptibility to financial fraud,⁹⁸ which generally encompasses investment and other financial scams, often involving the sale of worthless or non-existent products.⁹⁹ One in 25 Canadians is a victim of investment fraud, and one in five Canadians believe they have been approached with a fraudulent investment opportunity.¹⁰⁰ Those who were approached were most often contacted by phone or email and did not have a strong relationship with the potential fraudster; however, one in ten reported having been introduced to a potential fraudster through a friend, neighbour, co-worker, or family member, and about one in five reported developing a strong level of trust in the person who approached them.¹⁰¹

Canadians aged 65 and older are the age group most likely to say that they have invested money in what turned out to be a fraudulent investment.¹⁰² Fraudsters may directly target older individuals because of the relatively high levels of assets they hold as a result of a lifetime of saving and investing; other factors that influence older individuals’ susceptibility to fraud include cognitive decline,¹⁰³ as well as the absence of any “trustworthy friends or relatives to safeguard their assets.”¹⁰⁴

But the existence of a caregiving or other social relationship with a family member or friend does not necessarily reduce one’s risk of becoming a victim of financial exploitation. Financial exploitation has

been defined in a variety of ways by a variety of organizations and authors;¹⁰⁵ it may come in the form of theft, misuse or underuse of funds intended for care and other household expenses, or abuses of a power of attorney or other authority over the older person's decision-making.¹⁰⁶ Unlike financial fraud, financial exploitation is most often committed by friends or family members, with adult children and grandchildren, followed by a spouse, being the most common perpetrators; other perpetrators included co-workers and service providers.¹⁰⁷ In the context of a relationship between a client and the representative of a registered firm, the position of power that the representative holds over the client's financial assets may also create potential for an abuse of trust that could expose the client to some form of financial exploitation.

A national study on the mistreatment of older Canadians found that 2.6 per cent of Canadians aged 65 or older, representing 244,176 Canadians, reported having been a victim of financial abuse in the 12 months prior to when they were interviewed, making financial abuse the second most common form of elder abuse in Canada.¹⁰⁸ Social isolation, as well as cognitive decline and broader declines in health, can increase an individual's risk of financial exploitation, making them more dependent on a potentially exploitative individual, and reducing their ability to scrutinize or escape potentially exploitative situations.¹⁰⁹

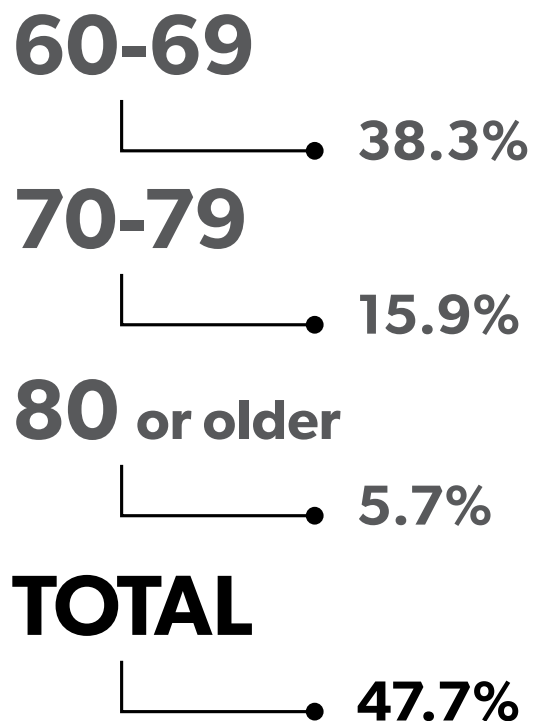
A significant amount of financial exploitation of older Canadians, as well as financial fraud, may be going unreported.¹¹⁰ Shame or guilt at perceived cognitive decline may leave individuals less inclined to report financial fraud or exploitation, and feelings of loneliness may lead individuals to pursue or maintain relationships with potential exploiters as a way of maintaining social connection.¹¹¹

There are also factors that may leave some older individuals in greater need of support from others when making financial decisions, or that may leave older individuals more susceptible to practices that do not rise to the level of financial exploitation or fraud, but nonetheless may be unfair or misleading. For example, seniors may be more susceptible

to sophisticated marketing techniques, including the "increasing use of behavioural economics and cognitive neuroscience to sway customers," as well as the natural human tendency, illustrated by behavioural insights, to become overwhelmed by complex information or choices.¹¹² Reduced ability to discern risk or trustworthy persons may also leave older investors more likely to purchase high-risk investments that may not be suitable for them.¹¹³

With respect to marketing, the use of misleading titles by registered firms and their representatives implying expertise in working with senior clients, as well as the use of misleading or confusing titles more broadly, has long been an area of focus for the OSC and other regulators.¹¹⁴ More broadly, data published by OBSI, which acts as an impartial and fair investigator of banking and investments related complaints across Canada, indicates that older Canadians may be disproportionately exposed to unfair practices in the investment industry. Nearly half of individuals who submitted complaints to OBSI in 2016 regarding unfair practices relating to investments were 60 years of age or older.¹¹⁵

*OBSI complaints by older clients, 2016*¹¹⁶



Common investment-related complaints include issues relating to investment suitability, suitability of margin or leverage, inaccurate or incomplete disclosure about a product or fees, disclosure and failure to follow a client's instructions (together representing over 70 per cent of investment-related OBSI cases opened in 2016).¹¹⁷

D. The challenge ahead

Older Canadians face complex financial decisions in retirement and, with a greater share of senior Canadians' incomes coming from private sources relative to a generation ago, these decisions come with higher stakes. Low interest rates and other factors have added further complexity to older Canadians' financial circumstances, encouraging greater borrowing while reducing the incentive to save. These trends may tend to heighten the potential impact of financial fraud or exploitation on the financial security of older Canadians.

It is natural to assume the best case scenario, but, with longer life spans and a more complex retirement ahead, it is important to plan for the unexpected. This is an area where investors expect regulators and registered firms and their representatives to help, as noted in the insights shared at the Seniors Roundtable.¹¹⁸ Many registered firms and representatives, in turn, have suggested that they need more support from regulators to help their clients plan for and address future changes and risks: a 2017 report by the Canadian Foundation for the Advancement of Investor Rights (FAIR Canada) and the Canadian Centre for Elder Law found that many registered firms and their representatives feel ill-equipped to respond to potential cognitive decline or financial exploitation of older clients, reporting that their firms had "few clear systems to follow, few experts within [their] organization, [and] few clear procedures" for identifying and responding to these situations.¹¹⁹ The report adds that many registered firms believe regulatory intervention in the form of guidance, legal safe harbours, and other tools may help both them and their representatives to better address the needs of their clients.¹²⁰



III.

ENVIRONMENTAL SCAN

We recognize that we are not alone in our focus on older investors. Securities regulators and other government agencies around the world have increasingly turned their attention toward the challenges that older individuals often face in accessing financial products and advice that are suited to their needs, and the risks that are often associated with aging and financial decision-making, including financial exploitation and diminished mental capacity.

We are particularly interested in identifying potential opportunities to support older investors and address the potential risks they face regarding financial exploitation and diminished cognitive capacity, with a view toward capturing instructive examples that can inform our own work in supporting Ontario's senior investors. To that end, we have examined various regulators and governments that have identified policy interventions or introduced new rules or guidance for the financial services industries in their respective jurisdictions to improve the resources and tools available to registered firms and their representatives working with older clients.

This begins with a look at the research and discussions by the United Kingdom's Financial Conduct Authority (FCA) around its work to determine the necessary scope of potential policy interventions by examining the financial needs of consumers as they age and the potential barriers that could prevent those consumers from accessing products and advice that meet their needs. It then moves to an examination of new rules and resources put in place by various organizations within the United States and Australia to support registered firms and their representatives in servicing older clients appropriately, including guidance to better

equip firm representatives to identify and respond to potential instances of financial exploitation or diminished mental capacity.

There are also a number of examples found both internationally and within Canada that illustrate interesting practices in investor protection, research, education and outreach as they relate to aging. We have examined these and other actions taken by organizations working in the financial services space given their potential applicability within an Ontario context, informing a number of the priorities that follow in this strategy.

A. United Kingdom

In February 2015, the FCA published its Occasional Paper No. 8, *Consumer Vulnerability*, which looked at ways financial service providers can better service "vulnerable consumers," a term used to describe those "who, due to their personal circumstances, [are] especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."¹²¹

In the paper, the FCA notes that vulnerability "can come in a range of guises, and can be temporary, sporadic or permanent in nature," with most people experiencing vulnerability at some point in their lives (though most people who experience such vulnerability would not identify themselves as "vulnerable").¹²² While the onset, duration, and severity of vulnerability can vary, the FCA also noted that an individual's vulnerability can also be exacerbated by the policies and practices of firms, creating issues such as people taking on an onerous amount of debt, purchasing high-cost products (such as payday loans) or taking on more risk than appropriate for their circumstances.¹²³ Firms



responding to these and other issues, as the FCA notes, will need to do so in a manner that is flexible, tailored and perhaps based on risk factors; the FCA adds that the use of risk factors is “useful in that [risk factors] capture not only the varied and fluctuating nature of vulnerability, but they also cover the interaction between the individual and the service provider.”¹²⁴

The FCA followed up its research on consumer vulnerability with a focus on older consumers and an in-depth review of the key issues they face.¹²⁵ It noted that, while “it is not the role of the FCA to design the products required or define how they should be delivered,” it does believe that it has “a role to play in helping to facilitate the debate about what older people need from financial services providers and the barriers that might get in the way of delivering them in a way that is accessible to those consumers.”¹²⁶ The FCA approached this debate by publishing Discussion Paper No. 16/1, *Ageing population and financial services*,¹²⁷ which had a number of interested parties submit “think pieces” intended to incite discussion about how financial services work for older individuals. The pieces covered a number of key areas, including the financial capability of older individuals, access to financial services and the role that firms can play in addressing clients’ needs as they age.

The FCA elaborated on this work with its September 2017 publication of Occasional Paper No. 31, *Ageing Population and Financial Services*, which looked at the public policy implications of an aging population, the impact on financial services and suggested actions for both the regulator and the financial services industry to better support older people.¹²⁸ In it, the FCA noted that older

consumers are not necessarily vulnerable, but are “more likely than other groups to experience transient or permanent vulnerability” due to issues related to health, resilience, capability and/or life events, creating risks related to the needs of older consumers being unmet, resulting in exclusion, poor outcomes and potential financial harm.¹²⁹

As noted in the paper, the issues precipitating these risks appear to have a range of interrelated root causes, including policies and controls that “are not designed around consumer needs and unintended consequences of retail product and service design.”¹³⁰ The FCA recognized that solutions “do not lie within the remit of any one party,” including the FCA and the firms it oversees,¹³¹ though it identified certain areas where it believed that regulators and financial services firms can play a role in addressing key risks and priorities. The FCA organized its ideas into three broad categories: product and service design, consumer support and adaptive strategies.

Product and service design: Products and services often appear to be designed for an “average” consumer who may not exist in practice, or are designed to meet corporate needs rather than consumer ones. Very few products and services are designed to anticipate the needs of older consumers. As such, firms could:

- understand and anticipate the current (and future) needs and circumstances of older customers in their target markets;
- take older customers’ needs into account when developing distribution channels, and customer support for older consumers, or other vulnerable groups; and

- involve older and vulnerable consumers in testing and product design at proof of concept stages.¹³²

Customer support: While not all customer support processes need to be built around the needs of older consumers, firms should take steps to consider how the changing needs of such people can be met, including:

- helping older customers find the most appropriate products and services for their needs (including developing products intended to fill any gaps in the market);
- helping customers to recognize when they are having difficulties and encouraging them to ask for more help; and
- providing appropriate support as consumer needs and life circumstances change.¹³³

Adaptive strategies: Meeting the needs of older consumers requires “continual strategic evolution, not one-off, short-term solutions or ‘box-ticking’ approaches.”¹³⁴ This means that firms may wish to consider adapting or retaining access channels for groups who depend on them and continuously review strategies, business models, supporting policies and controls to ensure they remain appropriate for changing consumer behaviours and needs.¹³⁵

B. United States

North American Securities Administrators Association

Model act

In 2014, the North American Securities Administrators Association (NASAA), an association of securities regulators in Canada, the U.S. and Mexico, formed a Committee on Senior Issues and Diminished Capacity to address the financial exploitation of older consumers, “the fastest-growing category of elder abuse in many [U.S.] states.”¹³⁶ NASAA noted that U.S. state securities regulators were often well-positioned to “intercede on behalf of vulnerable seniors,” but successful intervention requires policies and related tools that

allow regulators to “break down barriers to the sharing of information about financial exploitation and inspire action by financial services professionals who are positioned to identify red flags.”¹³⁷ To that end, the NASAA Committee on Senior Issues and Diminished Capacity drafted a model act to guide U.S. states toward adopting legislation or regulation that is designed to protect vulnerable adults from financial exploitation.

The model act was designed to provide financial service providers and state regulators with new tools to help detect and prevent financial exploitation of “vulnerable adults,” defined as individuals aged 65 or older as well as those who qualify for protection under a state adult protective services statute.¹³⁸ It applies to U.S. broker-dealers and investment advisers, including certain “qualified individuals” (agents and representatives of broker-dealers and advisers, as well as those serving “in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser”).

The model act brings together five core features that are intended to “clarify and more closely align the interests and responsibilities of registered firms and their representatives, regulators, and law enforcement” as a means to facilitate the reporting and prevention of financial exploitation of older consumers.¹³⁹ Those core features are government disclosures, third-party disclosures, delaying disbursements, immunity for disclosures and disbursements, and access to records:

- **Government disclosures:** Qualified individuals must report to their respective state securities regulators and state adult protective services agencies when they have a “reasonable belief” that financial exploitation of a vulnerable adult has been attempted or has occurred. The “reasonable belief” standard is intended to have both subjective and objective elements (“a qualified individual must have a subjective belief in the existence of the financial exploitation, and this belief must be objectively reasonable”).¹⁴⁰
- **Third-party disclosures:** Qualified individuals can notify a third party, designated by a client, regarding any suspected financial exploitation of

that client. Importantly, the model act directs that disclosure may not be made to the third party if the qualified individual suspects the third party of the financial exploitation.¹⁴¹

- **Delaying disbursements:** Qualified individuals can delay disbursing funds from a vulnerable adult's account for up to 15 business days if they suspect financial exploitation. The delay can be extended for an additional ten days at the request of either the state securities regulator or an adult protective services agency.¹⁴²
- **Immunity for disclosures and disbursements:** Qualified individuals are given immunity from administrative or civil liability if they take actions permitted under the model act, including making disclosures to a government agency or designated third party, or delaying a disbursement of funds.¹⁴³
- **Access to records:** Qualified individuals are required to ensure that law enforcement and state adult protective services agencies have access to the appropriate records needed to investigate cases of suspected or attempted financial exploitation. Under the model act, such records are not subject to state public records laws to allow such agencies to conduct investigations while maintaining the confidentiality of personal financial information.¹⁴⁴

NASAA has noted that the provisions of the model act could be adopted by statute as part of existing securities laws or, potentially, through regulation. By the end of 2017, the Model Act had been adopted in whole or in part by 13 U.S. states.¹⁴⁵

ServeOurSeniors

Concurrent with the development of the model act, NASAA also launched "ServeOurSeniors," a new initiative that included the development of a website to distribute relevant resources, a training program for regulators on issues related to diminished capacity, and an outreach program to help front-line financial workers detect the red flags of financial exploitation and where to report suspicions of fraud.

ServeOurSeniors.org emerged as the first component of the new initiative in late 2015, serving

as a hub for NASAA to provide "senior-focused" resources to investors, caregivers, industry, and policy makers. Available resources include: investor education tools, brochures, checklists and "conversation starters;" caregiver resources; and resources to help train industry participants in identifying and reporting suspected financial exploitation.¹⁴⁶ The website includes an interactive map to help users locate contact information for their jurisdiction's securities regulator, adult protective services agency and other governmental bodies.

