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CANADA'S INVESTMENT INDUSTRY: PROTECTING SENIOR INVESTORS - *Compliance, Supervisory and Other Practices When Serving Senior Investors*

Background and Acknowledgment: This Guidance Report ("Report") is derived from the September 22, 2008 report "Protecting Senior Investors: Compliance, Supervisory and other Practices used by Financial Services Firms in Serving Senior Investors" that was jointly prepared by the Securities and Exchange Commission's Office of Compliance Inspections and Examinations, the North American Securities Administrators Association, and the Financial Industry Regulatory Authority Inc., as subsequently updated by a joint 2010 addendum dated August 12, 2010.[1]

This Report represents a compendium of various best practices identified across a variety of firms. The IIAC expects that member firms can draw upon this document as appropriate, depending on each individual firm's business and structure.

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1 See "Securities Regulators Publish Updated Best Practices for Firms Serving Senior Investors": http://www.sec.gov/news/press/2010/2010-147.htm

Introduction and Executive Summary

Seniors seeking financial advice, guidance and services for their retirement years represent a significantly increasing proportion of clients as a result of changing demographics, and this trend will continue for the foreseeable future. Dealing with retail clients who are seniors gives rise to issues and considerations of which investment industry participants providing retail advisory and managed account services should be cognizant.

The purpose of this document is to encapsulate key considerations and best practices for dealing with a client base that is increasingly aging, with a focus on protecting senior investors and related supervisory, compliance and other practices when serving senior investors. This is not intended as a "checklist" of actions which should be taken. Each firm is encouraged to consider its own client demographics, business model, service and product offerings and draw upon this discussion as appropriate.

There has been widespread public discourse about the overall aging of the Canadian population. The first "baby boomers" (generally defined in Canada as those born between 1947 and 1966) turned 65 in 2012 and demographic studies indicate that nearly one in four Canadians will be 65 or older by the year 2036.[2] The 2011 Census counted just under 5 million Canadians as being aged 65 and older (almost 15% of the population). In addition, we are living longer than ever before, with life expectancy having increased dramatically over the last century to 78 years for males and 83 years for females in 2005. This is anticipated to further increase to 82 and 86 years respectively by 2031.[3]

In canvassing a broad cross-section of IIAC members, there was a common consensus that there are very few issues which can be characterized as unique to seniors. However, there was an equal consensus that certain considerations which can apply to any client are far more likely to impact seniors than any other demographic segment. For instance, considerations for dealing with a client with diminished capacity can apply across any age group. This Report focuses on the issues which are more likely to be encountered amongst seniors and should be emphasized for that demographic. However, we encourage all firms to apply similar standards to clients of any age who may be in like circumstances.

Another common conclusion was that there is no common investment approach or standard that is universally applicable to all seniors. The population of seniors is incredibly diverse, encompassing the highest net worth individuals in the country to the poorest, and there is no universally applicable guidance which can be applied to all of them. However, the number of Canadians who have a guaranteed source of retirement income (whether through a pension plan, significant financial assets or otherwise) to the extent they are not concerned about the effect of investment performance on their retirement income is

2 Population Projections: Canada, the Provinces and the Territories, The Daily, Statistics Canada, May 26, 2010: http://www.statcan.gc.ca/daily-quotidien/100526/dq100526b-eng.htm

3 Canadian Demographics at a Glance, Catalogue no. 91-003-X, Statistics Canada, January 2008: http://www.statcan.gc.ca/pub/91-003-x/91-003-x2007001-eng.pdf

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limited. Most are concerned about when they will be able to retire and whether their income in retirement will be sufficient to meet their needs, expectations and aspirations.

