OSGOODE
OSGOODE HALL LAW SCHOOL
YORK UNIVERSITY

INVESTOR
PROTECTION
CLINIC

4700 Keele St.
Toronto ON
Canada M3J 1P3
Tel 416 736 5538
IPC@osgoode.yorku.ca

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Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Attention: Mr. Stuart Wilkinson (stuart.wilkinson@fsrao.ca)

Re: ID 2024-002 Consultation on FSRA's Proposed Approach to Strengthening the Protection of Vulnerable Consumers

The Osgoode Investor Protection Clinic ("IPC") appreciates the opportunity to comment on FSRA's Proposed Approach to Strengthening the Protection of Vulnerable Consumers.

By way of background, the IPC, the first clinic of its kind in Canada, is dedicated to providing free legal advice and services to seek fair outcomes to harmed retail investors across the country. Since launching in 2016, we have worked with a wide range of clients who have suffered investment losses. From seniors whose adviser mismanaged their entire life savings on the cusp of their retirement to low-income investors whose advisers recommended leveraged loans, we have worked with vulnerable retail investors who need assistance in seeking redress but cannot afford a lawyer.

We are pleased to bring their voices to this consultation.

We appreciate your consideration of our comments; in the spirit of brevity, we have focused on those questions and topics that we think we can best add value to the process.

Sincerely,

Brigitte Catellier, Associate Director
Muzammil Chatha, Student Caseworker
Abilash Sathyakumar, Student Caseworker

The Osgoode Investor Protection Clinic

Question: Do you have any comments on FSRA's proposed approach to defining vulnerable consumers in Section B? Do you think it is useful to have a definition of vulnerable consumers? Are there any other factors that FSRA should consider in better understanding vulnerability in its sectors?

Defining the term "vulnerable consumers" for regulatory purposes requires a nuanced consideration of various factors to ensure comprehensive protection. The IPC applauds FSRA's non-exhaustive approach to defining vulnerability. This non-exhaustiveness can be seen as both a strength and a limitation. On the positive side, a broad definition allows for flexibility, accommodating a wide range of situations and ensuring that regulatory measures can adapt to evolving challenges. However, the absence of specific factors may hinder precision in identifying and addressing vulnerabilities effectively. FSRA may find it beneficial to complement this broad definition with supplementary guidelines or criteria that outline the specific economic, social, behavioural, or other dimensions contributing to vulnerability. This approach would strike a balance, providing a foundational definition while offering more detailed insights to inform targeted interventions and policies.

We would refer to the definition of "vulnerable client" in National Instrument 31-103 as "*a client who might have an illness, impairment, disability or aging-process limitation that places the client at risk of financial exploitation*". This definition was developed in the context of amendments to NI 31-103 to enhance the protection of older and vulnerable clients, and its scope is accordingly very narrow.

We would also note that in 2017, Quebec adopted the Act to Combat Maltreatment of Seniors and Other Persons of Full Age in Vulnerable Situations (the "Act") which includes a definition of "person in a vulnerable situation" as "*a person of full age whose ability to request or obtain assistance is temporarily or permanently limited because of factors such as a restraint, limitation, illness, disease, injury, impairment or handicap, which may be physical, cognitive or psychological in nature, such as a physical or intellectual disability or an autism spectrum disorder*". This definition includes a number of factors that may increase an individual's risk of becoming a vulnerable consumer, including more generic terms such as "restraint" and "limitation".

However, the IPC would like to bring attention to a few areas of vulnerability that are often overlooked.

Technological vulnerability:

Technological vulnerability, specifically in terms of digital literacy, is a crucial aspect that FSRA should consider when defining and addressing vulnerable consumers. In today's rapidly evolving digital landscape, where many essential services and transactions have migrated online, individuals lacking proficiency in digital skills may encounter significant challenges. Digital literacy encompasses the ability to use and navigate digital devices, understand and evaluate online information, and engage with digital platforms effectively.

Consumers with limited digital literacy may struggle to access essential services, conduct financial transactions, or make informed decisions when interacting with online platforms. This limitation can lead to financial exclusion and exacerbate existing vulnerabilities, especially as more industries and services adopt digital-first approaches.

