Independent Financial Brokers of Canada
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Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard Ave W, Suite 100
Toronto, ON M2N 6S6

Submitted via the FSRA website

Subject: Consultation on FSRA's Proposed Approach to Strengthening Protection of Vulnerable Consumers

Independent Financial Brokers of Canada (IFB) is pleased to comment on FSRA's proposed approach to strengthening protection of vulnerable consumers.

About IFB
IFB is a national, voluntary association whose members are licensed financial professionals. Most IFB members are regulated by FSRA in the life and health insurance sector and/or other provincial life/health insurance regulators.

Many are also securities registrants and subject to the rules applicable to the mutual fund and/or investment industry under the Canadian Investment Regulatory Organization (CIRO). Often, they have additional licenses, registrations, and credentials so they can offer clients advice on a broader range of services to better address their financial needs.

IFB provides provincial and national advocacy on issues which affect the financial services industry, business practices of our members and proposed rules and regulations, as well as professional services such as errors and omissions insurance, accredited continuing education, regulatory updates, and compliance tools.

IFB supports FSRA's work to strengthen protections for vulnerable consumers. All consumers should be confident that they will be treated fairly by those in the sectors FSRA regulates.

Our comments will be limited to the life/health insurance sector.

Comments
FSRA has indicated that its approach is focussed on two goals:

1. Promoting inclusive and fair treatment of vulnerable consumers and preventing targeted financial mistreatment.
2. Improving consumer education, engagement, and awareness building efforts.

As a general comment on point #1, we suggest that "promoting inclusive and fair treatment of vulnerable consumers" is sufficient. "Preventing targeted financial mistreatment" is captured in the concepts of inclusion and fair treatment. If FSRA wants to point out that targeted financial mistreatment is a concern, it could use it as an example of not meeting the standards of inclusion and FTC.

A comprehensive national approach to treating vulnerable individuals fairly will be the most effective.
We agree that it is important for FSRA to conduct research to better understand how its regulated entities in Ontario deal with the challenges of serving vulnerable consumers, as well as the level of satisfaction experienced by those who may be viewed as vulnerable. However, we also note that there is a considerable body of evidence available that identifies the challenges and possible measures to protect these individuals. As an example, Quebec has published guidance for financial sector representatives and more recently the Canadian Securities Administrators (CSA) published guidance for the investment industry, which has been adopted by CIRO for its registrants. Many life/health insurance advisors are also mutual fund registrants. Many are life licensed in multiple jurisdictions. The issues are the same, yet life/health insurance licensees have no specific guidance to help them deal with these difficult situations. We believe that consumers, including vulnerable consumers, are best served by a national strategy, similar to that available to securities registrants, and that they align wherever possible. As a member of the CCIR, FSRA can work to promote this goal.

Consumer protection is best enhanced by FSRA partnering with the life insurance industry to support vulnerable individuals and communities.
In our view, to successfully address the needs of vulnerable consumers, or vulnerable groups, there must be a partnership between those who provide advice/services and regulators. One reference to 'financial mistreatment', appears to be linked to the results of an investigation into the sales strategy at several MGAs. This implies a widespread concern and that there exists a negative relationship between the best interests of life insurance customers and their advisors. While we don't want to undervalue the results of this investigation, which did uncover some disturbing trends, it also is evident that FSRA has the regulatory authority to undertake enforcement action, which it has done. Mistreatment by registrants was raised by a commenter in the CSA consultation when it was drafting proposed vulnerable client amendments. To which the CSA responded: *The Amendments do not address circumstances where a vulnerable investor is exploited by a registered individual, registered individuals are subject to conduct requirements under securities laws, which include the requirement to deal fairly, honestly and in good faith with their clients.*

What is lacking for advisors is a framework to help them understand when they should report such instances, where to report them, and to do so without regulatory repercussion. For example, without violating privacy considerations. Turning back to the research, studies find that most instances of financial mistreatment or exploitation are the result of actions taken by family members or close associates. A report by the AARP on the scope of elder financial exploitation noted that 72% of losses arise from fraud by people the victim knows. These cases, where an individual is victimized by someone they know, are also less likely to be reported to authorities. In these cases, perpetrators familiar to the victim often gain direct access to funds for example by attaining joint ownership or power of attorney status on their victims' accounts.[1]

IFB members are on the forefront of dealing with clients, often meeting them face-to- face and in their own homes. This provides them with opportunities to identify possible red flags. However, they need appropriate tools and guidance, so they know how respond to situations where they suspect (or know of) instances where the client is under stress, perhaps from financial abuse or increasing diminished mental capacity.