A commonly expressed theme found across IIAC members who assisted in drafting this Report was the fallacy of attempting to view seniors as a homogeneous group, with common characteristics and issues uniquely attached to that demographic. Instead, the prevalent view was seniors are a very diverse group and considerations relevant to them apply generally to many investors of any age. However, there was recognition that some general statements can be made in relation to considerations which are particularly significant and prevalent amongst seniors:

- With limited exceptions, seniors have limited ability to replenish capital losses through future income from other sources. Extra caution should be exercised when dealing with seniors engaged in higher risk investments or strategies, or who deplete capital through withdrawals that exceed returns (other than through RRIF withdrawals or similar programs). This includes using margin or other leveraged investment programs.
- Unrealistic client expectations for investment income inconsistent with a low risk tolerance (preservation of capital) may be one of the most daunting challenges presented. This is particularly the case for seniors facing disconcerting realities, including: inability to maintain desired expenditure levels without depleting capital; a need to work longer than anticipated; and dependency on family members and others rather than self-sufficiency. Clients' fears and uncertainty about their future financial situation and life circumstances can be strong behavioural influences in their investment activities.
- Seniors are more susceptible to physical (e.g. hearing, vision) and cognitive (e.g. memory, context) impairments which need to be accommodated.

These considerations heighten the importance of industry participants providing objective, considered and professional advice, even if it may be contrary to what clients hope to hear.

Securities regulators and investment industry participants view protection of senior investors as a top priority. While securities regulators have long focused on the senior population and its particular vulnerability to fraud and abuse, changing demographics have amplified that attention. For instance, the Investment Industry Regulatory Organization of Canada ("IIROC") has identified seniors' issues as a strategic compliance examination and enforcement priority.[4]

This Report summarizes practices used by investment dealers and advisors in serving senior investors in the following areas:

[4] For instance, see the IIROC 2011-2012 Annual Report "Raising the Bar" at p.4 and p.13: http://www.iiroc.ca/news/Documents/IIROC_AR_2012_EN.pdf and "IIROC Focuses on Suitability of Investments for Seniors", Financial Post, April 14, 2011: http://business.financialpost.com/2011/04/14/iiroc-focuses-on-suitability-of-investments-for-seniors/

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- Getting started: how firms are thinking of ways to remodel their supervisory and compliance structures to meet the changing needs of senior investors;
- Communicating effectively with senior investors;
- Training and educating firm employees on senior-specific issues (such as how to identify signs of diminished capacity and elder abuse);
- Establishing an internal process for escalating issues and taking next steps;
- Encouraging investors of all ages to prepare for the future;
- Advertising and marketing to senior investors;
- Obtaining Know-Your-Client ("KYC") information at account opening and updates based on life changes,[5]
- Ensuring the suitability of investments; and
- Conducting senior-focused supervision, surveillance and compliance reviews.

By sharing this information, we hope to provide practical examples to firms that are seeking to strengthen their infrastructure to assist them in working with senior investors in an ethical, respectful and informed manner. This Report does not create or modify existing regulatory obligations with respect to senior investors. It also does not catalogue the full range of compliance practices applicable to senior investors. Rather, it focuses on specific, concrete steps that firms are taking to identify and respond to issues that are common in working with senior investors. By sharing this information, we also hope that investment dealer firms will continue to identify and implement additional practices to help ensure the industry continues to consider the particular needs of senior investors.

1. THE CHALLENGES

Any discussion about seniors raises the obvious question of who, exactly, is a "senior investor"? Because investors of any age do not necessarily share the same characteristics, investment objectives, risk tolerances or financial profiles, any definition of the term "senior investor" would be either under-inclusive or over-inclusive. 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.

As a result of societal and legislative changes, Canadians are no longer compelled to retire at age 65.[6] Increasingly, individuals may retire earlier or continue to work well past that age. There has also been a trend for people to increasingly "transition" into retirement over what

[5] Generally, "life changes" and "life stage" can refer to the key milestones in an investor's life, such as marriage, buying a home, saving for children's college education, preparing for retirement and retirement.

[6] For instance, federal government retirement income programs have undergone significant revisions in recent years to reflect the variability of when retirement starts for different individuals. Notable amongst these changes is the well-publicized 2012 Budget change to extend the eligible age to receive the Old Age Supplement ("OAS") from age 65 to age 67 on a staged basis starting in 2023 and ending in 2029. It was also noted that the Canada Pension Plan provides the flexibility to begin taking benefits as early as age 60 and as late as age 70, albeit with implications to the amount of pension received.

can be an extended period of time.