The IPC supports FSRA's approach in creating a cross-sectoral Technical Advisory Committee on vulnerable consumers as a key enabler to enhancing the protection of consumers who are impacted by technological vulnerability. This is particularly critical in light of the rapid evolution of digitization in the distribution of financial products and services.

The Dynamic Nature of Vulnerability:

The IPC recommends that a critical emphasis should be placed on the dynamic nature of vulnerability, acknowledging personal circumstances and life events such as job loss, illness, or family changes that may temporarily intensify consumer susceptibility. A consumer who has initially been flagged as not vulnerable may still be susceptible to developing vulnerabilities over time due to various dynamic factors. Life is inherently unpredictable, and circumstances can change, leading to shifts in a consumer's vulnerability status.

The IPC recommends that FSRA guidance include a robust model to enhance the management of consumer vulnerability by regulated sectors by implementing a systematic process of monitoring, assessing, and reassessing consumers over time. This model would support consideration of dynamic factors that may contribute to the development of vulnerabilities. The IPC suggests a Assess, Monitor, and Reassess approach to classifying consumers as vulnerable[BC1] .

Initial Assessment:

Onboarding Process: Implement a more comprehensive assessment of consumers during any onboarding process to identify factors to establish an initial vulnerability profile.

Risk Scoring: Develop a risk-scoring system that takes into account various vulnerability factors. This scoring mechanism can provide an initial baseline for identifying consumers who may be at higher risk.

Monitoring:

Promote consumer self-reporting: While implementing a continuous monitoring system may pose challenges for FSRA, addressing the dynamic nature of consumer vulnerabilities is crucial. Encouraging consumers to self-report changes in their life, such as illness or job status, will assist professionals regulated by FSRA in addressing these emerging vulnerabilities.

Provide education for customer-facing professionals: It is crucial for FSRA to establish an educational program within its regulated sectors, specifically targeting professionals engaged with consumers. The educational program should delve into the intricacies of identifying and flagging suspicious consumer activities. This includes a comprehensive understanding of red flags, potential risk indicators, and the nuances of regulatory compliance. Professionals should be equipped with the tools to discern irregularities in consumer behaviour, transactions, or financial patterns, enabling them to proactively address and report any anomalies.

Regular Reassessment:

Periodic Reviews: Conduct regular reviews of consumer profiles to reassess vulnerability levels. These reviews should be scheduled at intervals or triggered by significant life events, economic changes, or shifts in market dynamics.

Feedback Mechanisms: Establish mechanisms for consumers to provide feedback on their own experiences and changing circumstances. Consumer input can be invaluable in capturing nuances that may not be evident through automated monitoring alone.

Question: If you are a consumer or consumer advocate, what should FSRA know about the experiences of vulnerable consumers?

Behavioural Insights

Behavioural insights unveil a complex web of psychological factors influencing consumer behaviour, shedding light on vulnerabilities in financial decision-making. In a regulatory context, consumers who have been harmed may experience a range of emotions and understanding these dynamics is crucial for regulatory bodies to create effective mechanisms for reporting and addressing consumer grievances.

In addressing the findings under your chart entitled "*High vulnerability groups are likelier to experience issues, but only in some sectors does this translate to more complaints*", we would offer the following insights from the IPC's experience in helping vulnerable investors through a complaint process.

Stigma and Self-Blame: Consumers may feel a sense of shame due to societal stigma associated with being a victim of fraud or misconduct. There might be a tendency to internalise the unfair outcome, leading to self-blame, as individuals may question their own judgement or decision-making abilities. This self-blame can intensify feelings of shame, making it challenging for the affected individuals to openly discuss their experiences.

Fear of Judgment: Consumers might fear being judged by others for falling victim to misconduct or fraudulent activity. This fear of judgement, whether from peers, family, or the broader community, can contribute to a reluctance to disclose the harm suffered. The perception of being seen as gullible or naive may deter individuals from coming forward, even in a regulatory environment.