The following year, NASAA published a guide to help U.S. broker-dealers and investment advisers develop practices and procedures to detect and address instances of client diminished capacity and suspected cases of financial exploitation.¹⁴⁷ The guide was structured around five key concepts:

- **Identifying "vulnerable individuals":** Firms should train their frontline personnel (including call centre staff, branch office staff, and staff providing financial advice) to recognize signs of potential diminished capacity and financial exploitation,¹⁴⁸ as well as how to communicate with clients experiencing reduced cognition,¹⁴⁹ how to ask appropriate questions, when there are red flags in a manner that maintains the client's dignity and independence,¹⁵⁰ and how to escalate and report issues as appropriate.¹⁵¹
- **Reporting to government:** Firms should have a clear handle on the reporting obligations in their jurisdictions, including whether it is the individual's obligation or the firm's obligation to report financial exploitation, and they should have policies in place to protect clients by reporting suspected financial exploitation even when not legally obligated to do so.¹⁵² Policies should outline what required information is necessary for a report, and there should be detailed internal procedures for reporting, including escalation protocols or processes built into existing written supervisory procedures.¹⁵³
- **Reporting to third parties:** Firms should also develop procedures to encourage clients to use customized advance directives or designate

trusted contacts, ensuring that these procedures comply with privacy laws and that designations direct what information can be shared, what authority is conferred and under what conditions (which may include the authority to provide notification of suspected diminished capacity).¹⁵⁴

- **Delaying disbursements:** Firms should establish procedures to guide the decision-making around a potential delay of disbursements from a client account, including an internal review process related to any disbursement delays.¹⁵⁵
- **Regulatory cooperation:** Firms should develop strong working relationships with local adult protective services agencies and ensure that client records required by adult protective services and law enforcement agencies are provided upon request.¹⁵⁶

In 2016, NASAA conducted a series of reviews to discover how registered firms across the U.S. were addressing issues related to older investors. Across 62 reviews of at least 39 unique firms, it was found that “virtually all [reviewed firms] had both internal processes to identify and internally report suspected diminished capacity or senior financial abuse, and trained their staff on these policies.”¹⁵⁷ However, NASAA also noted that more than half of the firms reviewed lacked policies to define older customers; only 30 per cent had created policies and procedures to specifically address the needs of older clients; approximately 20 per cent had no supervisory procedures regarding any of the key issues related to older individuals that were examined; 19 per cent did not have a decision-maker responsible for reporting concerns to adult protective services agencies or authorities outside the firm; and fewer than half had developed a form for clients to designate an emergency or trusted contact person.¹⁵⁸

SEC and FINRA

In 2013, staff from the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) conducted 44 examinations of broker-dealers that focused on how firms conduct business with older consumers who are preparing for and entering into retirement.¹⁵⁹

These reviews focused on the types of securities purchased by older clients, the suitability of recommended investments, training of firm representatives, marketing, communications, use of designations such as “senior specialist,” account documentation, disclosures, customer complaints, and supervision.

Following the reviews, the SEC and FINRA issued a joint report in April 2015 that discussed the key observations and practices identified as a way for firms to “facilitate a thoughtful analysis with regard to their existing policies and procedures related to senior investors and senior-related topics and whether these policies and procedures need to be further developed or refined.”¹⁶⁰ Of note, the SEC and FINRA observed that:

- The different types of securities being purchased by older clients provided insight into how these investors attempted to meet their financial goals and evolving needs; the securities purchased by older consumers that generated the most revenues for firms were mutual funds, deferred variable annuities, equities, fixed income investments, and unit investment trusts/exchange-traded funds.¹⁶¹
- More than 77 per cent of the examined firms provided training for their representatives on issues specific to older consumers, typically on an annual basis and addressing topics such as risk disclosure of products, emphasizing how investment needs change as clients age, and escalation steps in the event that a firm’s representative notices signs of diminished capacity or financial exploitation.¹⁶²
- Nearly 64 per cent of the examined firms allowed their representatives to use senior designations in their sales efforts to imply expertise or credentials in issues related to older clients. Collectively, the firms reviewed used 25 different senior designations, including qualifications from “an approved curriculum, continuing education requirement, and recognition by an organization that is accredited by another institution.”¹⁶³ The SEC and FINRA noted that senior designations have varying requirements, some which are more

rigorous than others, and as a result some of these designations may be misleading to the investing public.¹⁶⁴

- The examined firms' marketing and communications efforts for older consumers largely centred on themes around retirement planning, though some materials included messages related to long-term care insurance, wealth preservation, and wealth transfer. Firms promoted these themes through various channels such as brochures, print and electronic advertisements, newspaper columns, radio and television commercials, and seminars, with retirement seminars being a popular forum for soliciting potential clients.¹⁶⁵
- When opening new client accounts, at least 30 per cent of the examined firms obtained client information beyond what is required by FINRA's rules, including "detailed expense information (including short- and medium-term expenses), retirement status, whether there was a durable power of attorney, mortgage-related information, insurance policy information, health care needs, sources of income (whether those sources are fixed or will be in the future), savings for retirement, and future prospects for employment."¹⁶⁶ However, 32 per cent of examined firms were relying on "aged account records" for their recommendations, with some account information being more than 36 months old.¹⁶⁷
- Some firms may be recommending non-traditional investments to supplement the income streams of older consumers. The SEC and FINRA found that examined firms made more potentially unsuitable recommendations for non-traditional securities such as variable annuities, structured products, and real estate investment trusts (REITs) than for more traditional securities such as open-end mutual funds, equities, or fixed-income investments.¹⁶⁸
- Most of the firms examined maintained written procedures related to supervision of firm representatives who deal with older clients, with most using the age of 70 when implementing age-based policies and procedures (though some

had procedures in place for clients as young as 60). While general requirements, suitability requirements, product guidelines, and other supervisory procedures varied by firm and by customer age, the SEC and FINRA noted a trend in firms paying increased attention to the accounts of older clients and, in particular, attention to transactions in non-traditional securities through specific supervisory procedures for investments such as variable annuities, non-traded REITs, structured products, and other alternative products. These supervisory structures typically are supported by automated systems, which help firms identify and address issues related to senior investors.¹⁶⁹

Alongside the release of the report, FINRA also launched its "Securities Helpline for Seniors," a toll-free number that older consumers could call to get assistance from FINRA or raise concerns about issues with their accounts or investments. In its first full year of operation, it received more than 4,200 calls from seniors and their families seeking help, and FINRA then facilitated the return of more than U.S. \$1.3 million in voluntary reimbursements from firms to customers. As well, through the helpline, FINRA obtained information related to potentially criminal behaviour and, in the helpline's first year, referred more than 200 matters to state, federal, and foreign regulators and made more than 70 referrals to adult protective services in 15 states.¹⁷⁰

FINRA's experience with its helpline highlighted issues relating to financial exploitation of older consumers, and in particular firms' abilities to effectively respond to suspected financial exploitation of older clients (and "other vulnerable adults") in a way that was consistent with FINRA's own rules.¹⁷¹ At that time, FINRA's rules did not explicitly permit firms to contact a non-account holder or to place a temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation of an older person or other vulnerable adult. To address these issues, in October 2015 FINRA proposed a set of rules to provide firms with a way to respond to situations in which they have a reasonable basis to believe that financial exploitation had occurred,

is occurring, had been attempted or will be attempted.¹⁷² The two components of the proposal included the ability for firms to place temporary holds on disbursements of funds or securities from the client's account and to make reasonable efforts to obtain the name of a "trusted contact person" that could serve as a resource for the firm in administering the client's account and in responding to possible financial exploitation.¹⁷³

Following a comment period, FINRA published Regulatory Notice 17-11, *Financial Exploitation of Seniors* in March 2017, confirming the SEC's approval of amendments to FINRA's rules that permit firms to contact a client's designated trusted contact person and, when appropriate, place a temporary hold on the disbursement of funds or securities from a client's account. These new rules became effective in February 2018.

Trusted contact person

Amendments to FINRA's Rule 4512 require members to "make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account" or when updating account information for an existing non-institutional account.¹⁷⁴ The amendments do not prohibit firms from opening and maintaining an account if a customer fails or refuses to identify a trusted contact person, so long as the member "makes reasonable efforts" to obtain one, which FINRA notes would include asking a client to provide the name and contact information for a trusted contact person.¹⁷⁵

As FINRA contemplated in its notice, a trusted contact person is intended to be "a resource for the member in administering the customer's account, protecting assets, and responding to possible financial exploitation."¹⁷⁶ FINRA noted that both clients and firms may both benefit from the trusted contact information, noting, for example, that a firm could inquire about a client's current contact information if the firm has been unable to contact them after multiple attempts.¹⁷⁷ A firm could also reach out to a trusted contact person if it suspects that a client "may be suffering from Alzheimer's disease, dementia, or other forms of diminished

capacity," or to address possible financial exploitation of a client before placing a temporary hold on a disbursement.¹⁷⁸

Temporary holds on disbursements of funds or securities

FINRA also introduced Rule 2165 to permit a firm that "reasonably believes" that financial exploitation has occurred, is occurring, has been attempted, or will be attempted to place a temporary hold on the disbursement of funds or securities from the account of a "specified adult" customer. Rule 2165 defines a "specified adult" as "a natural person age 65 and older or a natural person age 18 and older who the [firm] reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests."¹⁷⁹ In supplementary material for the rule, FINRA provided that a firm's "reasonable belief" that a person has a mental or physical impairment that renders him or her unable to protect his or her own interests may be based on the facts and circumstances observed in the firm's business relationship with the person.¹⁸⁰

By FINRA's own account, Rule 2165 has a "broad definition"¹⁸¹ of financial exploitation, which includes:

- the wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult's funds or securities; and
- any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a specified adult, to:
 - obtain control, through deception, intimidation, or undue influence, over the specified adult's money, assets, or property; or
 - convert the specified adult's money, assets, or property.¹⁸²

If a firm places a temporary hold on a disbursement, then the firm is required to immediately initiate an internal review of the facts and circumstances that led it to take such action. Firms are also required to provide notification of the hold and the reason for the hold to the client's trusted contact person and all parties authorized to transact business on

the account, including the client, no later than two business days after the date that the hold was initiated.¹⁸³ However, a firm is not required to provide notification to any person (including a trusted contact person) whom the firm reasonably believes has or will perpetuate the financial exploitation of the specified adult. Firms are also required to make records evidencing these notifications.¹⁸⁴

Under the rule, temporary holds on disbursements expire no later than 15 business days after the date that the firm first placed the hold, “unless otherwise terminated or extended by an order of a state regulator or agency or court of competent jurisdiction.”¹⁸⁵ Additionally, provided that the firm’s internal review of the facts and circumstances supports the reasonable belief that led to the temporary hold being put in place, the rule permits the firm to extend the hold for an additional ten business days (unless the hold is otherwise terminated or extended by the same parties previously listed).¹⁸⁶

The rule requires that firms that anticipate using a temporary hold also establish and maintain written supervisory procedures reasonably designed to achieve compliance with the rule, including “procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults.”¹⁸⁷ These procedures are required to identify the title of each person authorized to place, terminate, or extend a temporary hold on behalf of the firm and serve in a supervisory, compliance, or legal capacity for the firm. The rule also requires a firm that anticipates placing a temporary hold under the rule to develop and document training policies or programs designed to ensure that firm representatives and other people involved are able to comply with the requirements of the rule.¹⁸⁸

As FINRA notes, the rule does not create any obligation for firms to place a temporary hold on the disbursement of funds or securities. To that end, FINRA’s rule is permissive rather than mandatory, allowing firms to exercise their own discretion in their policies and procedures related to older consumers.¹⁸⁹

Both the amendments to Rule 4512 and the new Rule 2165 are consistent with a number of provisions in NASAA’s model act, but as NASAA noted in its 2018 commentary on the model act, rules adopted by FINRA (or any other self-regulatory organization) have fundamental differences from state legislation.¹⁹⁰ As per NASAA:

“The protections afforded by the FINRA rules are substantively different from those afforded by the Model Act and related legislation. For example, FINRA does not require mandatory reporting of suspected financial exploitation to state regulators or state [adult protective services] agencies, and does not incentivize reporting by offering immunity for disclosing information to government and third-parties. Further, while FINRA requires retention of records, it does not require the sharing of records with state [adult protective services] and law enforcement agencies, which can prove an essential tool for agencies tasked with preventing exploitation.”¹⁹¹

C. Australia

Australian Securities and Investments Commission

In April 2010, the Australian federal government introduced *The Future of Financial Advice*, a package of reforms to laws governing the financial planning sector in the country, intended to “improve the quality of advice, strengthen investor protection and underpin trust and confidence in the financial planning industry” and, ultimately, encourage more Australians to seek financial advice.¹⁹² Among these reforms was the proposal of a statutory fiduciary duty for financial advisors, which would require them to explicitly place their clients’ interests before their own.

This duty was to include a “reasonable steps” qualification for advisors and their representatives to discharge the duty, the details of which were developed after extensive consultation with the country’s financial services industry.¹⁹³ During that consultation period, the Australian Securities and Investments Commission (ASIC) conducted “shadow shopping research” into financial advice about retirement, using real-world examples to examine the quality of advice being provided to Australians to help them plan and prepare for retirement at or around the time they are retiring,

aiming to better understand what constitutes good- and poor-quality advice.¹⁹⁴ The report on this study highlighted that 39 per cent of advice examples were poor and did not meet the appropriate advice requirements set out in Australia's *Corporations Act*,¹⁹⁵ 58 per cent were adequate and only 3 per cent were good,¹⁹⁶ with evidence that conflicts of interest, such as those created by links to product issuers, had a detrimental effect on the quality of advice being delivered.¹⁹⁷

Following the consultation period, in 2012 the Australian government amended the *Corporations Act* to outline the "reasonable steps" that advisors must take to demonstrate that they have acted in the interests of their clients, which together formed a "safe harbour" for advisors' compliance with their duty to put clients' interests ahead of their own. To satisfy these steps, advisors must:

- identify the objectives, financial situation, and needs of the client that were disclosed by the client through instructions;
- identify the subject matter of the advice sought by the client (whether explicitly or implicitly) and the objectives, financial situation, and needs of the client that would reasonably be considered relevant to the advice sought on that subject matter;
- if it is reasonably apparent that information relating to the client's relevant circumstances is incomplete or inaccurate, make reasonable inquiries to obtain complete and accurate information;
- assess whether the advice provider has the expertise required to provide the client with advice on the subject matter sought and, if not, decline to provide the advice;
- if it would be reasonable to consider recommending a financial product:
- conduct a reasonable investigation into the financial products that might achieve the objectives and meet the needs of the client that would reasonably be considered relevant to advice on that subject matter; and
- assess the information gathered in the investigation;
- base all judgments in advising the client on the client's relevant circumstances; and
- take any other step that, at the time the advice is provided, would reasonably be regarded as being in the best interests of the client, given the client's relevant circumstances.¹⁹⁸

ASIC has issued guidance on the ways in which advisors can comply with each step of the safe harbour, and in doing so has outlined a number of practices that advisors can adopt to accurately respond to the evolving needs of a client. For example, ASIC notes that clients will not always know or fully understand what their objectives, financial situation or needs are, may provide instructions that are unclear or seem inconsistent with their circumstances, or ask for advice in response to a life event (such as divorce, loss of income, or receiving an inheritance) rather than on a specific product. In these situations, advisors may need to ask additional exploratory questions and exercise professional judgement in determining what the client's objectives, financial situation, and needs.¹⁹⁹

Australian Law Reform Commission

In June 2017, the Australian Law Reform Commission (ALRC) tabled a collection of recommendations to reform laws and legal frameworks to better protect older individuals from misuse or abuse and safeguard their autonomy. The recommendations, summarized in ALRC's *Elder Abuse – A National Legal Response* report, provide a range of strategies that several of Australia's government agencies and regulators may consider in their efforts to address the financial exploitation of older Australians, including legal reforms, policy changes, and educational initiatives.²⁰⁰

While the report made no recommendations toward securities regulation specifically, it addressed the banking sector in its observation that "banks are often in a good position to detect financial elder abuse and protect their at-risk customers."²⁰¹ The

ALRC recognized industry guidance on how banks might respond to the financial exploitation of older clients, but noted that the guidance was “voluntary and unenforceable.”²⁰² To that end, the ALRC recommended that Australia’s *Code of Banking Practice* be amended to require banks to “take reasonable steps to prevent the financial abuse of vulnerable customers,”²⁰³ such as training staff to detect and appropriately respond to abuse, using software and other means to identify suspicious transactions, and reporting abuse to the relevant authorities when appropriate.²⁰⁴

D. International Organization of Securities Commissions

In March 2018, the International Organization of Securities Commissions (IOSCO) issued its *Report on Senior Investor Vulnerability*, which aimed to identify the current and emerging risks that older investors face, highlight current sound practices to manage these risks, and describe the key initiatives undertaken by IOSCO members to meet the challenges of an aging population.²⁰⁵ The report, to which the OSC’s Investor Office contributed, was based largely on a quantitative and qualitative survey of the members of IOSCO’s Committee on Retail Investors, as well as a second survey of members of IOSCO’s Committee on Regulation of Market Intermediaries and the Affiliate Members Consultative Committee.