Further complexities in the definition arise from numerous other considerations, including the relevancy of established pre-conceptions about how seniors should invest in light of increasing life-spans[7] and whether the investor's investment objectives encompass inter-generational considerations; either through investible assets to be passed on to succeeding generations, philanthropic purposes or otherwise.

Thus, the IIAC does not define "senior investor" by reference to a specific age, but rather we use the term to include investors who have retired or are nearing retirement. For these reasons, 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. However and as discussed below, from a practical perspective firms may want to adopt a specific age definition to assist in applying internal policies and procedures using an easily measurable criterion to identify clients warranting heightened attention for supervision of seniors issues. For instance, the IIROC Enforcement Department categorizes anyone 60 or older as a senior.

Despite these complexities, a client's age and life stage are critical components of an investor's KYC profile and firms cannot meet their regulatory obligations without considering these factors. One of the most effective techniques identified to achieve that objective is through skilled and knowledgeable advisors who apply a robust KYC process and regularly revisit recorded KYC information and the related advice and strategy with clients.

There are certain issues and challenges that many firms commonly encounter in working with senior investors while recognizing what a divergent demographic senior investors represent. Some of the identified issues and challenges include:

- Physical and cognitive impairments, such as diminished mental capacity. Often there is no sudden onset and advisors and firms are confronted with the daunting task of determining the point in time where gradual degeneration has become an issue.
- Being particularly cognizant of predatory or otherwise inappropriate recommendations or advice which could be perceived as taking advantage of vulnerable senior clients or improperly capitalizing on their fears and uncertainties.
- With limited exceptions, retirees are unable to replenish their accumulated capital through income from other sources. This extends to the appropriateness of converting investments subject to market fluctuations and risk to guaranteed income vehicles, with the associated costs and trade-offs.
- Heightened concern over the potential personal impact of future unknowns, including client specific outcomes such as health considerations and life expectancy and the impact of macro factors such as market returns, inflation, government retirement programs and taxation.

[7] For instance, a retiree at age 65 might have an investment time horizon of 20 years (using average life expectancy) or double that (based on maximum life expectancy).

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- Balancing the individual client's potential future financial needs with the client's desire to fund dependents and others upon their death, including family members and charitable causes. This includes the complexity arising from succession planning through wills, estate, trust and tax planning.
- Client determinations on whether to remain a participant in an employer defined benefit pension plan or accept the option of payment of a lump sum commuted value.
- The use of leverage or margin by seniors seems to give rise to a regulatory presumption that it is inappropriate and unsuitable, even if that is not the case.
- The use of Deferred Sales Charge (DSC) commission product sales to seniors seems to give rise to a regulatory presumption that it is inappropriate and unsuitable, even if that is not the case.
- The death or incapacity of a spouse can fundamentally impact the investment relationship, particularly if the other spouse had little or no involvement in the household's financial management.
- Statistics encompass averages and probabilities, while each client is unique. The age at which a person dies can be far above or below the statistical mean. Similarly, should it happen, a diagnosis of a long-term chronic illness is an all or none measure, not a statistical probability.
- Some senior investors may be forced to confront harsh realities about their expectations for retirement, whether in terms of retirement age, lifestyle, leaving a financial legacy for their heirs or otherwise.
- Non-investment specific considerations, such as tax, seniors' government benefits and estate planning can quickly become key aspects of the investment relationship. For instance, a client with significant unrealized capital gains may abruptly recognize that transitioning to a more conservative portfolio will trigger significant capital gains tax liabilities and reduced eligibility for government benefits.
- Family members and other interested parties may become increasingly engaged in a client's financial affairs. In the vast majority of situations, this is of significant assistance since the objective of that involvement is the client's betterment and well-being. However, in rare situations, concerns may arise about whether the engagement is self-serving and directed to personal enrichment.
- The compliance and legal risks, complexity and costs associated with handling seniors' accounts can be significant. Advisors and firms may inadvertently be drawn into complex family matter disputes. One example cited was the interposition of a new third party into an account relationship as the result of a personal relationship with the client that other family members objected to. Another example identified was legal responsibilities when acting on so-called "deathbed" requests to transfer accounts to joint ownership to avoid probate taxes or liability for acting on purportedly valid legal powers of attorney.

