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Delivered By Email: (fcnb@fcnb.ca)

Seniors Initiative Committee
C/O Deborah Gillis
Financial and Consumer Services
Commission
85 Charlotte Street, Suite 300
Saint John, NB E2L 2J2

Dear Ms. Gillis:

RE: FCNB Consultation Paper - November 2017: *Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick (the Paper)*

I am writing in response to the above consultation paper on behalf of the members of the Investment Funds Institute of Canada. IFIC's 150 member organizations include mutual fund and ETF fund managers, distributors and industry service organizations, many of whom have clients and business operations in New Brunswick.

We commend the Financial and Consumer Services Commission of New Brunswick for recognizing the rising need to address the impact of cognitive decline and financial abuse on older Canadians and support many of the observations and proposals set out in the Paper.

Cognitive decline, financial exploitation and financial fraud are top-of-mind issues for IFIC members as the percentage of older investors increases. As the Paper notes, financial advisors often are the first to spot the warning signs of financial abuse. Research shows that financial decision-making is the earliest set of skills to decline¹, suggesting that advisors may be among the first to observe signs of cognitive impairment or disease in their clients.

In 2015, IFIC created the Vulnerable Investors Task Force, which now includes representation from industry, regulators (including the FCNB), investor advocates and an elder law expert. We are pleased to see priorities identified by the task force reflected in the Paper.

We offer the following comments in response to the themes set out in the Paper.

Theme 1: Opportunities for legislative change

- Introduce legislated “safe harbour” provisions for financial advisors and dealers. Several IFIC dealer members have raised the need for greater certainty when it comes to steps they can take to protect their clients when the advisor or dealer firm suspects financial abuse. As more than one dealer member has explained, it sometimes comes down to deciding which rule to break—do they refuse to execute instructions immediately, or do they breach privacy by reaching out to a known third party. This is an unsatisfactory choice for the advisor, the dealer, and the client. Faced with potential financial abuse or exploitation, dealers regularly err on the side of their client's interests

¹ [Declining financial capacity in mild cognitive impairment: A 1-year longitudinal study](#). Triebel KL, et al, *Neurology*, 2009

by placing a hold on the funds until they are able satisfy themselves that their client is not at risk. Financial advisors and dealers seeking to do the 'right thing' by their clients deserve to have clear guidance to follow.

- The North American Securities Administrators Association (NASAA) recognized this gap and has developed model legislation. It includes mandatory reporting, a fifteen-day holding period and immunity from civil and administrative liability for reporting, notifications and delays. As the Paper notes, combining mandatory reporting and immunity creates a "safe harbour" for those who report suspected abuse. For reasons described below, the mandatory component of the NASAA model rule may present challenges for Canadian jurisdictions. We also recommend a more inclusive approach to creating "safe harbour", one that firms and advisors could rely on to delay acting on instructions from clients suffering from cognitive impairment or dementia.
- Several U.S. states have already adopted the NASAA guidelines. The U.S. Financial Industry Regulatory Authority (FINRA) has also recognized the need. Effective February 5, 2018, firms that reasonably believe financial exploitation may be occurring may place temporary holds on disbursements of funds or securities from the accounts of the potential victim. The FINRA rule sets out the steps and timelines firms must follow once a hold has been initiated.
- Mandate firms to make a "reasonable effort" to obtain the name of a trusted contact as a safeguard against misuse of power by a power of attorney. The concept of a trusted contact is a recognized best practice and is especially useful when a firm suspects that a power of attorney is responsible for financially exploiting a donor. The government should provide guidance as to what constitutes "reasonable effort". Firms should be permitted to proceed with an account opening when a client refuses to provide a contact name.

Theme 2: Reporting Suspected Financial Abuse

- One of the biggest deterrents to reporting financial abuse and exploitation is the lack of resources to respond to suspected cases. Dealers cannot put an indefinite hold on a client's funds and dealers are not authorized or equipped to conduct investigations into exploitation or a client's decision-making capacity themselves. Firms can contact the police when they suspect financial fraud, but there is no agency firms can turn to with confidence about cognitive decline or exploitation by a power of attorney, family member or caregiver.
- The NASAA and FINRA approaches take into account the presence in most states of an Adult Protective Services agency – agencies mandated to investigate reports and provide intervention and protection to vulnerable adults who are victims of abuse, neglect, or exploitation. The mandates of these agencies include financial abuse. Canadian provinces generally do not have equivalent bodies. This gap presents an opportunity for government to take leadership by creating and promoting an entry point for reporting, backed up by knowledgeable staff who are able to complete a timely investigation.
- Clear definitions of financial abuse and financial exploitation in the Family Services Act and other relevant legislation would also support better reporting. Clear definitions would help dealers institute policies for reporting of suspected abuse or exploitation. They would help financial advisors evaluate their concerns about a client's situation and communicate their concerns to clients and others. We note that FINRA uses the broader term of financial exploitation in its Rules (4512 and 2165):
 - *The wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or*
 - *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 (i) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or (ii) convert the Specified Adult's money, assets or property.*

Theme 3: Improving Best Practices for Industry

IFIC members identified the need for training as a high priority. In response, IFIC is developing a toolkit to help educate advisors. The content of the toolkit has input from IFIC members, regulators and investor advocates as well as subject matter experts. IFIC expects to launch the advisor toolkit in June and will make it available to any interested party who wishes to use it. The toolkit combines text, slide and web-based formats and includes:

- information on changing demographics and prevalence of cognitive decline and fraud involving older investors
- the signs of cognitive decline, financial exploitation/abuse, and financial fraud
- the role and responsibilities of the advisor as well as regulatory, legal, and privacy requirements they and their firm must consider
- steps advisors can take to educate clients who are still fully cognizant about the potential for declining capability in their later years and to create a plan for continued management of the client's financial affairs
- case studies
- guides for managing difficult conversations about cognitive decline with clients
- checklists and tip sheets.

In response to the Paper's question as to whether such training should be mandatory, IFIC agrees that it would be appropriate to include a basic level of training on the signs of cognitive decline and best practices into core credentialing curricula. IIROC and the MFDA (once its CE credit rules are in place) should consider criteria that might trigger a requirement for CE credits on cognitive decline and financial exploitation, e.g. a percentage of the advisor's clients over the age of fifty.

Theme 4: Collaboration, Safeguarding and Inter-Agency Cooperation

As stated above, government has an important opportunity to provide leadership on this issue. A successful outcome will require all the impacted stakeholders—government, regulators, law enforcement, social services, elder law experts, health services providers, seniors' advocates. Each group has its role, but members of the financial services industry are on the front line for this emerging issue and must be engaged in all aspects of developing solutions.

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Thank you for the opportunity to provide our recommendations. We would be pleased to elaborate on or discuss any of them with you further.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Paul C. Bourque, Q.C, ICD.D
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