Nearly all of the IOSCO members surveyed believed that older individuals are at greater risk than other investors of losing money to fraud or of being taken advantage of by others and identified the most significant risks to older investors as unsuitable investments, financial fraud committed by a non-family member, and diminished cognitive capacity that affects financial decision making. The report also highlighted risks related to complex products, deficient financial literacy, and social isolation.²⁰⁶

While 74 per cent of respondents to the survey said they have programs to protect older individuals, this figure rests on the widely held belief that older investors are adequately served by existing investor protection programs and therefore do not require specific protection measures. Thirty-nine per cent

of survey respondents reported that they had no specific strategy or focus aimed at protecting older investors other than those covering all investors.²⁰⁷

Using practical examples provided by various responding jurisdictions, IOSCO set out a series of “sound practices” for both regulators, registered firms, and firm representatives to implement with the aim to achieve better outcomes for older investors. For regulators, these were to:

- deliver educational programs and resources targeting older investors;
- foster the development of expertise on older investors’ issues within existing regulatory, educational, and advisory programs;
- conduct research projects to better understand the risks and issues facing older investors and the incidence and mechanics of investment fraud in their jurisdictions; and
- develop guidelines and training programs for individuals reviewing transactions conducted with older investors.²⁰⁸

The practices outlined for financial services providers were to offer support to older investors experiencing a life event during the product life cycle and provide training and support for employees²⁰⁹

E. Other foreign jurisdictions

Hong Kong

In April 2016, the Investor Education Centre (IEC), a subsidiary of Hong Kong’s Securities and Futures Commission, introduced *The Chin Family*, an education platform providing information, resources and programs that address common financial concerns and priorities for people at various stages of life, with each life stage represented by a family member of an animated group of characters. According to the IEC, “Each character of *The Chin Family* has his or her own unique personality and plays a different role to communicate financial topics tailored to specific groups within the community.”²¹⁰

The Chin Family provides, among other things, information and resources around retirement

planning and maintaining quality of life while living in retirement through characters that are planning ahead for retirement (“Mr. Chin”), budgeting for daily expenses and avoiding financial frauds while living in retirement (“Grandpa Chin”), and demonstrating awareness of issues around health and health care costs associated with age (“Grandma Chin”).²¹¹ The IEC’s delivery of these resources through the family avatars reflects a number of behaviourally-informed approaches to public education. On top of the social element of *The Chin Family*, which reflects the cultural importance of family and familial obligations in Hong Kong, the use of animated characters to deliver financial information creates an experience that is “fun, lively and practical in its real-life implications.”²¹²

The IEC’s use of *The Chin Family* also demonstrates ways in which financial educational material can leverage elements of accessibility and design to promote engagement with consumers. Prior to introducing *The Chin Family*, the IEC had branded its education resources under its own name or that of the Hong Kong Securities and Futures Commission. The IEC found that this “sounded very regulatory” to consumers, creating limitations on the appeal and effectiveness of resources for their intended audiences.²¹³

New Zealand

In 2009, the New Zealand Bankers’ Association developed a set of voluntary guidelines to improve access to banking services for older and disabled clients.²¹⁴ The guidelines establish that banks should provide training for all staff interacting with customers to include training to recognize signs of potential financial exploitation and have in place internal procedures to manage such situations while remaining sensitive to customers’ situations and wishes.²¹⁵

The guidelines also make recommendations for improving communication with older clients, including giving better access to information and services through measures such as producing publications in larger print with clear fonts and colours, delivering information about banking services in plain language, and avoiding placing too much information on a page.²¹⁶

F. Canada

New Brunswick’s Financial and Consumer Services Commission

In 2017, the New Brunswick government’s Council on Aging presented *We are all in this together: An Aging Strategy for New Brunswick*, a strategy that identifies several actions to enable older individuals in the province to have the support, financial means, and protections to live independently, gives recommendations to make the province more age-friendly and takes steps to establish New Brunswick as a leader in aging research and social innovation.²¹⁷ Following this, New Brunswick’s Financial and Consumer Services Commission (FCNB) launched consultations to identify the ways in which it could address the issue of financial exploitation of older individuals and “other vulnerable people” within the industries it regulates (including securities, insurance, pensions, credit unions, trust and loan companies, and co-operatives) and support the Council on Aging’s strategy. The consultation paper, *Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick*, sought public input on four key themes, which were to:

- identify opportunities for legislative change that would provide increased safeguards against financial abuse of seniors;
- address the challenges in reporting and investigating financial abuse of seniors;
- improve best practices for industry participants, in particular those FCNB regulates, to guide them when they spot signs their clients are being financially abused; and
- build a more collaborative approach between government departments and agencies to address the issues surrounding financial abuse of older individuals.²¹⁸

The paper contextualizes the issue of financial exploitation and the reasons older individuals considered at risk, noting that older investors are often the target of investment frauds and scams due to the likelihood that they have built up assets (such as retirement savings and real property) over a period of many years. They can also become

concerned with outliving their savings or leaving outstanding debt for family members, which can precipitate an increased willingness to “listen [to] and consider these ‘too good to be true’ scams.”²¹⁹

Despite the FCNB’s familiarity with these risks, it also recognized the challenges it had encountered in identifying and investigating cases of financial exploitation and fraud given that the perpetrators of such exploitation are often trusted family members and friends of the victim. As such, the consultation paper posited that older individuals may resist help out of a fear of retaliation, loss of support, loss of independence, embarrassment, or a perceived lack of other options for care and assistance.²²⁰

Québec’s Autorité des marchés financiers

In June 2017, the Québec government launched a five-year action plan to address the mistreatment of older individuals, which aimed to promote awareness and understanding of the issue and coordinate organizational efforts to address it. The action plan contains 52 measures to fight mistreatment, with a focus on preventing abuse, promoting respect and care for older adults, fostering early detection and appropriate interventions, facilitating reporting of abuse (particularly in cases of financial exploitation), and increasing knowledge exchange.²²¹ As part of this plan, Québec’s Autorité des marchés financiers (AMF) hosted community and industry focus groups to discuss issues related to clients that may be vulnerable to mistreatment; the discussions from these focus groups will inform guidelines that the AMF will publish for registered firms and their representatives on good practices when engaging with potentially vulnerable clients.

It is also worth noting that in early 2017, the Québec government adopted *An Act to combat maltreatment of seniors and other persons of full age in vulnerable situations* as a means of combating abuse. Under the act, the province’s health and social service institutions are required to adopt and implement policies to report and intervene in cases where an older individual or “person in a vulnerable situation” is experiencing “maltreatment,” which the act defines as “a single or repeated act, or a lack

of appropriate action, that occurs in a relationship where there is an expectation of trust, and that intentionally or unintentionally causes harm or distress to a person.”²²² In February 2018, the AMF entered into a provincial framework agreement with a number of other ministries and governmental organizations regarding the maltreatment of seniors. As provided by the act, the framework agreement establishes a process to intervene and act appropriately in cases of maltreatment.

Financial Consumer Agency of Canada

As part of a proposal to strengthen and modernize Canada’s financial consumer protection framework for banks to respond to the diverse needs of Canadians, in April 2014 the Government of Canada appointed the first Financial Literacy Leader at the Financial Consumer Agency of Canada (FCAC), whose role was to provide guidance and expertise to implement a national financial literacy strategy through mobilizing and collaborating with stakeholders across the country.²²³ Later that year, and with the guidance of members of National Steering Committee on Financial Literacy that were appointed by the Financial Literacy Leader, the FCAC published a strategy to enhance the financial literacy of older Canadians, which represented an early milestone in the process toward developing a national financial literacy strategy.²²⁴

Strengthening Seniors’ Financial Literacy was developed following a public consultation of public, private and non-profit organizations in Canada, which raised several key points that informed the goals, objectives and activities of FCAC’s strategy.

- **Older Canadians are diverse:** The needs for financial education and support vary widely among older Canadians and depend on factors such as age, income level, education, health, and personal and family circumstances. A “one size fits all” approach will not work; rather, initiatives should be tailored to the specific needs of subgroups that make up the demographic that is older Canadians.
- **Research is important:** Developing effective programs, communications, core messaging, and marketing strategies that will lead to improved

financial outcomes for older Canadians requires more research to better understand the audiences involved. In particular, research on factors that impact people's behaviour is key to developing initiatives and programs that will be more effective in supporting all Canadians, including older ones, to take actions and decisions that will help them achieve their financial goals.

- **Emphasize early planning and decision-making:** The financial well-being of Canadians in their later years depends largely on decisions and savings behaviour undertaken much earlier in life.
- **Documents, processes, and financial education materials should be simplified:** Some Canadians find many of the current sources of financial information and education difficult to understand, in part due to the increasing complexity of financial issues. There is a need for greater emphasis on clear, user-friendly forms and documents such as contracts and disclosure materials, which should be reviewed to ensure they are easily understood and meet the needs of older individuals.
- **Financial advice should be tailored and objective:** Access to objective financial planning and advice tailored to individual circumstances has become increasingly important as financial decisions have become more complex and the choice of available financial products has grown considerably.
- **Collaboration and sharing should be encouraged:** Good resources already exist but there is a need for them to be coordinated and shared among agencies in order to maximize their use. By sharing resources, more attention can be directed to gaps and high-priority initiatives.
- **Financial literacy is not a complete solution:** Knowledge and skills alone are not sufficient to achieve the desired outcomes; consumer protection also has an important role to play.²²⁵

The consultation process also found broad consensus on the objectives that FCAC proposed to bolster financial literacy among older Canadians moving forward.²²⁶ Those objectives were grouped into four main goals:

- **Engage more Canadians in preparing financially for their future years:** The strategy aims to help Canadians develop a greater interest in and understanding of long-term saving. Objectives under this goal include governments and stakeholders promoting financial goal setting, saving for the future, and debt management through public awareness campaigns, and organizations engaged in financial literacy helping employers promote financial education and planning for retirement to support their employees' financial security.²²⁷
- **Help older Canadians plan and manage their financial affairs:** The strategy plans to encourage government and other organizations to promote research to increase the understanding of the diverse needs of older Canadians, use clear and user-friendly information and forms to explain financial topics, implement solutions to address the needs of older Canadians experiencing some loss of mental capacity and their caregivers, and strengthen digital literacy to support financial decision-making and access to online financial services.²²⁸
- **Improve understanding of and access to public benefits for older individuals:** The strategy suggests focus on supporting older Canadians in making appropriate financial decisions through communication and educational materials, including integrating financial education into government benefit programs and raising awareness of benefit programs to older Canadians and their support networks.²²⁹
- **Increase tools to combat financial abuse of seniors:** The strategy here is to enhance understanding and access to tools to help older Canadians identify, report, and protect themselves against financial exploitation, through collaboration among governments and stakeholders.²³⁰

FCAC also set out criteria to evaluate each of its strategy's goals using indicators of progress over the short, medium and long term.²³¹ The Canadian Financial Capability Survey, a survey fielded by Statistics Canada every five years to "shed light on

Canadians' knowledge, abilities, and behaviours concerning financial affairs,"²³² was identified as a key measurement tool for long-term impact, with other data sources (such as the results of other surveys, usage of financial literacy resources and qualitative evaluations from partner organizations) being used to evaluate goals and successes in the intervening years.²³³

In subsequent material related to its national strategy for financial literacy, FCAC noted that "there is no easy or quick fix for improving financial literacy," given that it is a significant and complex issue. Removing barriers, changing habits, and fostering a culture of financial well-being could require a collaborative effort over many years.²³⁴ There are a number of obstacles to success, including the fact that Canadians are "dealing with increasingly complex lives and may find it challenging to access the right supports to help them improve their finances."²³⁵ The FCAC noted that individuals require the right incentives and tools to take charge of their financial situations, but those situations are diverse and varied across different people; what works for some Canadians may not work for others.²³⁶

Self-regulatory organizations

Both IIROC and the Mutual Fund Dealers Association of Canada (MFDA) have taken steps to raise awareness and provide guidance on matters related to aging and the prevention of financial exploitation. In 2016, IIROC issued its *Guidance on compliance and supervisory issues when dealing with senior clients* notice, providing guidance to its members on how best to deal with the specific challenges that can arise when dealing with clients who are retired or about to retire. This notice outlined several key areas that dealers should consider when dealing with older clients, in particular:

- powers of attorney-related issues;
- effective communication;
- policies and procedures;
- product due diligence;

- "know-your-client," suitability and supervisory obligations and practices;
- use of titles;
- complaint handling process; and
- training on issues common to older clients, such as potential diminished capacity.²³⁷

IIROC set out regulatory guidance on many of these and other related issues and established strategies for firms and their representatives to respond to potential financial exploitation and diminished-capacity situations among their clients, affirming that dealers should implement, maintain, and carry out policies and procedures that are designed to detect and address such situations. In particular, IIROC recommended that these policies and procedures:

- encourage clients to provide the name and contact information of an emergency or "trusted contact person" to assist the dealer when issues arise; and
- enable the dealer to place a temporary hold on the client's account in instances where financial exploitation or diminished capacity is suspected.²³⁸

IIROC also recommended that dealers establish internal processes to escalate difficult issues involving older clients, such as requiring representatives to contact the appropriate supervisor, compliance officer, or legal counsel to obtain guidance on how to resolve difficult questions involving financial exploitation, powers of attorney, and diminished-capacity issues.²³⁹

The MFDA has taken several steps to incorporate issues related to older investors into its operations. It has held two Seniors Summits, one in 2013 and one in 2015, which have brought together various specialists and subject matter experts to share practical advice with MFDA members on dealing with the issues and challenges faced by firms and their representatives in servicing older clients. Topics of discussion included an overview of FINRA's activities related to older investors, medico-legal issues in servicing older clients, and effective compliance programs.²⁴⁰

The MFDA published amendments to strengthen and clarify its existing rule against its members having any form of control or authority over the financial affairs of a client, such as a power of attorney from a client, or an appointment to act as a trustee or executor of a client or client's estate.²⁴¹ It has also emphasized enforcement cases involving older individuals and vulnerable persons, placing a priority on such cases during the case-screening process. In the MFDA's most recent fiscal year, 30 per cent of proceedings commenced involved older or vulnerable persons.²⁴²

As part of its focus on the protection of older investors, in 2015 the MFDA also conducted a targeted examination sweep of deferred sales charge funds (DSCs) trading practices among its members, specifically examining the suitability of sales charges as they relate to clients' ages and investing time horizons. Following the sweep, the MFDA issued guidance to its members that included a series of good practices and recommendations regarding DSC trades, noting that members should have "adequate procedures to supervise and assess the suitability of DSC trades considering both client time horizon and age and procedures to disclose sales charges both at the time of purchase and redemption."²⁴³ Among the recommendations were:

- policies and procedures to assess the reasonableness of a client's time horizon in comparison to the client's age at account opening or when updating "know your client" information;
- policies and procedures to specifically consider client age when assessing the suitability of DSC purchases;
- time horizon categories on "know your client" forms that allow for an accurate assessment of the suitability of DSC transactions;
- policies and procedures to consider the suitability of DSC purchases in registered retirement income fund accounts; and
- written policies and procedures to disclose fee and transaction charges to clients.²⁴⁴

The MFDA also maintains a "For Seniors" section in its investor education material available online, connecting readers to resources created for older individuals as well as links to investor education resources from the MFDA, its regulatory partners, and other organizations.²⁴⁵

Securities industry associations

In 2014, IIAC published *Canada's Investment Industry: Protecting Senior Investors – Compliance, Supervisory and other Practices When Serving Seniors*, a report that described a number of challenges that firms and their representatives face in serving their older clients, including the difficulty some professionals can have in adequately identifying which clients can be considered senior clients (given the diversity of circumstances among older clients varies widely, ranging from the highly sophisticated and financially independent to clients with limited investment knowledge and minimal financial resources), responding effectively to physical and cognitive impairments, providing appropriate recommendations or advice, and the engagement of family members in a client's financial affairs.²⁴⁶