Trust Concerns: Consumers might feel ashamed for having placed trust in a product, service, or institution that failed them. This breach of trust can be emotionally distressing, and individuals may hesitate to admit that they were deceived or misled. The fear of being viewed as naive or easily deceived can contribute to a reluctance to disclose an unfair outcome.

FSRA should design interventions to counteract these biases and mitigate the exposure of consumers to financial risks. Understanding the psychological thought process of investor behaviour is paramount to developing effective strategies to overcome these behavioural biases and enhance consumer protection in the financial landscape.

Plain Language Disclosure

The IPC would also recommend the promotion of plain language disclosure across FSRA's regulated sectors as a key aspect for enhancing consumer protection. The experience of vulnerable consumers when confronted with disclosure that lacks plain language is often fraught with confusion, frustration, and a heightened sense of vulnerability. When financial or legal information is communicated in complex or jargon-laden terms, individuals who may already be facing challenges due to various life circumstances, such as limited literacy skills, language barriers, or cognitive impairments, find themselves at a significant disadvantage. By adopting plain language, service providers enhance transparency and empower consumers to make informed decisions about their finances or legal matters. This is particularly pertinent for vulnerable consumers, as it enables them to navigate through complex information without feeling overwhelmed or disadvantaged. Clear communication fosters a sense of trust and reliability, crucial components in any consumer-service provider relationship.

Question: To what extent does this topic require more attention from FSRA?

Being on the frontlines of investor protection, the IPC believes that more needs to be done with regards to protecting vulnerable consumers, especially in terms of adapting to evolving market trends and new products.

Namely, the IPC has seen the following key trends in the marketplace among those seeking our services.

First, there has been a rise in Ponzi schemes that are infiltrated through community networks, including family, friends and co-workers. Many of these victims would be categorised by FSRA’s proposed definition of vulnerable consumers and are often the primary target of these schemes given the familial connection to the fraudster.

Cryptocurrency-based fraud and scams are also on the rise and pose difficult challenges for investor recovery, given the immutable nature of the payment process. The IPC has seen cases from harmed investors who are seeking repayment of funds in unregistered securities or scams that were paid through cryptocurrency. Many of these vulnerable investors are unaware of how the payments are made, what cryptocurrency and blockchain transactions are, and are coached through the process by fraudsters, and in return, are promised high returns on a unique investment opportunity.

The IPC has also observed a notable increase in cases involving digital elements within transactions and investments. This trend has been driven by the proliferation of online trading platforms, which are now more readily accessible to retail investors through mobile applications.

Additionally, vulnerable investors are increasingly targeted via digital communication channels such as social media platforms and phishing emails, often luring them with promises of lucrative investment opportunities. It is imperative for FSRA to recognize the evolving consumer landscape shaped by digitization.

This is further complicated through the complexity and variety of investment products that gained popularity in recent years. An example of this is segregated funds, where the IPC has found that clients holding segregated funds do not always have a comprehensive understanding of the product and the protective rights attached to it. Similarly, the IPC often has been posed questions about the obligations of advisors who are licensed to sell segregated funds, and their distinction from those advisors that sell seemingly similar products such as mutual funds. As new products enter the marketplace, consumers are confronted with an expanding array of investment options, leading to persistent uncertainty about the most suitable choices.

Conclusion

Different strategies will be needed to educate the targeted population of vulnerable consumers. As the definition proposed by FSRA entails, vulnerable consumers can be wide ranging. Social media has proven to be an effective tool in reaching mass audiences. Being able to flag recent emerging trends would prove to be useful in educating the broader public about new products entering the marketplace.

Another important strategy would be the implementation of more plain language disclosure for consumers. The IPC has found that many vulnerable investors do not have significant investment knowledge. Complex financial jargon can be intimidating and confusing for many retail investors. Having plain language disclosure would help improve transparency and clarity for investors as new products enter the marketplace, especially vulnerable investors. The IPC believes this would apply more broadly to vulnerable consumers.

Lastly, FSRA should also look into aggregating demographic data where possible related to vulnerable consumers. This would help develop a data-driven approach to policy making when regulators and the legislature look to draft new consumer protection laws. By employing these strategies, regulators and financial institutions can work towards fostering a more informed and empowered consumer community.