

FSRA's Proposed Approach to Strengthening Protection of Vulnerable Consumers

03/04/2024

General Comments

The Canadian Bankers Association (**CBA**)¹ appreciates the opportunity to provide input on FSRA's Proposed Approach to Strengthening Protection of Vulnerable Consumers (**Proposed Approach**).

Our members appreciate the importance of identifying opportunities to do more in protecting vulnerable consumers. For many years, banks in Canada have worked collaboratively as an industry and with regulators towards achieving similar goals for their customers. We are therefore supportive of the overall objectives of the Proposed Approach. We would be happy to assist FSRA in this effort by sharing information about how our members have worked to meet the unique needs of vulnerable consumers. We provide an overview of this information in our response to Question 3 below.

In terms of how the Proposed Approach should be applied to the Financial Planner/Financial Advisor (**FP/FA**) sector, we note that as federally regulated financial institutions (**FRFIs**), our members and the financial professionals they employ are subject to existing federal banking and provincial securities regulatory requirements, credentialing body standards of professional responsibility and codes of conduct, and oversight designed to protect consumers, including specific measures regarding vulnerable consumers. In addition, for the FP/FA sector, FSRA's statutory mandate was expressly designed to avoid overlap with existing regulatory regimes and as a result, is focused on ensuring the appropriate use of the FP/FA titles rather than creating conduct standards for individual FPs/FAs.²

¹ The Canadian Bankers Association is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals.

² The duty of credentialing bodies (**CBs**) to oversee the conduct of FPs/FAs is established by the *Financial Professionals Title Protection Act, 2019*, s. 5 and the *Financial Professionals Title Protection Rule*, paragraph 4(1)(d). See also [FSRA's response to stakeholder feedback on the initial FP/FA Rule Consultation in 2020](#): "FSRA's intent is to include SROs as approved CBs under the framework. This would drive regulatory effectiveness and efficiencies for both title users and approved CBs, and should mitigate any potential duplication between the SROs and other approved CBs. **In particular, the framework does not introduce new conduct standards for firms and individuals registered with the Investment Industry Regulatory Organization of Canada (IIROC) or the Mutual Fund Dealers Association of Canada (MFDA).** [Emphasis added].

We believe this is the correct approach for the FP/FA sector as it helps avoid creating unnecessary duplication and imposing undue regulatory burden on entities and individuals that are already highly regulated and subject to robust regulatory oversight. We would urge FSRA to take a similar approach when considering the need for any new regulatory requirements regarding vulnerable consumers in the FP/FA sector.

Our responses below are focused on the consultation questions that are most relevant to the FP/FA sector. We have numbered the questions for ease of reference.

Specific Consultation Questions

1. **To what extent does this topic require more attention from FSRA? In addition to the activities proposed in the chart under Section A, are there any additional activities, such as outlining a set of expectations or defining specific requirements for entities across all of its regulated sectors, that FSRA should consider for its approach to strengthening protection of vulnerable consumers?**

From a cross-sector perspective, we believe that this is an important topic for FSRA to focus on, especially as Ontarians are living longer and as the risk of becoming financially vulnerable increases. We are supportive of the activities listed in the chart under Section A of the Proposed Approach as they recognize the importance of engagement with all stakeholders and other regulators, and the need to ensure that policy decisions are evidence-based.

We do not have suggestions for additional activities to be added to the Proposed Approach and believe that identifying specific requirements for the FP/FA sector is not necessary, in light of existing regulatory requirements and oversight applicable to both the retail banking and securities-related activities undertaken by entities and individuals in the sector.

Retail Banking Regulatory Regime

With respect to retail banking, this includes oversight from the Financial Consumer Agency of Canada (**FCAC**) and requirements set out in the FCAC's *Guideline on Appropriate Products and*

Services for Banks and Authorized Foreign Banks, including the following requirement:

When establishing and implementing Policies and Procedures [to ensure that the products or services in Canada that a Bank offers or sells to a person are appropriate for that person], **a Bank should recognize that consumers are a diverse group, and that some consumers may have financial vulnerabilities.** Policies and Procedures should be comprehensive and result in a Bank offering or selling products or services that are appropriate for consumers, having regard to their circumstances, including their financial needs.³

In addition to the above overarching requirement, under the auspices of the FCAC, Banks have also made a number of public voluntary commitments and committed to several voluntary codes of conduct aimed at protecting consumers. Compliance with these codes and commitments is monitored by the FCAC. This includes commitments that help better protect vulnerable consumers, such as the following:

- The *Code of Conduct for the Delivery of Banking Services to Seniors*⁴ (**Seniors Code**), committed to in 2019, which establishes principles that apply to banks to guide them when they deliver banking products and services to Canada's seniors.
- The 2014 *Commitment on Powers of Attorney (POAs) and Joint Deposit Accounts (JDAs)*,⁵ which specifies the information banks will provide to clients to help them understand the implications of using POAs and JDAs.

Securities Law Regulatory Regime

With respect to securities law, there have been important recent reforms specifically aimed at better protecting vulnerable consumers. These reforms and the business conduct regulatory oversight provided by securities regulators is directly relevant to the FP/FA sector – i.e., anyone

³ [Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks - Canada.ca](#)

⁴ [Code of Conduct for the Delivery of Banking Services to Seniors](#) (2019).