IIAC identified a series of practices and processes already put in place by various firms to address these and other challenges, noting that many of them did not direct their initiatives at older investors specifically, but focused on retirement and retirees as a common theme. Some firms indicated they considered a full range of issues, such as: how to communicate effectively with older investors; how to train and educate firm employees on issues specific to older individuals; how to establish an internal process for escalating issues and taking next steps when issues or questions are identified; how to encourage investors of all ages to prepare for the future; how to advertise and market to older investors; obtaining information at account opening; how to ensure the suitability of investments; and how to conduct supervision, surveillance and compliance reviews focused on issues related to older investors.²⁴⁷

During that year, the Investment Funds Institute of Canada (IFIC) created a multi-stakeholder task force to identify and help market participants address issues relating to vulnerable investors, especially those experiencing cognitive decline. IFIC's task force has researched and compiled existing best practices for firms and their representatives when working with older clients, and has developed resources to help dealers better identify and manage cognitive impairment in clients. These resources include checklists aimed at helping firm representatives prepare for issues that may arise in their work with aging investors – one on cognitive decline and the other on financial exploitation.²⁴⁸

Ontario's Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives

In April 2015, Ontario's Minister of Finance appointed an independent expert committee to provide advice and recommendations to the Ontario government regarding whether and to what extent financial planning and the giving of financial advice should be regulated in Ontario and the appropriate scope of such regulation. In its initial consultation document, the expert committee recognized that "no general legal framework exist[ed] [in Ontario] to regulate the activities of individuals who offer financial planning, advice and services, and the absence of such a framework raised questions about proficiency, quality standards and potential conflicts of interest."²⁴⁹

In November 2016, the expert committee issued its final report to the Ontario government. The report set the context for the committee's recommendations by describing the evolution of financial services away from the provision of transactions and toward the provision of more holistic advisory services, noting that current regulation has not fully adapted to this shift and explaining why Ontario's regulatory framework remains fragmented and largely focused on the sale of financial products.²⁵⁰ The committee noted that a key issue that has emerged in the province's current regulatory landscape is consumer confusion among misleading titles and credentials used by firms

and their representatives. According to the expert committee:

"In Ontario today, consumers ... are likely to encounter individuals with titles and credentials that may not clearly reflect an individual's specific qualifications, expertise, and the nature of the services provided. During our two rounds of consultation, one theme was consistently raised by interested parties: the multitude of titles and credentials currently used in Ontario's financial services industry lead to confusion and jeopardize consumer protection."²⁵¹

Citing the OSC, IIROC and MFDA's joint "mystery shopping" research into advisory practices and the investor experience in Ontario,²⁵² the committee found that consumers were often left to navigate the "alphabet soup of credentials" on their own. As titles and credentials are used to give an impression of expertise and instill consumer trust, the committee expressed concern over instances where titles and credentials were not backed up by real expertise and could result in trust that is misplaced, as well as lead well-qualified and credentialed individuals to compete with unqualified (or less qualified) individuals for business.²⁵³

To address these issues, the expert committee recommended that financial services regulators in Ontario work together to develop a circumscribed list of approved titles that are descriptive of regulated activities, and that individuals engaged in financial planning and providing financial advice should only be permitted to use approved titles.²⁵⁴ The list of approved titles should accurately reflect the credentials that underlie them, with particular attention given to the title of "financial planner," which the committee recommended be reserved for individuals that have "sufficient education, training, integrity, and experience that a reasonable person would expect necessary to provide a competent financial plan for a consumer."²⁵⁵

The expert committee also raised concern over the current framework for consumer redress for financial losses, noting that a consumer with a "legitimate complaint against a provider of Financial Product Sales, Financial Planning or Financial Advice" had a complex series of venues to navigate depending on the financial product in question, including:

- OBSI;
- the OmbudService for Life and Health Insurance (OLHI);
- the General Insurance OmbudService (GIO);
- IIROC’s arbitration program;
- regulatory orders or settlement agreements (compensation, disgorgement, etc.); and
- civil remedies (via a court process).²⁵⁶

Due to the cost and complexities associated with civil remedies, the committee established that the most practical option for consumers was to seek redress from OBSI, OLHI or GIO. However, the committee noted that “these ombud services fall short of delivering the kind of redress to which consumers should have access,” citing in particular OBSI’s lack of binding decision-making authority as a major barrier to it effectively fulfilling its role as an ombudsman in the province’s financial services sector. The expert committee concluded that this inability to make binding decisions, coupled with the fragmented regime for redress overall, necessitated a consumer-friendly process for recovery of financial losses from financial service providers by consumers as a consequence of negligent planning, advice and sales.²⁵⁷

Elder Abuse Ontario

Elder Abuse Ontario, a provincial non-profit organization focused on supporting the implementation of the *Ontario Strategy to Combat Elder Abuse*. In partnership with the Assaulted Women’s Helpline, Elder Abuse Ontario maintains the “Seniors Safety Line,” a confidential, toll-free helpline that provides callers with information about agencies in Ontario that assist in cases of financial exploitation. Through the line, Elder Abuse Ontario also provides supportive counseling for older individuals who are being abused or at risk of abuse, and connects family members and service providers to information about community services.

The organization has also created a series of educational resources to build capacity among

front-line service workers who engage with older individuals and adopt a common approach toward identifying and responding to various forms of elder abuse. These resources include video examples of common client interactions, focusing on recognizing both emotional and financial abuse and coaching users through interactive scenarios in which they can learn to respond to typical abuse scenarios.²⁵⁸



IV.

THE WAY FORWARD

The time has come to change the conversation around older investors. This strategy aims to do that, with the goal of fostering a stronger and more secure financial future for all older Ontarians. We are focused on addressing the changing financial environment faced by older investors in a more comprehensive way, by providing practical guidance, resources and tools for registered firms and their representatives, older investors and their families and friends, as well as regulators. Our strategy recognizes that there is no “one size fits all” solution to the challenges and opportunities that investors may face as they age; as illustrated by the research described in section II of this report, older individuals’ circumstances are becoming more diverse as time passes.

We have aimed to develop a strategy that is inclusive, social, and responsive. These three guiding principles will shape our policy-making, operations, research, education and outreach initiatives with respect to older Ontarians. We also believe that they can be useful for registered firms and their representatives who help older Ontarians meet their financial goals. We explain each of these principles in depth below.

- **Inclusive:** Being inclusive means taking into account, among other things, differences in mobility, vision, hearing, and literacy, including financial literacy. It also means accounting for diversity: for example, more Ontarians aged 65 and older are visible minorities than ever before.²⁵⁹ An inclusive approach means combating ageism and making clear that the contributions of older

Ontarians are important to our economy and society, and that seniors’ goals and priorities are important to our financial services sector. An inclusive approach helps Ontarians maintain an independent lifestyle that allows them to make choices and engage with others on their own terms.

- **Social:** Financial and other important decisions are rarely made in isolation. People are social: they consider the effects of their actions on others and seek others’ advice before making a decision. For example, a parent may delay retirement to help adult children buy a home or pay off student debt. Investors of all ages rely on registered firms and their representatives, as well as trusted friends and family members, as sources of information and advice before making financial decisions.²⁶⁰ Family and friends can play important roles as caregivers later in life, and a representative’s relationship with a client may evolve as the client ages. Representatives’ relationships with their clients come with significant responsibility and accountability, which they must keep in mind when serving their clients as they age. These social connections and responsibilities point to new pathways for designing policy and delivering relevant information to older Ontarians.
- **Responsive:** Being responsive means delivering timely and relevant support and resources to investors, as well as the people they work with when making financial decisions, in a way that reflects and responds to changes in investors’ personal circumstances. It also

“We think that it’s important for both firms and advisors to have the tools to be able to recognize elder abuse and have a safe harbour as a way [to act when] something is going on, to hold the funds for a period of time and work through the issues.” Maureen Jensen, OSC Chair and CEO, at OSC Dialogue 2017

means responding to demographic and other changes to the population of older Ontarians, as well as economic and other trends that shape the environment in which older Ontarians make financial decisions. As we have outlined, changes in the composition of older individuals’ income sources and balance sheets, shaped by broader trends such as low interest rates, can have profound effects on these individuals’ financial decisions. Social trends, such as the increasing percentage of older individuals with smartphones and internet access, also have significant implications in developing new ways of delivering relevant information and advice to older Ontarians.²⁶¹

The discussion below describes some of the new initiatives the OSC is pursuing in relation to older individuals and our plans to continue building on existing initiatives.

A. Policy

In developing our policy focus with respect to older Ontarians, we benefitted significantly from the input received from a number of sources, including from SEAC, as well as the insights shared at the Seniors Roundtable. We also gathered extensive feedback and input from retail investors and other stakeholders and community groups through our OSC in the Community program and other outreach and engagement initiatives. Further, in 2017, we conducted 30 compliance reviews of registered firms, focusing on how they conduct business with senior investors and the challenges and business practices related to their delivery of services to these

clients.²⁶² Finally, we conducted extensive research and consulted with our regulatory counterparts both here in Canada and abroad.

SEAC members and other stakeholders have expressed concern regarding older investors’ susceptibility to financial exploitation, fraud, and cognitive impairment. Older Ontarians represent a large percentage of the investing population, and there is apprehension around the relationship between aging, the capacity to make financial decisions, and the potential for financial exploitation, particularly as some older individuals increase their reliance on caregivers, family, and friends. Increased reliance on others can, in some situations, expose an older individual to undue influence from someone who may otherwise be presumed to be acting in the best interest of the older person; the complicated nature of these relationships can make it difficult for registered firms and their representatives to definitively identify situations in which a client may be subject to financial exploitation or experiencing cognitive impairment.

We also recognize that registered firms and their representatives may not feel adequately equipped to address issues that might arise as their clients age, and may find that existing legal obligations (such as their obligations to execute client instructions) or privacy laws could constrain them from taking action in instances where they suspect that financial exploitation or cognitive decline may be affecting their client’s judgment. For example, while a power of attorney can be a useful precautionary tool for addressing possible issues that may arise as a client

ages, it does not address situations where a firm's representative has doubts about the intentions of the individual exercising that power of attorney. Firm representatives are not expected to be experts in the detection of financial exploitation or fraud. However, they are well-positioned to be able to spot the red flags and help their client protect against financial harm.

Under this strategy, we will be looking at opportunities to provide a framework to enable registered firms and their representatives to respond to situations where they suspect that financial exploitation or cognitive impairment may be affecting their client's judgment. We have also identified further opportunities for policy responses to other issues that may contribute to challenges that many older investors may face in the capital markets. This includes addressing confusing and misleading business titles, designations, and marketing practices, as well as strengthening OBSI and exploring how the dispute resolution process can better respond to the issues of older investors. We have also identified a number of opportunities to work with other regulators, government, and other organizations toward a common goal of designing policies and programs that serve the interests of older individuals.

A framework for addressing financial exploitation and cognitive impairment

We believe that any framework to address matters of financial exploitation and cognitive impairment must be flexible and allow registered firms and their representatives to exercise judgment based on the particular situation while keeping appropriate investor protection measures in place.

In contemplation of such a framework, we have reviewed both NASAA's model act and FINRA's Rule 2165, as discussed in section III, and consulted with FINRA staff on FINRA's new rule regarding temporary holds on disbursements and the amendments that require FINRA members to make reasonable efforts to obtain the name of a trusted contact person for non-institutional clients. While we believe there are elements of both these rules that we can leverage, we also recognize that there are a number of differences in the Canadian

landscape that may pose challenges and require further exploration.

Based on this review and that of other regulatory frameworks, consultation with SEAC, and ongoing discussions and collaboration with our colleagues at the FCNB and other stakeholders, we believe that the key principles to a regulatory framework to empower registered firms and their representatives to address situations of suspected financial exploitation or cognitive impairment of older individuals should include:

- **Temporary hold on disbursements of funds or securities:** A mechanism that permits firms to place a temporary hold on disbursements from a client's account when there is a reasonable belief that financial exploitation has occurred, is occurring or will be attempted, or if a client's judgement may be impaired. While the temporary hold would not prevent the sale of securities in the account, it would prevent the disbursement of the proceeds of the sale. We envision that this will include four key parts:
 - a definition of the individuals who would be covered and a definition for "financial exploitation" and "cognitive impairment;"
 - the level of authorization required for, and the scope of, the temporary holds, including length of time and options for extensions;
 - the supervisory obligations of the firm; and
 - the recordkeeping obligations of the firm.

The question of whether a firm is to report the temporary hold or the circumstances of their client to a law enforcement agency or the Ontario Public Guardian and Trustee remains an area for continued discussion in light of the absence of relevant guidance with respect to potentially applicable exceptions to privacy obligations under the *Personal Information Protection and Electronic Documents Act (PIPEDA)*.²⁶³

- **Safe harbours:** Firms will require a certain degree of latitude when placing temporary holds on disbursements or making disclosures to a trusted contact person or a third party organization

to act responsively in service to their clients. We are considering providing those firms that place a hold on a disbursement or disclose personal information to a trusted contact or third party organization without consent with a safe harbour that will allow them to act with discretion and without fear of moving offside of existing regulatory rules that may constrain their ability to act to protect their clients.

- **Trusted contact persons:** A requirement that registered firms and their representatives make reasonable efforts to obtain the name and contact information of a trusted contact person for both new and existing non-institutional clients. This could be considered an “emergency contact” that a registered firm or its representatives may reach out to should they have concerns about a client’s behaviour or transactions in a client’s account. It will be important to outline the trusted contact person’s role, qualifications (if any), whether a trusted contact person should be notified of their role and responsibilities, and the frequency with which a trusted contact person designation (or lack thereof) should be discussed with clients. It is not our intention that a trusted contact person replaces or assumes the role of a client-designated power of attorney.
- **Guidance on suggested practices for engaging with older clients:** We will publish a staff notice setting forth suggested practices for registered firms and their representatives to follow when engaging with older clients. This guidance will discuss issues that may emerge or become more relevant as an investor ages, and help firm representatives better communicate with clients and support them in their decision-making as they age. This will cover areas such as collecting sufficient information about a client, establishing emergency contacts, supervising a client’s account, and ensuring the suitability of products, as well as communication practices such as discussing sensitive issues with clients and delivering information that is accessible and appropriate.

We will continue to consider the appropriate mechanisms to implement the proposals outlined above.

We note that, depending on a firm’s size, it may be appropriate for it to consider establishing a centralized response unit that can escalate potential situations of financial exploitation and provide direction for its representatives to respond to common questions related to older clients. Such a unit could also manage the design and implementation of training programs to help representatives appropriately respond to issues that can arise in relationships with older clients.

The roles of registered firms and their representatives are changing, and we will provide them with tools and resources to respond to the needs of their clients. Clients expect that firm representatives will put their client’s interests first, rather than focusing on selling them particular investment products. They also expect a firm representative to help them plan for the future and achieve their financial goals. Firm representatives may be able to add significant value for their clients by taking the perspective of a financial “coach.” A holistic understanding of investors as they age should help firm representatives fulfill this role. We want to support this transition, not only through a regulatory framework as contemplated above, but also, as described in greater depth below, through education and outreach targeted at both older investors and the registered firms and representatives with whom they work.

Addressing confusing and misleading titles, designations and marketing practices

Many stakeholders have raised concerns with registered firms and their representatives’ use of misleading titles, designations and marketing practices. For example, in a 2017 statement, CARP’s (formerly the Canadian Association of Retired Persons) Chief Operating Officer and Vice-President of Advocacy, Wanda Morris, stated that “too many investors have placed their trust in individuals with credible sounding titles, such as Vice-President, Seniors Specialist, or Wealth Manager, without

realizing that such titles are essentially meaningless; they do not promise a specific level of education or experience, or a commitment to a standard of ethics.”²⁶⁴

Limited regulation of titles and designations over time has led to the spread of a multitude of confusing and potentially misleading titles. The use of potentially misleading or confusing titles by firm representatives, including titles that indicate expertise in issues related to older individuals, such as senior specialist or retirement planning specialist has become another area of focus for the OSC and other regulators.²⁶⁵ We acknowledge that the issue of misleading or confusing titles and designations is an issue that affects all investors, however we are especially concerned about the impact on older investors as they may be more vulnerable to business titles that imply specialty skills.