- Advisors and firms may administratively overlook obtaining updated account documentation, including new KYC information and Power of Attorney/Trading Authority forms upon the death of a spouse.
- After-the-fact adjudication of disputes and complaints involving senior investors can be difficult. The client, regretfully, may no longer be alive or capable of providing a statement and, as a result, assertions can be made by other interested parties (e.g. beneficiary, estate trustees) about what "should have" been done. Documentary evidence of numerous and complex interactions can be critically important in such cases.
- For several of the above reasons, older investors may be more frequent targets for financial abuse. This can come from unknown third parties, community members, friends and relatives. Advisors and firms should be aware of the issues, but are limited in their ability to prevent clients from being financially taken advantage of by third parties.
- Providing retirement financial advice and solutions that take into account the complexity of various government retirement income program entitlements (e.g. Canada Pension Plan ("CPP"), Old Age Supplement ("OAS") and Guaranteed Income Supplement ("GIS")) and taxation considerations at various life stages.

Some of those issues relate to meeting regulatory obligations, such as assessing the suitability of an investment for investors at different stages of life, or marketing retirement products to investors who are at or near retirement age. Other challenges, such as recognizing the signs of diminished capacity or financial abuse, are not unique to the investment industry. We have included in this Report examples of various steps firms are taking to address these challenges because firms indicated these issues are becoming increasingly common, and are of concern to the investment industry. Ultimately, investors will benefit when investment dealer firms consider and address these challenges in a proactive manner.

The following scenario, along with others provided in this Report, illustrates some of the challenges that firms face when working with senior investors and demonstrates the importance of taking steps to implement a program to address these issues.

Mr. Investor is a 76 year old widower. Adam Advisor has handled his investment portfolio for 25 years. His investment objective for the last 10 years has been to generate income. Recently, Mr. Investor told Adam Advisor that he wanted to generate higher returns from his account, and to change the beneficiaries on his RRIF and Trust account from his children to his sister-in-law. Adam Advisor also began to notice that Mr. Investor didn't always return his telephone calls, which was unusual, as they spoke regularly over their 25 year relationship.

Adam Advisor is concerned about altering the investment strategy to take on more risk and also about changing the beneficiary of Mr. Investor's account under these conditions. Adam Advisor wonders what, if anything, he should do next.

2. PRACTICES USED BY FINANCIAL SERVICES FIRMS IN SERVING SENIORS

Many firms indicated they have implemented and are implementing new processes and procedures aimed at addressing common issues associated with their interactions with senior investors. The fact that these initiatives are not directed at seniors per se and typically focus on retirement and retirees was a common theme. Some firms indicated they considering a full range of issues, such as: how to communicate effectively with senior investors; how to train and educate firm employees on senior-specific issues; 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 senior investors; obtaining information at account opening; how to ensure the suitability of investments; and how to conduct supervision, surveillance and compliance reviews focused on senior-specific issues.

2A. Getting Started: Firms consider alternative approaches to their supervisory and compliance structures to meet the changing needs of senior investors

Firms indicated they generally view senior-related issues from the perspective of issues and considerations applicable to all investors, with specific emphasis on certain issues of particular relevance to senior investors. Firms have recognized seniors' issues and typically have responded throughout the firm in a client-centric manner, with senior status necessitating heightened consideration of the associated considerations.

It was noted that one business model is to establish a central team focused on retirement topics (which we took to encompass senior investors). The more common approach is to encourage a greater focus on widespread understanding of senior investor issues across the firm.