⁵ [Commitment on Powers of Attorney and Joint Deposit Accounts](#) (2014)

using the FP/FA title that is a securities registrant is already subject to this regulatory oversight.

These reforms include requirements for registered firms and individuals to take reasonable steps to obtain the name and contact information of a client's trusted contact person (**TCP**), as well as the client's written consent to contact the TCP in prescribed circumstances where there are concerns related to financial exploitation or mental capacity.⁶

These reforms also established a framework under which registered firms and individuals are permitted to place a temporary hold on client transactions and accounts in specified circumstances involving financial exploitation of a vulnerable client or concerns with respect to mental capacity.⁷

Finally, securities regulators, including the Ontario Securities Commission, have established well-developed resources to assist registered firms and individuals to address the needs of vulnerable consumers.⁸

2. 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?

In our view, defining vulnerable consumers is a necessary component of the Proposed Approach as it will help determine the scope of FSRA's work on this issue. That being said, in the interest of promoting regulatory harmonization across different jurisdictions and sectors, we would urge FSRA to consider aligning with existing regulatory definitions of related concepts where appropriate.

Another key factor to consider is whether to adopt a relatively broad definition of vulnerable consumers, or one that is narrower in scope. From a legal and compliance perspective, we believe that a narrow definition is appropriate when developing new regulatory requirements.

⁶ [National Instrument 31-103](#), s. 13.2.1.

⁷ *Ibid.*, s. 13.9.

⁸ [Working with older and vulnerable clients | OSC](#)

This is because a narrow definition tends to provide a greater degree of certainty to the entities and individuals that would be tasked with complying with regulatory requirements. For example, NI 31-103 includes the following relatively narrow defined terms:

- **“vulnerable client”** means a client who might have an illness, impairment, disability or aging process limitation that places the client at risk of financial exploitation.
- **“financial exploitation”** means the use or control of, or deprivation of the use or control of, a financial asset of an individual by a person or company through undue influence.

We recognize that in some cases, a broader definition, such as the one set out in the Proposed Approach, might be more appropriate. For example, when conducting research related to vulnerable consumers, a broad definition of the concept might be best to help ensure that all valid avenues of inquiry are considered.⁹

3. If you are from one of FSRA’s regulated sectors, what should FSRA know about how you, your firm, or your industry serves marginalized, underserved, and/or vulnerable consumers? For example, do you have any targeted programs or communications tactics or controls in place to reduce risk of unfair outcomes for these groups?

The CBA’s members are committed to serving and enhancing the customer experience for all Canadians, including marginalized, underserved, and/or vulnerable consumers. The following are some examples of the efforts undertaken by our members to minimize the risk of unfair outcomes for these groups:

- **Increasing access to financial products and services for vulnerable populations:**
 - Offering low- and no-fee banking products.
 - Serving Indigenous Peoples who have unique financial needs, both on and off reserve, including dedicated Indigenous banking teams. Assisting newcomers to Canada through specialized programs designed to facilitate their access to

⁹ The broad vs. narrow approach to defining vulnerability is articulated well by the MFDA in a recent research paper: [Vulnerability and Financial Advice: A Broader Look at the Factors That May Increase the Risk of Client Vulnerability \(mfda.ca\)](https://www.mfda.ca/en/research-and-publications/vulnerability-and-financial-advice-a-broader-look-at-the-factors-that-may-increase-the-risk-of-client-vulnerability), see especially pages 3 and 4.

credit and provide easier access to international money transfers.

- Small and medium sized business lending programs designed to remove barriers where they may exist and provide equitable and inclusive lending solutions to underserved populations, including micro loans.
- Accessibility policies, plans and accommodations to promote inclusive and accessible banking for persons with disabilities.

- **Strengthening financial literacy:**

- Tools and resources to help customers track expenditures, set budgets, monitor anomalies in spending habits and identify savings opportunities.
- Fraud awareness tools, alerts, advice and resources tailored for seniors, as well as training for bank staff to better respond to the needs of older adults.
- Digital literacy tools to help customers that may be new to online and digital banking.
- Collaborating with other organizations to extend financial literacy access for specific customer groups that may be more financially vulnerable.

- **Community Engagement and investment:**

- Commitments to make community engagement and investments aimed at strengthening economic resilience among financially disadvantaged people and underserved communities.
- Partnering with local organizations to sponsor events tailored to underserved communities, providing a forum to discuss insights and strategies for making informed financial decisions.
- Scholarship programs for disadvantaged individuals and groups.

- **Cultural Competency and Inclusivity Training:**

- Training, resources and job aids to assist staff dealing with vulnerable customers.

- **Transparent and Plain Language Communications:**

- Banks prioritize using clear, transparent, and accessible information for customers. This includes providing information in multiple languages, using plain language that is not misleading, and offering tailored advice that considers the individual's financial situation and needs.

4. What additional information, (such as leading practices, tools, opportunities or risks) should FSRA be considering to inform its approach?

Consistent with the Proposed Approach, we would encourage FSRA to engage with the Canadian Securities Administrators and related committees to leverage their extensive experience on this issue and to help avoid unnecessary duplicative efforts. This would include, for example, engaging with the Ontario Securities Commission's Seniors Expert Advisory Committee.

We thank you for taking the time to consider our views regarding the Proposed Approach and trust that you will find these comments helpful. We would be pleased to discuss our comments further at your convenience.