OSC Staff Notice 31-715, *Mystery Shopping for Investment Advice: Insights into Advisory Practices and the Investor Experience in Ontario*, a joint research project by the OSC, IIROC and the MFDA that involved mystery shopping firms in Ontario across four platforms, found that shoppers encountered 48 different business titles in the 88 shops reviewed.²⁶⁶ The report comments that the issue is further complicated by the use of certain qualifying adjectives in business titles as we noted above with terms such as “senior specialist” or “vice president.”²⁶⁷ Registered firms and their representatives will often use these titles as part of their marketing strategy to attract certain clients, leading those clients to believe that a particular firm or representative has additional qualifications or expertise over others without such titles. Firms that permit the use of business titles are expected to have policies and procedures in place regarding the use of those titles and should be supervising their use to ensure that the title is not misleading or confusing and is supported with the appropriate qualifications or certifications. We also encourage investors to go beyond the title on a firm representative’s business card and ask questions about what qualifications or certifications they have that support their title.

In Consultation Paper 33-404, *Proposals to Enhance the Obligations of Advisers, Dealers, and*

Representatives, the CSA is working to improve the alignment of interests between advisors and investors through regulatory reform to improve the advisor/client relationship. In particular, the CSA sought comments on a proposal to standardize the titles used by client-facing representatives in an effort to minimize confusion for all groups of investors, including older investors.²⁶⁸ The CSA recognizes that “significantly more care and diligence is required for at-risk or vulnerable clients, such as inexperienced investors, seniors, [and] discretionary clients.”²⁶⁹ We believe that a renewed focus on the issue of titles and designations for all client-facing business titles will provide clarity around the use of titles and strengthen public confidence in registered firms and their representatives.²⁷⁰

We note that the need for standardized titles is also supported by the Ontario Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives. As well, in the U.S., SEC Chairman Jay Clayton recently emphasized the importance of addressing misleading titles used by registered firms and their representatives when advising investors, stating that the SEC “[has] to get to the substance of what the labels mean.”²⁷¹

Strengthening OBSI

Strengthening OBSI and providing a robust oversight framework is another area of focus for the OSC and our colleagues in the CSA. We believe that strengthening OBSI’s ability to secure redress for investors is important for investor protection in Canada and vital to the integrity of the country’s capital markets, and we are especially concerned about the impact on older investors of not being able to secure redress. As we previously discussed, nearly half of the individuals who submitted complaints to OBSI in 2016 regarding unfair practices relating to investments were 60 years of age or older.²⁷² Older investors who suffer financial losses generally have less time or opportunities to rebuild their wealth, and an increasing number of older Canadians are relying on their investments to support their income needs in retirement.

As a first step toward strengthening OBSI, in December 2017 the CSA, IIROC, and MFDA

jointly issued CSA Staff Notice 31-351, *Complying with requirements regarding the Ombudsman for Banking Services and Investments*, which established that CSA members view a registered firm's refusal to compensate a client consistent with OBSI recommendations, or repeatedly settling with clients for lower amounts than recommended by OBSI, as possible risk-based indications of problems with the registered firm's complaint-handling practices, and set out potential regulatory responses that could be employed to address these issues. The CSA is examining options to strengthen OBSI's ability to secure redress for investors, and as that work continues we will explore how the dispute resolution process can allow the issues of older investors to be addressed more appropriately.

Breaking down silos

Stakeholders have identified several significant trends and issues affecting Ontario seniors, as well as possible policy responses. Many of the recommendations made in the Seniors Roundtable – including its recommendations that we address confusing and misleading titles and designations and that registered firm's representatives receive training and education so that they are better able to meet seniors' needs and are better placed to spot and act on signs of diminished capacity or financial exploitation²⁷³ – are reflected in this strategy. Among its findings, the Seniors Roundtable highlighted the importance of breaking down silos between the various regulators and organizations with mandates that affect the interests of seniors, so that it becomes possible to “develop comprehensive solutions that prevent seniors from ‘falling through the cracks’ that exist between mandates of the organizations that are designed to serve them.”²⁷⁴ We recognize that many significant issues that affect the financial lives of seniors fall outside of our jurisdiction or engage the mandates of multiple regulators and other organizations. We wish to work with other regulators and agencies and reach across jurisdictional boundaries to achieve our common goal of designing policies and programs that serve the interests of older individuals. Below, we have identified a number of policy areas where such cooperation could produce significant results.

“Know your client” obligations

The “know your client” (KYC) obligations, along with the obligations to “know your product” and of suitability, are among the most fundamental obligations owed to clients by registered firms and their representatives, and are cornerstones of the investor protection regime in Canada.²⁷⁵ We expect registrants to comply not only with the letter of the securities law, but also with the spirit of the requirements.²⁷⁶ Section 13.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), among other things, requires registrants (including dealer members of IIROC and the MFDA) to take reasonable steps to establish the identity of a client and ensure that they have sufficient information to meet their suitability obligation. There are also supplemental KYC requirements that exist in the member rules of self-regulatory organizations,²⁷⁷ and the companion policy to NI 31-103 provides further clarification on what is expected of registrants in order to comply with KYC obligations, including “[taking] reasonable steps to obtain and periodically update information about their clients.”²⁷⁸

We must recognize the significant role played by two self-regulatory organizations, IIROC and the MFDA, in developing and elaborating upon regulatory frameworks that are key to investor protection, including the KYC obligations imposed on dealers and advisers. Any changes to these obligations intended to enhance protections afforded to senior investors would need to be developed in coordination with these self-regulatory organizations. We note, however, that KYC obligations as they currently exist are open-ended and flexible, and already provide a critical foundation for understanding and serving the interests of investors at any age. Registered firms and their representatives are obligated to consider their clients' ages and life stages as part of the client-adviser relationship; in other words, “knowing your client” means knowing your client as they age, ensuring that products and advice remain suitable for clients as their financial needs, objectives, risk tolerances, and life circumstances change. It also means that, if a client's behaviour suddenly

changes (for example, if a client requests changes to their investment strategy that do not seem to be supported by changes in their circumstances, or if they begin requesting disbursements of unusually large sums of money), a registered firm or its representatives should take steps to understand the reasons for this change in behaviour.

In Staff Notice 31-336, the CSA reminded registered firms and their representatives of the requirement to obtain current KYC information about a client's investment needs and objectives whenever a suitability determination is required. However, the CSA also noted that they expect registrants to be proactive in keeping KYC information current. The KYC process is intended to be flexible and provides the critical foundation for understanding and serving the interests of a client at any age. Without adequate and timely KYC information, registered firms and their representatives cannot meet their suitability obligation to clients.

Further work is being conducted on the KYC obligation as part of the CSA's policy project to enhance the obligations that registered firms and their representatives have toward their clients. In light of the flexible nature of KYC process, registered firms and their representatives should consider whether it is prudent to continue the common practice of using "one-size-fits-all" KYC forms for all of their clients, or whether it would be appropriate to amend their practices to collect information specific to clients that have reached particular milestones. For example, when an investor reaches age 71, their tax-deferred retirement savings must begin to flow into their taxable income; it may be appropriate to collect different KYC information from clients who have reached or are close to reaching this milestone.

Powers of attorney

We recognize that registered firms and their representatives often rely on powers of attorney as tools to help address changes in circumstances that occur as their clients age,²⁷⁹ but rules relating to powers of attorney are designed by provincial governments rather than provincial securities regulators. Research has suggested that there is

significant potential for powers of attorney to be abused, and that financial exploitation is often committed by a person holding a power of attorney. A 2017 report by the Law Commission of Ontario (LCO) highlighted several characteristics of the current power of attorney system that may require improvement, including the fact that "there are no proactive monitoring mechanisms" in respect of powers of attorney, such that "often, by the time abuse comes to light, it has been ongoing for some time," and, "where the abuse is financial, it is very difficult to recover any funds: the damage is done."²⁸⁰ The LCO also notes that, under the current regime, "it may be difficult to determine whether a [power of attorney] exists, whether it is valid, and whether it should be in operation," a factor that poses significant challenges for registered firms and their representatives.²⁸¹ We stand ready to engage with key stakeholders to help develop frameworks for addressing these challenges.

Privacy laws and disclosures of client information

We will also need to consider the implications of federal privacy laws on any form of disclosure of a client's personal information made by a registered firm or one of its representatives, be it to a trusted contact person or a third-party organization such as the Public Guardian and Trustee. Currently, *PIPEDA* prohibits the disclosure of an individual's personal information without their consent, subject to certain exceptions.²⁸² In 2015, Parliament added new exceptions to this general rule to allow for reporting of suspected fraud and financial exploitation. The relevant amended language permits disclosure by an "organization" to "another organization" to detect, suppress or prevent fraud, as well as disclosure by that organization to "a government institution, a part of a government institution or the individual's next of kin" in cases of suspected financial exploitation, subject in each case to certain additional requirements.²⁸³ Unfortunately, neither *PIPEDA* nor its regulations define the terms "government institution," "next of kin" or "authorized representative."²⁸⁴ In 2017, the Office of the Privacy Commissioner of Canada issued interpretative guidance regarding the new exception relating to fraud, but this guidance

did not include information regarding the new exception relating to financial exploitation.²⁸⁵ As such, registered firms and their representatives have reason to question whether the current exceptions are sufficient to provide comfort that making a disclosure of personal information about a client without the client's consent, either to a law enforcement agency or the Public Guardian and Trustee, would not be offside of privacy legislation. We would be willing to take part in conversations about providing additional guidance regarding the application of these exceptions.

We note that, unlike the nationally coordinated adult protective services agencies that exist in the U.S., which can respond to issues of financial exploitation and cognitive impairment readily and which play a significant role in ensuring the effectiveness of FINRA Rule 2165, Canada has a patchwork of provincial public guardians with varying mandates and resources to respond when there are concerns raised by registered firms or their representatives regarding their clients. The recent report by FAIR Canada and the Canadian Centre for Elder Law notes that "stakeholders consistently, and without exception, identified the lack of an adult protective agency as the key factor handicapping Canada's efforts to protect vulnerable investors."²⁸⁶ The LCO has noted that, while Ontario's Public Guardian and Trustee "performs a range of important functions in the legal capacity and decision-making system," cases of suspected exploitation must meet a high legal threshold before the Public Guardian and Trustee can become involved and, as a result, frontline workers dealing with senior clients may have "no meaningful way" to address concerns about abuse that do not meet [this] threshold."²⁸⁷ We look forward to engaging in discussions with registered firms and government entities regarding ways in which we can cooperate to address these concerns.

Probate fees and jointly-owned accounts

Through our continued engagement with stakeholders, we have also heard a number of concerns around registered firms' and their representatives' practice of advising consumers,

as part of an estate-planning process, to transfer some or all of their assets into joint accounts with family members to minimize or avoid probate fees. We recognize that the nature of this advice may be well-intentioned, but note that joint ownership arrangements require clients to forfeit exclusive control over their accounts, which can, in turn, increase the risk of experiencing financial exploitation or fraud committed by family members or caregivers provided with access to jointly-held assets. Stakeholders have indicated that the current structure of probate fees could be examined as a way of addressing this issue. While the current probate fee structure is a cross-jurisdictional issue that cannot be managed by the OSC alone, we are prepared to share our knowledge and experience with other stakeholders who have more direct influence on this issue.

B. Operations

It is important that we respond to the needs of older Ontarians in our own work and explore opportunities to enhance our existing processes and operations to reflect the learnings and best practices discussed in this strategy.

OSC staff currently interacts with older Ontarians through a number of operational channels, most directly through the Investor Office's outreach programs and resources (including OSC in the Community, teletownhalls and through platforms like GetSmarterAboutMoney.ca and Re: Investing) and the Inquiries and Contact Centre, which allows people to reach out to OSC staff members with questions about investing and working with a registered firm, as well as report their complaints about companies, investment products, or possible investment frauds or scams.

Enforcement staff also works with older investors, interviewing and gathering evidence from investors who have been the victims of investment fraud. As well, older clients of various registered firms and their representatives may be interviewed by OSC staff when completing a compliance review. The OSC conducts compliance reviews of regulated advisers, exempt market dealers, scholarship plan dealers, and investment fund managers to monitor compliance with Ontario securities law.

We recognize that operational changes must be done with sensitivity toward older Ontarians and implemented in concert with the ways they are already being serviced by other agencies in the province. For example, we contemplated establishing a dedicated hotline for older Ontarians, reflecting the practices put in place in the U.S. by the FINRA. However, in consultation with SEAC and other stakeholder groups, consensus emerged around the potential for consumer confusion created by having multiple, competing services in the marketplace. We have determined that enhancing our existing services, rather than implementing additional ones, would be more effective in responding to the needs of older individuals wishing to contact the OSC.

Through the learnings, best practices, and considerations that have emerged throughout the development of this strategy, we will continually improve our own processes through various enhancements to our operations, including:

- **Training and education:** We will provide training and education for staff members who may be required to interact with older individuals, such as when receiving inquiries and complaints, during enforcement investigations, or as part of conducting compliance reviews. This will help our staff build their capacity for effectively communicating with older individuals, recognizing potential warning signs of issues related to financial exploitation and diminished capacity, and escalating potential issues to the appropriate agencies.
- **Dedicated staff for older investor inquiries:** We will enhance our Inquiries and Contact Centre's ability to identify older individuals and respond to their needs in an effective and appropriate manner. In addition to exploring the previously discussed referral system with Elder Abuse Ontario's Senior Safety Line, we will also examine methods of prompting older individuals to self-identify as a "senior" early in the process, so we can immediately direct them to members of our Inquiries and Contact Centre staff who are trained to understand and address the unique needs that older individuals may have. These dedicated staff

members will be an important source of insight for other areas of the OSC and will help execute strategies for ensuring that we work with older Ontarians in a way that reflects best practices and responds effectively to their questions and concerns. Allowing callers to identify themselves as a senior will also aid enforcement staff in triaging cases and allocating resources appropriately.

- **Applying a new lens to our work:** We will take steps to encourage all branches of the OSC to approach their respective projects and initiatives with consideration to the implications that their work will have for older investors. For example, we will amend the covering memoranda for materials provided to OSC commissioners to promote consideration of the impacts that various proposals may have on different demographics of investors, including older investors. In addition, we will ensure that engagement with fintech companies through our LaunchPad team encourages and facilitates conversations about how digital financial services and products have contemplated the needs and risks related to older clients.
- **Resources and materials for staff:** We will support our staff in working effectively with older investors and understanding the unique needs and issues they face by developing new resources, tools and other materials that can assist staff in effectively communicating with older individuals, as well as in considering the implications that various projects may hold for older investors generally. These materials may include discussion guides, checklists, and other tools to facilitate best practices when engaging older individuals. Additionally, we expect that our partnerships with community organizations focused on older Ontarians will be helpful to our operational staff in responding to investor inquiries and working with older investors more generally. To ensure that all staff can take advantage of these opportunities, we will establish a central directory of these organizations that can be accessed by our staff.

C. Research

Research broadens and deepens our understanding of investor behaviour. It also allows us to understand and respond to emerging trends in the markets and the ways investors are reacting to them.

Two recent Investor Office studies published in 2017 – our behavioural insights report, which looked at the impact cognitive biases can have on financial decision-making and associated behaviours, and our *Investing As We Age* study, which examined the financial knowledge, attitudes and behaviours that Ontarians aged 45 and older have toward retirement planning – have helped shape our understanding of older investors and have influenced the development of this strategy. Continued research will be vital to ensuring our policy-making, education and outreach efforts remain responsive to the circumstances and needs of older Ontarians.

Our existing research has highlighted the importance of planning for the future, but behavioural insights illuminate the reality that investors often behave in ways that are detrimental to their long-term financial well-being, in many cases, despite their best intentions. As previously discussed, investors can often be overconfident in their financial decision-making and may ignore information that runs counter to their preconceptions. This can be exacerbated with age: older investors may be more likely to focus on positive information and filter out negative information. The Investor Office is working with the Behavioural Insights Team – one of the world's leading organizations in the area of public sector applications of behavioural insights – in order to better understand the specific behavioural barriers that pre-retired Ontarians face when thinking about, devising and following through on a retirement plan; we will publish the results of this research by mid-2018. Our objective is to provide stakeholders with a set of behaviourally-informed design principles that they should keep in mind when designing programs, products, and services to respond to the needs of older Ontarians.