A common approach was equipping advisors with the knowledge and ability to identify seniors' issues and having processes which provide reasonable assurance the advisor can appropriately respond or internally escalate the situation to supervisors and other specialist groups who can appropriately respond. The IIAC noted that the definition and effectiveness of an appropriate escalation and remediation process for seniors' issues is a strongly held regulatory expectation.

However, regardless of structure and approach, the IIAC recommends that firms:

- Remind advisors they have primary accountability for KYC and suitability, and need to consider seniors' issues as a fundamental part of that ongoing obligation.
- Review the adequacy of existing policies and procedures within different areas of the firm that need to incorporate investors' life stage issues, particularly in the context of IIROC's Client Relationship Model ("CRM").
- Incorporate the suitability of products for senior investors into product due diligence

and new product approval processes.[8]

- Review the use of proposed senior designations.
- Review and approve marketing materials aimed at senior investors.
- Develop firm-wide escalation procedures to assist advisors in raising concerns about potential diminished capacity or elder financial abuse situations.
- Implement appropriate processes by ensuring staff possess the requisite expertise to deal with seniors' specific documentation situations, such as wills, estates, powers of attorney, etc.
- Make in-depth training opportunities available for advisors, including training by experts, on issues related to aging.
- Review, and modify when necessary, criteria used for risk-based supervisory and compliance reviews, including criteria used to identify and resolve potential advisor misconduct involving senior investors.
- Review, and modify when necessary, complaint handling procedures to ensure that senior investors have easy access to the firm's complaint handling process and that appropriate assistance is provided when a senior investor wishes to file a complaint.
- Consider risks related to senior investors as part of the firm's ongoing or periodic assessment of risks and compliance effectiveness.

2B. Communicating Effectively With Senior Investors

Firms explained that they have adopted practices that they believe improve their communication with senior investors. These include:

- Increasing the frequency of contact with senior investors to remain informed about changes in investors' financial needs, employment status, health, and other life events.
- Emphasizing the importance of accurate, complete and current KYC documentation supplemented by consistent supporting documentation, such as investment policy statements and financial plans as applicable.
- Reminding advisors about the importance of effectively documenting all material discussions with clients through correspondence, emails, documented notes and similar means.
- Encouraging advisors to talk to clients about having an emergency or alternate contact on file with the firm, such as a trusted family member or other trusted individual.
- Educating investors about the benefits of having a power of attorney and when appropriate, encouraging investors who are in good health to share details of their financial affairs with trusted family members, estate lawyers and/or other professionals

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8 See for example IIROC Rules Guidance Notice 09-0087 "Best Practices for Product Due Diligence" dated March 23, 2009 and IIROC Rules Guidance Notice 13-0039 "Recommendations and Best Practices for the Distribution of Non-Arm's Length Investment Products" dated February 6, 2013.

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to help ensure that if the investor's health deteriorates, their financial affairs will be properly handled. This includes disclosure and a balanced discussion of the risks and considerations when granting such authority.

- Documenting conversations with investors in case they have difficulties with lack of recall or to help resolve any misunderstanding.
- Sending follow-up letters to investors after conversations to document and reiterate what was discussed.
- Using plain language (avoiding financial jargon), and having larger font versions of marketing materials available.
- Considering the firm's statutory obligations to accommodate client accessibility for disabled clients under legislation such as the Accessibility for Ontarians with Disabilities Act.

Many firms produce brochures, newsletters and magazines aimed at educating senior investors. Some firms include educational materials in their monthly or quarterly mailings to investors. These materials are targeted to both a particular age group and life stage, and examples include:

- Marketing materials (i.e., booklets, magazines, and single page flyers) to assist investors in understanding specific products, meeting financial goals and investment strategies for pre-retirement and retirement.
- Publications that are education-oriented and cover topics such as analyzing government retirement programs and, identifying healthcare and estate planning resources.
- Educational materials created by third parties and educational resources from public websites targeted to senior investors.
- Many of these materials may be primarily designed to market retirement-oriented services and products to senior investors. As is the case with all resources developed for investors, firms must ensure that these materials comply with relevant regulatory requirements.