IFB is familiar with the frustration and has seen firsthand the care and concern members have for their clients under these circumstances. For a number of years, IFB has offered educational sessions, led by experts in the legal (trust & estates) and mental health fields. These sessions focused on the complex situations advisors encounter and advice for those facing such instances. It has been our experience that advisors freely share the many difficult situations they find themselves in and their desire to protect their clients but often lack the knowledge of where to turn. Advisors in these difficult situations often face uncertainty between wanting to do the right thing for their client and not knowing the acceptable boundaries of appropriate action or who to communicate their concerns to.

FSRA needs to work with the life insurance industry by addressing these gaps, while recognizing that they are not trained mental health professionals. There is a clear, and growing, need for better information, tools and training for advisors and firms in this area. One such tool would be to have the client name a Trusted Contact Person (TCP), as is in place for the securities industry. IFB has, in past submissions to the CSA, encouraged it to work alongside the CCIR, so that clients who have life insurance and investments with the same advisor have similar protection. If an advisor is concerned about the client being financially exploited or having diminished capacity, there should be a standard protocol to follow for that client's account regardless of the type of investment.

Training and education are key elements to the success of any program to protect vulnerable consumers. Advisors, and the life insurance industry at large, need to be equipped to recognize red flags, understand appropriate next steps and where to report suspected instances, while having the comfort that they have acted in accordance with regulatory expectations and exercised their concerns in good faith and with reasonable care, safe from liability. In its 2020 comments to the CSA consultation, IFB recommended that the CSA include a safe harbour provision that would allow advisors and firms to report these situations without regulatory or civil liability. The importance of advisors who can act in their client's interests is illustrated by a study by the FINRA Investor Education Foundation which found that more than half of the people who reported a third-party intervention from a bank employee or financial service company were able to avoid losing money. For example, an intervention by the advisor or the firm at the time of a large withdrawal which created suspicion.

Other considerations

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[1] Office of the Investor Blueprint. CIRO. November 2023. Page 10.

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FSRA should consider whether there are specific risks for consumers who purchase insurance online without the advice of an advisor, where there would be no personal contact and no ability to assess a client's vulnerability.

FSRA should address vulnerability in view of the nature of life insurance products, which are often held for many years, even decades. For example, the policyholder was not vulnerable at the time of sale, but personal or other circumstances may have changed.

FSRA and insurer contact centre staff should receive training on how to assist vulnerable clients or set up a specific help line with a specific individual appointed for vulnerable customers to contact and/or get questions answered. This would provide an alternative, as some clients may not want to disclose their concerns to their advisor or insurer. This would also provide FSRA and insurers with the opportunity to track this information and make decisions or policies based on these metrics.

In summary, IFB agrees that this is an important topic. We recommend FSRA work toward a harmonized national approach that would align with the securities industry where possible. We recommend that FSRA partner with its life licensees to better support and protect vulnerable consumers by developing guidance and best practice tools, as well as making educational resources (such as can be found on the OSC website) available.

There is no doubt that the risks for consumers to experience short-term situations of vulnerability , or enter into a longer term of vulnerability will continue to rise as a result of the lingering effects of the pandemic (e.g. on mental health), high interest rates, increased immigration, high debt and an aging population.

IFB appreciates the opportunity to provide our comments to FSRA and trust they will be helpful as FSRA proceeds to develop a more specific consultation document.

Please contact the undersigned, or Susan Allemang, Director, Policy & Regulatory Affairs (E: sallemang@ifbc.ca) if you have questions.

Yours truly,

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