Over the longer term, research will allow us to fine-tune our policy-making, education and

outreach activities to respond to the needs of older Ontarians. Interviews, focus groups, and other qualitative research techniques, as well as quantitative testing, will provide insight into the likely effects of proposed new policy interventions on older Ontarians, and will examine the effectiveness and resonance of new educational resources with older Ontarians and other target audiences. This type of testing is part of evidence-based policy and program development, and we look forward to building on our research infrastructure and partnerships to enhance our capacity for this type of activity.

A better understanding of the possible effects of emerging trends on older Canadians, such as the growth of the digital advice channel and other fintech innovations, will be important for all stakeholders. Canadians' increasing comfort with technology offers both opportunities and risks that research can help us better understand. Technology can help users overcome mobility and other barriers by allowing them to manage their finances without having to go to a bank branch, and "big data" collected and analyzed by new fintech tools can help users understand their spending and investing habits and plan for the future.

But, to the extent that this growth comes at the expense of more traditional channels for delivering financial services, it may negatively affect relationships and ways of doing business that many older investors may feel comfortable with and want to continue. Fintech tools may also encounter challenges in monitoring and addressing the effects that cognitive changes may have on the way we understand and make financial decisions, particularly when these tools are designed for "do-it-yourself" investors (who prefer to make investment and other financial decisions on their own without help from a registered firm). These trends and their possible implications for older investors are important issues for the financial sector and other stakeholders to examine.

Engagement with external organizations will remain key to identifying research priorities. For example, the LaunchPad team helps innovative fintech companies work within regulated markets

to serve the interests of investors of all ages; in turn, building relationships with fintech companies helps us enhance and build on our understanding of the opportunities new technologies are creating in the financial sector. We look forward to engaging with fintech firms to find ways to make fintech accessible and responsive to the needs of older Ontarians. In addition, SEAC continues to help us monitor emerging trends relating to older investors and provides an important perspective on our research direction.

D. Education and outreach

Financial education and investor outreach form a significant part of our existing investor-focused activities, and under this strategy we plan to develop even more tools, resources, and other materials to help older Ontarians, as well as their networks of family and friends, plan for the future. These materials will raise awareness of the needs that older individuals have later in life – in both best- and worst-case scenarios – and offer guidance on making plans to address these needs.

In communicating this message, we will emphasize that financial planning is not an abstract exercise that deals solely with dollars and cents or risk and return. Rather, it is about life priorities, such as home, health, work, leisure, and family, and there is a need to develop a step-by-step process for achieving these priorities.

We will talk about red flags not only for financial fraud, but also financial exploitation and the natural challenges associated with aging. We will start a conversation about tools that can help address these changes and risks, such as trusted contacts and powers of attorney, and we will also direct older Ontarians and their families, caregivers, and friends to external organizations that can provide guidance on issues relevant to them.

We plan to deliver these messages through a variety of media, including written and online materials as well as live presentations. Social media will be another vital channel for broadcasting key messages relating to retirement planning, signs of financial exploitation, and other relevant issues. Through the delivery formats and channels we will explore, we

will recognize that, as discussed above, financial planning and decisions do not occur in isolation; they take into account that friends, family, and registered firms often are part of the conversation surrounding these decisions.

Providing education to registered firms and the representatives who work with older investors will also make up an important part of our education and outreach plan. As previously noted, we will issue guidance for registered firms and their representatives on engaging with older clients appropriately, and we intend to build on that further through the provision of resources and training materials to help them communicate effectively and recognize many of the common warning signs that may indicate a client may be experiencing impaired judgement with regard to financial decision-making or is the subject of undue influence from a third party.

Our guidance will include best practices that firms can undertake in forming and delivering communications messages for older audiences, and it's important we lead by example by employing these practices in our own materials. Our suite of tools and resources will strive to be inclusive, accessible and useful for older Ontarians and reflect best practices developed by the Government of Canada²⁸⁸ and other leading practitioners, nationally and abroad. The ways in which we communicate will also strive to be inclusive and accessible across multiple delivery vehicles, recognizing that some individuals may prefer receiving written information or communicating electronically, while others prefer engaging in a live conversation.

Our planned education and outreach activities include:

- **White label materials and other resources for firms:** We will provide firms with access to a series of white label resources, such as forms, discussion guides and educational materials, that they can quickly brand and deploy to their representatives and clients as they see fit, allowing them to mitigate the burden of developing their own materials independently. These white label resources will reflect our own learnings and

best practices when it comes to communicating with older audiences, helping firms align their communications with the examples we set.

- **Resource hub on GetSmarterAboutMoney.ca:** We will build on our existing online resources to create a “resource hub” that aggregates resources in a central online location, organized and curated for older Ontarians and their friends, family, and caregivers, as well as for industry organizations and regulators. Each of these groups will be able to easily access resources relevant to them. This initiative will provide an opportunity for the OSC to leverage its partnerships with other agencies and organizations that have developed tools and materials aimed at improving outcomes for older investors – these partners will be encouraged to make their own resources available through the hub, reducing the end-user burden of having to find and seek out information from a variety of different sources available at different websites.
- **Discussion guides:** We will help older investors shape their conversations with registered firms and their representatives by developing a discussion guide outlining key questions to ask, as well as guidance for interpreting how a firm representative responds to these questions. We hope these guides will help older Ontarians feel more prepared when they talk to a firm representative and more confident understanding and acting on the information and choices they are given.
- **Resources for families, friends and caregivers:** We will develop materials aimed at helping families, friends, and caregivers of older Ontarians engage in a conversation about aging and planning for the future, spotting signs of financial exploitation and understanding the roles and responsibilities of a trusted contact in an investment relationship. These resources will also point to organizations focused on older Ontarians that can provide additional help and guidance. We will look to include videos and other forms of multimedia content as additional ways in which we deliver information and provide alternative methods for providing resources to those who benefit from visual or audio cues.

- **Education and outreach strategy for new Canadians:** We will implement an education and outreach strategy for new Canadians that includes a focus on older investors, recognizing the diverse and varied knowledge levels, language proficiency, and confidence as new consumers in the Canadian financial marketplace.

Partnerships with organizations focused on the needs of older individuals will be important as we develop these resources. In addition, we will leverage these partnerships to help us publicize and distribute these resources, building on our existing relationships with organizations across the province with an interest in addressing the issues of older individuals in order to distribute information and resources to older Ontarians and their families, friends and caregivers. For example, we will explore opportunities to build a referral system between our Inquiries and Contact Centre and Elder Abuse Ontario’s Seniors Safety Line, to help respond to calls made to the Seniors Safety Line related to financial exploitation or fraud, gather the appropriate information and bridge callers to the OSC directly. We will also work with Ontario’s Public Guardian and Trustee to identify possible opportunities for collaboration and joint efforts in reporting and responding to issues related to financial exploitation and diminished capacity.

As previously discussed, investor education and outreach have formed a significant part of our activities to date. We will expand many of our existing programs and resources to reflect the research, best practices, and learnings around the intersection of age and money in order to better respond to the needs of older investors through:

- **Community outreach:** Over the past several years, OSC staff members from the Investor Office and Enforcement branch have connected with hundreds of groups, including many seniors organizations, through the OSC in the Community program, hosting live presentations on how investors can protect their money from financial frauds, recognize common red flags of fraud and work with a firm representative. Recently, the Investor Office expanded its community outreach through

its teletownhall program, which allows OSC staff to connect with thousands of Ontario investors at once in a live townhall carried out by phone. We will continue to use these programs to connect with older Ontarians on issues relevant to them, including protecting themselves against financial exploitation and fraud, and look to expand the channels for delivery through digital tools such as webinars and live-streamed sessions in which viewers can ask questions and receive answers from OSC staff in real-time over the internet.

- **Online education and outreach:** The OSC's award-winning [GetSmarterAboutMoney.ca](https://www.getsmarteraboutmoney.ca) website publishes materials and resources to help investors make better decisions about their money.²⁸⁹ The Investor Office also engages directly with investors through social media, its *Investor News* newsletter and *Re: Investing*, a digital contact centre that allows OSC staff to respond directly to questions from individuals on investing, financial planning and fraud. Through these channels, we will publish new content relevant to older Ontarians and leverage digital and social platforms to communicate as appropriate.

Across all of our education and outreach efforts, both those currently operating and those planned under this strategy, it is important that we leverage the appropriate communications opportunities to continue promoting a broader awareness of the OSC as an organization that investors can contact for questions and concerns related to Ontario's capital markets and financial service providers. We will continue to direct investors to resources (including [GetSmarterAboutMoney.ca](https://www.getsmarteraboutmoney.ca) and the OSC's Inquiries and Contact Centre) designed to address their concerns and answer their questions and will continually improve our responsiveness to the needs of older investors through enhancements to our own operations.



V.

CONCLUSION

The financial lives of older Canadians are more complex relative to previous generations. As a regulator, we believe that we have a role to play in ensuring that the needs of older Ontarians are appropriately met by the province's securities industry. Our vision is a stronger and more secure financial future for all Ontario seniors, and we believe that we will achieve this through an inclusive, social and responsive strategy.

We recognize that seniors are not a homogenous group, and we have taken this into account when developing appropriate policy responses and education and outreach initiatives. We also know that financial decisions are rarely made in isolation, and have taken this into account in designing policy and programs that help seniors meaningfully participate in conversations about aging and retirement planning.

We strive to be responsive through the delivery of timely and relevant support and resources to investors, as well as the people they work with when making financial decisions, which means that we must pay close attention to emerging trends and changes in circumstances affecting the financial lives of older individuals.

We know that we are not alone in our work to better service the needs of older Ontarians, and as such, we look forward to continuing the conversation with our partners and stakeholders, as well as other regulators and government agencies, the financial sector, community organizations and Ontarians themselves as we further develop and implement the initiatives described in this strategy.

As we continue to work with our partners and conduct research in this space, we recognize that new issues, and new initiatives to address them, may emerge. Responding appropriately to the full scope of issues affecting older investors will require us to remain vigilant and flexible in our approach. We will provide an update on our progress in implementing this strategy in one year, and will continue to monitor and assess changes among older demographics through further research and stakeholder consultation.

APPENDIX A: Seniors Expert Advisory Committee member biographies

We recognize the importance of consulting seniors' experts who can provide expert opinions and input to support our ongoing efforts to better understand the unique needs of older investors. The SEAC advises OSC staff on securities-related policy and operational developments that impact older investors and provides input on the OSC's related education and outreach activities. In developing this strategy, we drew heavily on the expertise and insights provided by the members of the SEAC, and we are grateful for their contributions.

Current members

Ellen Bessner

Ellen Bessner is a litigator at Babin Bessner Spry LLP with over 25 years of experience working with investment and insurance industry participants. She is also the author of the best-selling book *Advisor at Risk: A Roadmap to Protecting Your Business*.

Jan Dymond

Jan Dymond is the former Chair of the Vulnerable Investors Task Force at the Investment Funds Institute of Canada (IFIC) and former Vice President, Public Affairs at IFIC, possessing over 35 years of communication and government-related experience.

Arthur Fish

Arthur Fish is a lawyer at Borden Ladner Gervais LLP with over 25 years of experience working with elderly clients in both the public and private sectors. He previously worked with the Mental Competency Clinic at the Baycrest Centre for Geriatric Care, served as Chair of the Ontario Mental Health Foundation, and was a member of the Consent and Capacity Board.

Alan Goldhar

Alan Goldhar has spent almost 20 years as the Chief Investment Officer for Ontario's Office of the Public Guardian and Trustee, managing \$1.5 billion in investments for more than 13,000 clients, most of whom are seniors. In 2001, he was awarded with the honour of Fellow of the Financial Planning Standards Council. Alan is also a former member of the OSC's Investor Advisory Panel.

Dr. Amanda Grenier

Dr. Amanda Grenier is a Professor at McMaster University's Department of Health, Aging and Society and Director of the Gilbrea Centre for Studies in Aging. She has collaborated with seniors' councils and service organizations dedicated to improving the lives of older people, including the Hamilton Age-Friendly City Project, as well as the Notre-Dame-de-Grâce Senior Citizen's Council and Black Council on Aging in Montréal.

Marta C. Hajek

Marta C. Hajek is the Director of Operations with Elder Abuse Ontario (EAO), an organization mandated to oversee the implementation of the Ontario Strategy to Combat Elder Abuse. Prior to joining EAO, Marta coordinated the rollout of the 211 Information and Referral Service in Ontario and served as the Executive Director of the Ontario Gerontology Association.

Patricia Kloepfer

Patricia Kloepfer is a Chartered Professional Accountant with over 25 years of experience in financial services and insurance, who provides independent consulting service to members of the financial services industry. In her former role as Vice-President of Compliance and Chief Compliance Officer for Investors Group's mutual funds and securities dealers, she developed expertise in the challenges facing seniors and vulnerable clients, and potential strategies that firms may implement to better meet the needs of such clients.

Wanda Morris

Wanda Morris is the Chief Operating Officer and Vice-President of Advocacy for CARP. She oversees CARP's advocacy priorities, which include retirement income security and investor protection. Wanda has been a Chartered Professional Accountant for three decades, including seven years with PricewaterhouseCoopers in Vancouver and Melbourne, Australia.

Lindsay Rogan

Lindsay Rogan represents the Portfolio Management Association of Canada (PMAC), where she serves on the PMAC Practices and Standards Committee. Lindsay also serves as the Managing Director and Chief Compliance Officer of Rogan Investment Management Limited, where she works with senior clients and their families, often dealing with very complicated family trust, estate and tax issues.

Bonnie Rose

As Chief Executive Officer and Registrar for the Retirement Homes Regulatory Authority, Bonnie Rose leads the organization in administering the Retirement Homes Act for the protection, safety and wellbeing of approximately 55,000 seniors living in over 700 Ontario retirement homes.

Greg Shaw

Greg Shaw is the Director of International and Corporate Relations for the International Federation on Ageing. He has previously held senior management positions within the Australian Commonwealth Department of Health and Ageing, where he was responsible for the regulatory regime associated with quality of care and certification programs in both residential and community care services.

Dr. Samir Sinha

Dr. Samir Sinha is the Director of Geriatrics of the Sinai Health System and University Health Network Hospitals in Toronto. He has consulted and advised governments and health care organizations around the world and is the Architect of the Government of Ontario's Seniors Strategy.

Laura Tamblyn Watts

Laura Tamblyn Watts is a lawyer who focuses on elder law issues. She is the National Director of Law, Policy and Research at CARP. She is also a senior fellow at the Canadian Centre for Elder Law and a past long-time national director. Laura is the past Chair of the Canadian Bar Association's National Elder Law section. She is also a board and founding member of the NICE network, a co-facilitator of the World Study Group on Elder Law, a member of the Ombudsman for Banking Services and Investments Board of Directors and former board member of FAIR Canada.

Past members

Patricia Fleischmann

Patricia Fleischmann is a retired veteran of the Toronto Police Service who spent the last 16 years of her career as the Vulnerable Persons' Coordinator. She is the co-chair of the National Initiative for the Care of the Elderly's Law and Aging Theme Team. Patricia has served as an elder abuse educator for police and non-law enforcement audiences across Canada and internationally. She is also a founding member of Law Enforcement Agencies Protecting Seniors.

Neil Gross

Neil Gross is the former Executive Director of the Canadian Foundation for Advancement of Investor Rights (FAIR Canada). He has been a lawyer for over 30 years, during which time he has represented investors across Canada in hundreds of disputes involving every major investment product category.

Notes

¹ Ontario, *Aging with Confidence: Ontario's Action Plan for Seniors* (November 2017), <http://bit.ly/2houz5q>.

² Ontario, Ministry of Finance, *Ontario Population Projections Update, 2016–2041* (2017), at p. 4, <http://bit.ly/2CxIQWR>.

³ These trends are reviewed in Section II.B. below.

⁴ Progress Consulting, *Seniors Roundtable: Facilitator's Report*, by D. Scott Ferguson (commissioned by the OSC) (2014), <http://bit.ly/2qUnCQ>.

⁵ Innovative Research Group, *Investing As We Age* (commissioned by the OSC) (2017), at p. 81, <http://bit.ly/2xBCIt7>.

⁶ *Ibid.*, at pp. 81-82.

⁷ *Ibid.*, at p. 83.