Some firms indicated they are producing brochures and providing information aimed at educating senior investors on various topics. Examples include:

- Online security precautions and safe computing practices.
- Hosting client seminars by police officials on topics such as investment fraud.

2C. Training Firm Employees on Senior-Specific Issues

In the subsequent months, Adam Advisor spoke with Mr. Investor at least twice a month. Mr. Investor seemed disoriented and did not recall transactions that he had previously authorized. Adam Advisor noted these observations in his file. Adam Advisor asked Mr. Investor whether he had all of his financial information in one place. Mr. Investor was not sure where his financial information was located. Adam

Advisor encouraged Mr. Investor to invite his daughter to their meetings.

Many firms have taken a proactive approach in training their advisors to help ensure that if they are faced with similar difficult and sensitive situations, they have the proper tools to address the issues. Firms utilize a variety of training methods to help ensure the training is effective, including the following:

- Using hypothetical examples to illustrate the potential issues that advisors may encounter.
- Creating web-based modules focused on diminished capacity, suitability, communicating with senior investors, advertising, the use of professional designations and elder financial abuse.
- Distributing periodic internal communications that contain articles or reminders about current policies and procedures related to senior investors.
- Collaborating with gerontologists and other aging experts to help advisors understand and meet the needs of senior investors.
- Creating educational materials on multi-generational and wealth transfer issues and the transition from planning for retirement to managing financial needs during retirement.
- Integrating special considerations advisors should be aware of when working with senior clients or clients approaching retirement into firm-sponsored continuing education programs.
- Reminding advisors of what types of sales practices have been identified by regulators as posing potential risks when dealing with and marketing to seniors.

Regardless of the mechanism used, many firms appear to be developing training for their employees on senior-specific issues. Two areas that firms mentioned in particular are how to identify signs of diminished capacity and elder financial abuse. Each area is discussed below.

i) Training on How to Identify Diminished Capacity

Some firms indicated that a critical aspect of their educational programs for employees is focused on identifying signs of diminished mental capacity in an investor. The ability to observe changes in investors' behaviour places advisors in a unique and challenging position. Firms shared their concerns about steps they are taking when an investor shows signs of diminished capacity, about their responsibilities in these instances, and about their potential liability in instances where the advisor does not address the issue.

In circumstances where the investor appears to lack the capacity to understand an investment or to provide informed consent, firms may want to consider implementing procedures for advisors to follow, such as seeking advice from supervisors about contacting a trusted family member or the person designated in the investor's power of attorney.

Many firms have included segments in their educational programs to help advisors identify signs - or "red flags" - that may indicate that an investor may have diminished capacity or a reduced ability to handle financial decisions. Examples of signs include, but are not limited to, the following:

- The investor appears unable to process simple concepts.
- The investor appears to have memory loss.
- The investor appears to have difficulty speaking or communicating.
- The investor appears unable to appreciate the consequences of decisions.
- The investor makes decisions that are inconsistent with his or her current long-term goals or commitments.
- The investor refuses to follow appropriate investment advice; this may be of particular concern when the advice is consistent with previously-stated investment objectives.
- The investor appears to be concerned or confused about missing funds in his or her account, where reviews indicate there were no unauthorized money movements or no money movements at all.
- The investor is not aware of, or does not understand, recently completed financial transactions.
- The investor appears to be disoriented with surroundings or social settings.
- The investor appears uncharacteristically unkempt or forgetful.
- The investor's recurring cognitive problems become worse over time.
- The investor displays behaviour that is out of character (e.g. the frugal client who becomes a spendthrift, the client who wants to upset a long-established investment strategy).
- The investor has difficulty in understanding important aspects of the account.

ii) Training on How to Identify Elder Financial Abuse

Elder abuse comes in a variety of forms. It can be physical or emotional and can be in the form of neglect, abandonment, or through financial exploitation. Elder financial abuse is generally referred to as the misuse of a person's money or belongings by a family member or a person in a position of trust.