⁸ Law Commission of Ontario (LCO), *A Framework for the Law as it Affects Older Adults: Advancing Substantive Equality for Older Persons through Law, Policy and Practice* (2012), at p. 26, <http://bit.ly/2CA01Xr>.

⁹ *Ibid.*

¹⁰ See discussion in section II.B below.

¹¹ Korn Ferry (in partnership with Patrick O'Callaghan and Associates), *2015 Corporate Board Governance and Director Compensation Report* (2016), at p. 33, <http://bit.ly/2EVpR60>.

¹² Investment Industry Regulatory Organization of Canada (IIROC), Notice 16-0114, *Guidance on compliance and supervisory issues when dealing with senior clients* (31 May 2016), at p. 1, <http://bit.ly/2CzhTlo>.

¹³ Investment Industry Association of Canada, *Compliance, Supervisory and Other Practices When Serving Senior Investors* (2014), at p. 5, <http://bit.ly/2EquCEG>.

¹⁴ *Ibid.*

¹⁵ Statistics Canada, *CANSIM Table 206-0011: Market income, government transfers, total income, income tax and after-tax income, by economic family type, Canada, provinces and selected census metropolitan areas (CMAs)* (26 May 2017), <http://bit.ly/2CA6NfR>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Statistics Canada, *New facts on pension coverage in Canada*, by Marie Drolet and René Morissette, (Insights on Canadian Society, 18 December 2014), at p. 2, <http://bit.ly/1MSRbS9>. See also Canada, Department of Finance, *Backgrounder: Canada Pension Plan (CPP) Enhancement*

(2016), <https://goo.gl/v5Y9fK>. Benefits paid under a "defined benefit" pension plan are generally fixed based on a participant's earnings and service with his or her employer, whereas benefits paid under a "defined contribution" pension plan are based on the performance of investments purchased by the participant via the plan.

²⁰ Statistics Canada, *Working seniors in Canada*, (Census in Brief, 29 November 2017), at p. 1, <http://bit.ly/2CAEgah>.

²¹ Canada, Department of Finance, note 19 above.

²² Statistics Canada, *CANSIM Table 205-0002: Survey of Financial Security (SFS), assets and debts held by economic family type, by age group, Canada, provinces and selected census metropolitan areas (CMAs)* (7 December 2017), <http://bit.ly/2UjJeCt>.

²³ Gino Cateau, Tom Roberts and Jie Zhou, "Indebted Households and Potential Vulnerabilities for the Canadian Financial System: A Microdata Analysis," *Financial System Review* 49 (December 2015), at p. 53, <https://goo.gl/7uSkMS>

²⁴ Statistics Canada, note 22 above.

²⁵ *Ibid.*

²⁶ Statistics Canada, "Housing in Canada: Key results from the 2016 Census," *The Daily* (25 October 2017), at p. 6, <http://bit.ly/2E36Tcl>.

²⁷ The OSC Investor Office has published resources to help homeowners make a plan for using their home equity in retirement, available at <http://bit.ly/2wsZUUI>.

²⁸ Statistics Canada, note 22 above.

²⁹ *Ibid.*

³⁰ Stephen S. Poloz, Governor, Bank of Canada, *Living with Lower for Longer* (Speech, 20 September 2016), at p. 2, <http://bit.ly/2qfYwZ2>.

³¹ Statistics Canada, note 22 above; Jason Kirby, "The 91 most important economic charts to watch in 2018," *Macleans* (5 December 2017), <http://bit.ly/2CDttMj>.

³² Poloz, note 30 above, at p. 3.

³³ Innovative Research Group, note 5 above, at p. 11.

³⁴ U.K. Financial Conduct Authority (FCA), *Over 55s at heightened risk of fraud, says FCA* (Press Release, 25 May 2016), <http://bit.ly/2CB0OXk>.

³⁵ Statistics Canada, *CANSIM Table 477-0077: Canadian and international tuition fees by level of study* (6 September 2017), <http://bit.ly/2xCbO1W>.

³⁶ Statistics Canada, *CANSIM Table 327-0056: New housing price index* (14 December 2017), <http://bit.ly/2E3nOLX>.

- ³⁷ CIBC, *CIBC Poll: Parents delaying retirement, taking on debt to help kids pay for education* (Press Release, 22 August 2013), <http://bit.ly/2CP7pLq>.
- ³⁸ Ratehub, *Digital Money Trends Report* (2017), at p. 2, <https://goo.gl/Wni882>.
- ³⁹ Statistics Canada, *Young adults living with their parents in Canada in 2016* (Census in Brief, 2 August 2017), at p. 3, <http://bit.ly/2zosg8Y>.
- ⁴⁰ Statistics Canada, "Families, households and marital status: Key results from the 2016 Census," *The Daily* (2 August 2017), at p. 8, <http://bit.ly/2CBujsS>.
- ⁴¹ Statistics Canada, *Diversity of grandparents living with their grandchildren*, by Anne Milan, Nadine Laflamme and Irene Wong, (Insights on Canadian Society, 14 April 2015), at p. 3, <http://bit.ly/1JGQ5F0>.
- ⁴² TD Bank Group, "Déjà-Boom: boomerang kids collide with retirement goals of boomer parents" (Press Release, 18 January 2017), <https://go.td.com/2k49IDX>.
- ⁴³ Statistics Canada, *The impact of aging on labour market participation rates*, by Andrew Fields, Sharanjit Uppal, and Sébastien LaRoche-Côté (Insights on Canadian Society, 14 June 2017), at p. 5, <http://bit.ly/2CBXuwb>.
- ⁴⁴ LCO, note 8 above, at p. 32.
- ⁴⁵ *Ibid.*, at p. 50.
- ⁴⁶ Ontario, note 1 above, at p. 8.
- ⁴⁷ Statistics Canada, note 43 above, at p. 1.
- ⁴⁸ Statistics Canada, *Working seniors in Canada* (Census in Brief, 29 November 2017), at p. 2, <http://bit.ly/2CAEgah>.
- ⁴⁹ Statistics Canada, note 43 above, at pp. 4-5.
- ⁵⁰ *Ibid.*, at p. 4.
- ⁵¹ *Ibid.*, at pp. 4-5.
- ⁵² Statistics Canada, *Volunteering and charitable giving in Canada*, by Martin Turcotte (Spotlight on Canadians, 30 January 2015), at p. 6, <http://bit.ly/1HrAyMO>.
- ⁵³ Statistics Canada, note 26 above, at p. 5.
- ⁵⁴ Statistics Canada, note 40 above, at p. 4.
- ⁵⁵ *Ibid.*
- ⁵⁶ *Ibid.*
- ⁵⁷ Statistics Canada, "Life in the fast lane: How are Canadians Managing?, 2016" *The Daily* (14 November 2017), at p. 1, <http://bit.ly/2AiC4y8>.
- ⁵⁸ *Ibid.*
- ⁵⁹ Innovative Research Group, note 5 above, at p. 65.
- ⁶⁰ See, e.g., Keith Gamble *et al.*, "Aging and Financial Decision Making," 61(11) *Management Science* 2603–10 (2015), <http://bit.ly/2Fwln4d>; Michael S. Finke, John S. Howe, and Sandra J. Huston, "Old Age and the Decline in Financial Literacy," 63(1) *Management Science* 213 (2016); Social Research and Demonstration Corporation (commissioned by the Financial Consumer Agency of Canada), *The role of financial literacy in financial decisions and retirement preparedness among seniors and near-seniors*, by Taylor Shek-wai Hui *et al.* (2016), at p. iii, <https://goo.gl/YZAdpQ>.
- ⁶¹ Gamble *et al.*, *ibid.*, at p. 2603.
- ⁶² Statistics Canada, *Gender differences in the financial knowledge of Canadians*, by Marie Drolet (Insights on Canadian Society, 23 March 2016), at p. 2, <http://bit.ly/1qT6Xon>.
- ⁶³ *Ibid.*
- ⁶⁴ Innovative Research Group, note 5 above, at p. 14.
- ⁶⁵ *Ibid.*
- ⁶⁶ *Ibid.*, at p. 32.
- ⁶⁷ Stephen Foerster *et al.*, "Retail Financial Advice: Does One Size Fit All?" 72(4) *Journal of Finance* 1441 (2017), manuscript at p. 31, <http://bit.ly/2Cnvlzj>.
- ⁶⁸ The Brondesbury Group, *Focus Groups with Retail Investors on Investor Rights and Protection*, by Lori Bottrell and Ed Weinstein (commissioned by the OSC) (2011), at p. 8, <http://bit.ly/2IRZvZl>.
- ⁶⁹ OSC Staff Notice 11-778, *Behavioural Insights: Key Concepts, Applications and Regulatory Considerations* (2017), at p. 49, <http://bit.ly/2CjRVyc>. See also, Social Research and Demonstration Corporation, note 61 above.
- ⁷⁰ Sumit Agarwal *et al.*, "The Age of Reason: Financial Decisions over the Life-Cycle with Implications for Regulation," *Brookings Papers on Economic Activity* 2:51 (2009), manuscript at p. 26, <http://bit.ly/2IOsK0w>.
- ⁷¹ The Brondesbury Group, *Financial Life Stages of Older Canadians*, by Edwin L. Weinstein (commissioned by the OSC) (2015), at p. 1, <http://bit.ly/2CkInCc>.
- ⁷² Mark S. Lachs and S. Duke Han, "Age-Associated Financial Vulnerability: An Emerging Public Health Issue," 163(11) *Annals of Internal Medicine* 877 (2015), manuscript at p. 5, <http://bit.ly/2CAAdC1g>; Agnieszka Tymula *et al.*, "Like cognitive function, decision making across the life span shows profound age-related changes," 112(40) *Proceedings of the National Academy of Sciences* 17,143 (2015), at p. 17,147, <http://bit.ly/2CMXR3W>.
- ⁷³ Tymula *et al.*, *ibid.*, at p. 17, 143.
- ⁷⁴ Corinna E. Löckenhoff and Laura L. Carstensen, "Socioemotional Selectivity Theory, Aging, and Health: The Increasingly Delicate Balance Between Regulating Emotions and Making Tough Choices," 72(6) *Journal of Personality* 1395 (2004), at p. 1395, <http://bit.ly/2IPRGDZ>.

⁷⁵ R. Nathan Spreng, Jason Karlawish and Daniel C. Marson, "Cognitive, social, and neural determinants of diminished decision-making and financial exploitation risk in aging and dementia: A review and new model," 28(4-5) *Journal of Elder Abuse and Neglect* 320 (2016), at pp. 323-24, <http://bit.ly/2lQhalD>.

⁷⁶ FCA, *Occasional paper No. 31, Ageing Population and Financial Services* (2017), at p. 26, <http://bit.ly/2lQgzzt>.

⁷⁷ Lachs and Han, note 72 above, manuscript at p. 5; Spreng et al., note 76 above, at p. 335.

⁷⁸ Canada, Senate, *Dementia in Canada: A National Strategy for Dementia-friendly Communities* (Standing Senate Committee on Social Affairs, Science and Technology, 2016), at p. 3, <http://bit.ly/2lRlq3r>.

⁷⁹ FCA, note 76 above, p. 27.

⁸⁰ Lisa Rapaport, "Age-associated financial vulnerability often overlooked," *Reuters* (12 October 2015), <http://reut.rs/2Cysooh> (quoting Dr. Eric Widera of the University of California, San Francisco).

⁸¹ Lachs and Han, note 72 above, manuscript at p. 5.

⁸² Statistics Canada, *Disability in Canada: Initial findings from the Canadian Survey on Disability* (2013), at p. 4, <http://bit.ly/2CNyUVW>.

⁸³ Statistics Canada, *A Portrait of Seniors in Canada*, by Martin Turcotte and Grant Schellenberg (2006), at p. 83, <http://bit.ly/2CnsQCg>.

⁸⁴ See, e.g., Donald T. Stuss and Malcolm A. Binns, "Aging: Not An Escarpment, But Many Different Slopes," in *Perspectives on Human Memory and Cognitive Aging: Essays in Honor of Fergus Craik* 334 (Moshe Naveh-Benjamin, Morris Moscovitch and Henry L. Roediger III, eds., 2001).

⁸⁵ Seniors Roundtable, note 4 above, at p. 4.

⁸⁶ The Big Window Consulting, *The Ageing Population: Ageing Mind Literature Review Report* (commissioned by the FCA) (2017), at p. 14, <http://bit.ly/2CA8EkP>.

⁸⁷ Laura Fratiglioni et al., "Influence of social network on occurrence of dementia: a community-based longitudinal study," 355(9212) *The Lancet* 1315 (2000), <https://goo.gl/dvjFWe>; Conor Ó Luanaigh and Brian A. Lawlor, "Loneliness and the health of older people," 23(12) *International Journal of Geriatric Psychiatry* 1213 (2008).

⁸⁸ National Seniors Council, *Report on the Social Isolation of Seniors* (2014), at p. 1, <http://bit.ly/2GyKohl>.

⁸⁹ Janice Keefe et al., *Final Report: A Profile of Social Isolation in Canada* (2006), at p. 10, <http://bit.ly/2DPqU6z>.

⁹⁰ National Seniors Council, note 88 above, at p. 1.

⁹¹ See section II.B.3 above.

⁹² National Seniors Council, note 88 above, at p. 15.

⁹³ Statistics Canada, *Portrait of caregivers, 2012*, by Maire Sinha, (Spotlight on Canadians, September 2013), at pp. 3, 19, <http://bit.ly/1fryVf0>.

⁹⁴ *Ibid.*, at p. 120.

⁹⁵ *Ibid.*, at p. 19.

⁹⁶ Statistics Canada, *Family caregiving: What are the consequences?*, by Martin Turcotte (Insights on Canadian Society, 2013), at p. 1, <http://bit.ly/1dNsaCV>.

⁹⁷ *Ibid.*, at p. 10.

⁹⁸ Marguerite DeLiema, "Elder Fraud and Financial Exploitation: Application of Routine Activity Theory," *The Gerontologist* (10 March 2017), <https://doi.org/10.1093/geront/gnw258>.

⁹⁹ International Organization of Securities Commissions, *Report on Senior Investor Vulnerability* (2018), at p. 5.

¹⁰⁰ Innovative Research Group (commissioned by the CSA), *CSA Investor Index* (2017), at p. 52, <http://bit.ly/2lPXFTs>.

¹⁰¹ *Ibid.*, at pp. 55-56.

¹⁰² *Ibid.*, at p. 62.

¹⁰³ Rebecca A. Judges et al., "The Role of Cognition, Personality, and Trust in Fraud Victimization in Older Adults," *Frontiers in Psychology* (13 April 2017), <http://bit.ly/2DOr7dd>.

¹⁰⁴ DeLiema, note 98 above.

¹⁰⁵ Canadian Center for Elder Law, *Financial Abuse of Seniors: An Overview of key Legal Issues and Concepts* (commissioned by International Federation on Ageing) (2013), at pp. 3-4, <http://bit.ly/2BvBU7d>. Different regulators and organizations have adopted varying definitions of financial abuse and financial exploitation. The U.S. Financial Industry Regulatory Authority (FINRA), in its recently promulgated rules respecting financial exploitation, defined financial exploitation as "the wrongful or unauthorized taking, withholding, appropriation, or use of ... funds or securities" and any act or omission to "obtain control, through deception, intimidation or undue influence, over ... money, assets or property or convert ... money, assets or property," in each case in respect of an individual aged 65 or older and certain other persons protected by that rule. FINRA Rule 2165 (Financial Exploitation of Specified Adults). See section III of this report for information on action taken by other financial services regulators relating to financial abuse and exploitation.

¹⁰⁶ Canadian Foundation for the Advancement of Investor Rights (FAIR Canada) and Canadian Centre for Elder Law, *Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity*, by Marian Passmore and Laura Tamblyn Watts (2017), at p. 10, <http://bit.ly/2qmkyjl>.

¹⁰⁷ National Initiative for the Care of the Elderly, *Into the Light: National Survey on the Mistreatment of Older Canadians* (2015), at p. 36, <http://bit.ly/2IOZHK8>.

¹⁰⁸ *Ibid.*, at p. 55. Interviews were conducted between July 2014 and August 2015. Many organizations have adopted the World Health Organization (WHO)'s definition of elder abuse ("a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress"). WHO, "Fact sheet: Elder abuse" (June 2017), <http://bit.ly/1clytgi>.

¹⁰⁹ National Seniors Council, note 88 above, at p. 7; Martin J. Gorbien and Amy R. Eisenstein, "Elder Abuse and Neglect: An Overview," 21 *Clinics in Geriatric Medicine* 279 (2005); Lachs and Han, note 72 above, manuscript at p. 5.

¹¹⁰ Vancity, *Suffering in Silence: The financial abuse of seniors in British Columbia* (2017), at p. 1, <http://bit.ly/2EPiMDN>; Carmel Bitondo Dyer, Marie-Therese Connolly and Patricia McFeeley, "The Clinical and Medical Forensics of Elder Abuse and Neglect," in *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* 339 (Richard J. Bonnie and Robert B. Wallace, eds., 2003), at p. 364, <http://bit.ly/2CzKGW0>; CSA *Investor Index*, note 100 above, at p. 57.

¹¹¹ Lachs and Han, note 72 above, manuscript at p. 5.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ See, e.g., IIROC Notice 16-0114, note 12 above, at p. 9; CSA Consultation Paper 33-404, *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward their Clients* (2016), 39 OSCB 3947, at p. 3950, <http://bit.ly/2mIW79L>.

¹¹⁵ OBSI, *Annual Report* (2016), at p. 21, <http://bit.ly/2AR94h9>.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, at p. 31.

¹¹⁸ Seniors Roundtable, note 4 above, at p. 6.

¹¹⁹ FAIR Canada and Canadian Centre for Elder Law, note 106 above, at p. 53.

¹²⁰ *Ibid.*, at pp. 54-57.

¹²¹ FCA, *Occasional Paper No. 8, Consumer Vulnerability*

(2015), at p. 7, <http://bit.ly/2jSHiW5>.

¹²² *Ibid.*, at p. 8.

¹²³ *Ibid.*, at p. 18.

¹²⁴ *Ibid.*, at p. 22.

¹²⁵ FCA, *Discussion Paper No. 16/1, Ageing population and financial services* (2016), at p. 9, <http://bit.ly/2ASUFRr>.

¹²⁶ *Ibid.*, at p. 6.

¹²⁷ *Ibid.*

¹²⁸ FCA, note 76 above, at p. 13.

¹²⁹ *Ibid.*, at pp. 7-8.

¹³⁰ *Ibid.*, at p. 7.

¹³¹ *Ibid.*, at p. 11.

¹³² *Ibid.*, at p. 8.

¹³³ *Ibid.*, at p. 9.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ North American Securities Administrators Association (NASAA), *NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation and 2018 Commentary* (2017), at p. 1, <http://bit.ly/2Fsp1hg>.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*, at p. 6.

¹³⁹ *Ibid.*, at p. 2.

¹⁴⁰ *Ibid.*, at pp. 8-9.

¹⁴¹ *Ibid.*, at pp. 10-11.

¹⁴² *Ibid.*, at pp. 11-13.

¹⁴³ *Ibid.*, at p. 13.

¹⁴⁴ *Ibid.*, at pp. 13-14.

¹⁴⁵ *Ibid.*, at p. 3.

¹⁴⁶ NASAA, *ServeOurSeniors*, <http://bit.ly/1JjwD9N>.

¹⁴⁷ NASAA, *A Guide for Developing Practices and Procedures for Protecting Seniors and Vulnerable Adults from Financial Exploitation* (2016), at p. 4, <http://bit.ly/2DoLj9r>.

¹⁴⁸ *Ibid.*, at pp. 2, 9-10.

¹⁴⁹ *Ibid.*, at pp. 7-8.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, at pp. 13-14.

¹⁵² *Ibid.*, at p. 12.

¹⁵³ *Ibid.*, at pp. 12-15.

¹⁵⁴ *Ibid.*, at pp. 16-18.

¹⁵⁵ *Ibid.*, at pp. 19-20.

¹⁵⁶ *Ibid.*, at p. 22.

¹⁵⁷ NASAA, *NASAA Broker-dealer section study of senior practices and procedures* (2017), at p. 1, <http://bit.ly/2t32gKM>.

¹⁵⁸ *Ibid.*, at pp. 2-3, 5.

¹⁵⁹ U.S. Securities and Exchange Commission (SEC)'s Office of Compliance Inspections and Examinations and FINRA, *National Senior Investor Initiative: A Coordinated Series of Examinations* (2013), at pp. 4-5, <http://bit.ly/2Dpjh3a>.

¹⁶⁰ *Ibid.*, at p. 2.

¹⁶¹ *Ibid.*, at p. 6.

¹⁶² *Ibid.*, at p. 8.

¹⁶³ *Ibid.*, at p. 10.

¹⁶⁴ *Ibid.*, at p. 11.

¹⁶⁵ *Ibid.*, at p. 13.

¹⁶⁶ *Ibid.*, at pp. 17-18.

¹⁶⁷ *Ibid.*, at p. 17.

¹⁶⁸ *Ibid.*, at pp. 19-20.

¹⁶⁹ *Ibid.*, at pp. 29-31.

¹⁷⁰ FINRA, *FINRA 2015 Year in Review and Annual Financial Report* (2015), at p. 2, <http://bit.ly/2CXMyF4>.

¹⁷¹ FINRA, *Regulatory Notice 17-11, Financial Exploitation of Seniors* (2017), at p. 2, <http://bit.ly/2D6FASo>.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, at p. 3.

¹⁷⁴ *Ibid.*, at p. 2.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*, at p. 3.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ *Ibid.*, at p. 4.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*, at p. 5.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, at pp. 3-5.

¹⁹⁰ NASAA, note 136 above, at p. 4.

¹⁹¹ *Ibid.*, at pp. 4-5.

¹⁹² Australia, Department of the Treasury, *The Future of Financial Advice Information Pack* (2010), at p. 2, <http://bit.ly/2DzO5Sf>.

¹⁹³ *Ibid.*, at p. 5.

¹⁹⁴ Australian Securities and Investments Commission (ASIC), *Report 279: Shadow shopping study of retirement advice* (2012), at p. 5, <http://bit.ly/2Feclo1>.

¹⁹⁵ *Corporations Act 2001* (Cth).

¹⁹⁶ ASIC, note 194 above, at p. 8.

¹⁹⁷ *Ibid.*, at p. 10.

¹⁹⁸ ASIC, *Regulation Impact Statement: Future of Financial Advice: Best interests duty and related obligations* (2012), at pp. 6-7, <http://bit.ly/2ncnYdT>.

¹⁹⁹ ASIC, *Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure* (2017), at p. 74.

²⁰⁰ Australian Law Reform Commission, *Elder Abuse – A National Legal Response (ALRC Report 131)* (2017), at pp. 7-8, <http://bit.ly/2sc9nAz>.

²⁰¹ *Ibid.*, at p. 299.

²⁰² *Ibid.*

²⁰³ *Ibid.*, at p. 298.

²⁰⁴ *Ibid.*

²⁰⁵ International Organization of Securities Commissions, *Report on Senior Investor Vulnerability* (2018), at p. 3.

²⁰⁶ *Ibid.*, at p. 1.

²⁰⁷ *Ibid.*, at pp. 16-17.

²⁰⁸ *Ibid.*, at pp. 24, 29, 32, 35.

²⁰⁹ *Ibid.*, at pp. 39-41.

²¹⁰ Investor Education Centre (IEC), "The Chin Family," <http://www.thechinfamily.hk/web/en/about-the-chin-family/index.html>.

²¹¹ IEC, “Characters of the Chin Family,” <http://www.thechinfamily.hk/web/en/about-the-chin-family/characters/index.html>.

²¹² OSC Staff Notice 11-778, note 69 above, at p. 98.

²¹³ *Ibid.*

²¹⁴ New Zealand Bankers’ Association, *Voluntary Guidelines to Assist Banks to Meet the Needs of Older and Disabled Customers* (2009), <http://bit.ly/2ns4qSW>.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ New Brunswick, Financial and Consumer Services Commission, *Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick* (2017), at p. 3, <https://goo.gl/ShZdYc>.

²¹⁸ *Ibid.*, at p. 5.

²¹⁹ *Ibid.*, at p. 10.

²²⁰ *Ibid.*, at p. 8.

²²¹ Ministère de la Famille – Secrétariat aux aînés (Québec), *Plan d’action gouvernemental pour contrer la maltraitance envers les personnes aînées: 2017-2022* (2017), at p. 11, <https://goo.gl/1m6wTK>.

²²² Québec, Bill 115, *An Act to combat maltreatment of seniors and other persons of full age in vulnerable situations*, 1st Sess., 41st Leg. (2017), cl. 2(2), <https://goo.gl/2rpGfF>.

²²³ Financial Consumer Agency of Canada (FCAC), *National Strategy for Financial Literacy – Count me in, Canada* (2014), at p. 5, <http://bit.ly/2DLWiG8>.

²²⁴ *Ibid.*, at p. 17.

²²⁵ FCAC, *Strengthening Seniors’ Financial Literacy* (2014), at pp. 5-6, <http://bit.ly/2GkOVFR>.

²²⁶ *Ibid.*, at p. 7.

²²⁷ *Ibid.*, at p. 9.

²²⁸ *Ibid.*, at p. 12.

²²⁹ *Ibid.*, at p. 14.

²³⁰ *Ibid.*, at pp. 15-16.

²³¹ *Ibid.*, at p. 17.

²³² FCAC, *Financial Literacy and Retirement Well-Being in Canada: An Analysis of the 2014 Canadian Financial Capability Survey* (2017), at p. 1, <http://bit.ly/2BuUmwF>.

²³³ FCAC, note 223 above, at p. 17.

²³⁴ FCAC, *Priority Groups – A consultation paper* (2014), at p. 10, <https://goo.gl/Fyrlf3>.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ IIROC, note 12 above, at p. 3.

²³⁸ *Ibid.*, at pp. 7-8.

²³⁹ *Ibid.*, at p. 8.

²⁴⁰ Mutual Fund Dealers Association of Canada (MFDA), <http://mfda.ca/members/member-webcasts/mfda-2015-seniors-summit>.

²⁴¹ MFDA, <http://mfda.ca/policy-and-regulation/rules/mfda-rules>, at 2.3 Control or Authority.

²⁴² MFDA, *Annual Report 2017* (2017), at p. 8, <http://bit.ly/2G0a7yd>.

²⁴³ MFDA, *2015 DSC Sweep Report – Supervision, Suitability and Disclosure of Funds with Sales Charges* (2015), at p. 8, <https://goo.gl/58Bn9i>.

²⁴⁴ *Ibid.*, at pp. 4-8.

²⁴⁵ MFDA, <http://mfda.ca/investors/for-seniors>.

²⁴⁶ Investment Industry Association of Canada, *Canada’s Investment Industry: Protecting Senior Investors – Compliance, Supervisory and other Practices When Serving Seniors* (2014), at pp. 4-7, <http://bit.ly/2EquCEG>.

²⁴⁷ *Ibid.*, at p. 8.

²⁴⁸ Investment Funds Institute of Canada, <https://www.ific.ca/en/ific-advisors/vulnerable-investors>.

²⁴⁹ Ontario Ministry of Finance, *Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives – Initial Consultation Document* (2015), at p. 2, <https://goo.gl/q7gcQy>.

²⁵⁰ Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives, *Financial Advisory and Financial Planning Regulatory Alternatives – Final Report* (2016), at pp. 16-17, 19-20, 24, <https://goo.gl/3qXcxf>.

²⁵¹ *Ibid.*, at p. 27.

²⁵² OSC Staff Notice 31-715, IIROC Notice Number 15-0210 and MFDA Bulletin Number 0658-C, *Mystery Shopping for Investment Advice: Insights into advisory practices and the investor experience in Ontario* (2015), <https://goo.gl/Hq64dX>.

²⁵³ Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives, note 250 above, at p. 29.

²⁵⁴ *Ibid.*, at p. 43.

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*, at p. 69.

²⁵⁷ *Ibid.*, at p. 71.

²⁵⁸ Elder Abuse Ontario, <https://goo.gl/4yXoAs>.

²⁵⁹ Ontario, note 1 above, at p. 9.

²⁶⁰ See, for example, Innovative Research Group, note 5 above, at pp. 32, 59; Innovative Research Group, *Missing Out: Millennials and the Markets* (commissioned by the OSC) (2017), at pp. 6-7, <http://bit.ly/2jPULTx>.

²⁶¹ Statistics Canada, note 57 above, at p. 1.

²⁶² These reviews focused on investors aged 60 years old or older. A complete report of the findings from the compliance reviews will be included in the *Dealers, Advisers and Investment Fund Managers Annual Report* to be published later in 2018.

²⁶³ S.C. 2000, c. 5 (PIPEDA).

²⁶⁴ See <http://www.carp.ca/2017/03/29/carp-calls-regulation-investment-advisor-titles-designations/>.

²⁶⁵ IIROC, *Use of Business Titles and Financial Designations* (2014), at p. 3; CSA Consultation Paper 33-404, note 115 above, at pp. 3950, 3955-56. See also NASAA Model Rule on the use of Senior-Specific Certifications and Professional Designations (2008), <http://bit.ly/2rOyut7>.

²⁶⁶ OSC Staff Notice 31-715, note 252 above, at p. 26.

²⁶⁷ *Ibid.*

²⁶⁸ CSA Consultation Paper 33-404, note 114 above, at p. 3963.

²⁶⁹ *Ibid.*, at p. 4000.

²⁷⁰ *Ibid.*, at p. 3948.

²⁷¹ The Wall Street Journal, *What's in a Broker's Name? SEC to Address Titles Used When Advising Investors. Planned regulation would address use of terms such as 'financial adviser'*, (23 February 2018), <https://goo.gl/rXY21F>.

²⁷² OBSI, note 115 above.

²⁷³ Seniors Roundtable, note 4 above, at pp. 8-11.

²⁷⁴ *Ibid.*, at p. 13.

²⁷⁵ CSA Staff Notice 31-336, *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations* (2014), at p. 1.

²⁷⁶ *Ibid.*

²⁷⁷ IIROC Rule 1300 *Supervision of Accounts* (IIROC Rule 1300), IIROC Rules Notice Guidance Note 12-0109 *Know your client and suitability – Guidance* dated March 26, 2012 (IIROC Notice 12-0109), Section 2.2.1 of MFDA Rules, MFDA Policy No. 2 *Minimum Standards for Account Supervision* (MFDA Policy No. 2), and MFDA Staff Notice 0069 *Suitability* (MFDA Notice 0069).

²⁷⁸ Companion Policy 31-103CP, *Registered Requirements and Exemptions* (2009), 32 OSCB (Supp-2) 264, at p. 292, <https://goo.gl/E1oX1L>.

²⁷⁹ FAIR Canada and Canadian Centre for Elder Law, note 106 above, at p. 28.

²⁸⁰ LCO, *Legal Capacity, Decision-making and Guardianship* (2017), at p. 175, <http://bit.ly/2GZ4dyF>.

²⁸¹ *Ibid.*, at p. 184.

²⁸² PIPEDA, note 263 above, s. 7(3).

²⁸³ *Ibid.*, ss. 7(3)(d.2)-(d.3).

²⁸⁴ *Ibid.*, s. 2(1). PIPEDA does state that "organization" includes "an association, a partnership, a person and a trade union."

²⁸⁵ Office of the Privacy Commissioner of Canada, *Applying paragraphs 7(3)(d.1) and 7(3)(d.2) of PIPEDA* (2017), <http://bit.ly/2EblrCu>.

²⁸⁶ FAIR Canada and Canadian Centre for Elder Law, note 106 above, at p. 76.

²⁸⁷ LCO, note 280 above, at p. 210.

²⁸⁸ Public Health Agency of Canada, *Age-Friendly Communication: Facts, Tips and Ideas* (2010), <http://bit.ly/2mkuyOw>.

²⁸⁹ GetSmarterAboutMoney.ca won the Web Marketing Association's 2017 MobileWebAward for Best Information Services Mobile Website.

If you have any questions or comments about this document, please contact:

Tyler Fleming

Director

Investor Office

tfleming@osc.gov.on.ca

416-593-8092

Denise Morris

Manager, Policy

Investor Office

dmorris@osc.gov.on.ca

416-595-8785

Doug Sarro

Senior Advisor, Research and
Regulatory Innovation

Investor Office

dsarro@osc.gov.on.ca

416-597-7236

Ontario Securities Commission

Investor Office

20 Queen Street West, 20th Floor

Toronto, ON M5H 3S8

416-593-8314