Similar to detecting diminished capacity, firms indicated that advisors are on the front lines of seeing indications of possible financial abuse and, as a result, have included segments in their educational programs to help advisors identify signs - or "red flags" - that may indicate that an investor may be subject to elder abuse. Examples of these signs include:

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- The investor gives a power of attorney to someone who appears to be inappropriate to the advisor.
- Indications that the investor does not have control over or access to his/her money.
- The investor’s mailing address has been changed to an unfamiliar and unexplained address.
- Inability of the advisor to speak directly to the investor, despite attempts to do so.
- The investor appears to be suddenly isolated from friends and family.
- There is a sudden, unexplained or unusual change in the investor’s transaction patterns.
- There are unexplained disbursements made in an investor’s account that are outside of the norm.
- The sudden appearance of a new individual involved in the investor’s financial affairs

2D. Establishing an Internal Process for Escalating Issues and Taking Next Steps

Many firms stated that the key to responding to signs of diminished capacity or financial abuse is to establish internal procedures that permit the advisor to obtain advice from others within the firm on possible next steps to take. The following are examples of escalation procedures or next steps identified by some firms:

- Requiring the advisor to document suspected diminished capacity or elder financial abuse, and escalate the issue immediately.
- Clearly designating the individual or groups to whom the advisor is to escalate the matter, e.g., branch manager, compliance department or legal department within the firm.
- Training employees to escalate early - at the first sign.
- Embedding escalation procedures in employee training and continuing education courses.
- Identifying a central point of contact within the Compliance Department to provide guidance on senior investor issues.
- Escalating any suspected elder abuse in the same way as suspected diminished capacity, and then considering whether the situation requires reporting to appropriate law enforcement.
- Potentially declining a transaction or declining to open an account if there is suspicion of financial abuse or diminished capacity.

Firms have also created and adopted policies with respect to the next steps to take after an issue was identified and escalated. These policies include:

- Prohibiting the advisor from making securities recommendations to the investor or investments in the account until the concern no longer exists. This may include a complete freezing of the account or restricting it to liquidating trades only.
- If a concern is identified, delaying action for a period of time (e.g. a few hours) and then reconfirming with the client, as appropriate. This delay can also be used to internally escalate and seek guidance.
- Communicating with the investor's designated emergency contact or the person provided with power of attorney for the investor.
- Conducting a review of the investor's account and identifying any transactions or patterns that could indicate a problem (i.e. financial abuse by an advisor or other individual).
- Maintaining frequent contact with the investor to assess any new developments.
- Having a supervisor or designated firm representative communicate with the investor along with, as appropriate, the advisor who has direct responsibility for the investor's account.
- Notifying the compliance and legal departments of further conversations with the investor, and involving them as appropriate.
- Assessing whether there are applicable regulations that require the firm to alert appropriate authorities, including law enforcement and/or government protective services organizations, if elder abuse is suspected. This assessment also needs to consider the firm's privacy obligations.

Firms indicated that having effective escalation procedures and a process for considering and taking further steps is critical in helping to ensure that they address issues of possible diminished capacity or financial abuse.

2E. Encouraging Investors of All Ages to Prepare for the Future

Firms have taken steps that help them and their clients prepare for the future. Clients of *any* age can take steps to plan for the event of mental or physical incapacity. Many firms actively promote that clients consider such events through various means, including informational content on their websites and other client advisories.

As stated above, some firms make it a normal practice to ask clients to provide them with emergency or alternate contacts for use in the event the firm is unable to contact the client or if the firm suspects diminished capacity or elder abuse.

Some firms specify the permitted purposes for contacting this alternate person and receive permission to keep this information in the client's files. Any such sharing of information and discussion of the client's situation with a third party is subject to privacy regulations and common law confidentiality requirements.

Another approach is for the advisor to ask the client whether he/she has provided a power of attorney granting authority over the client's account to a trusted friend or family member under certain circumstances. These arrangements may more formally facilitate the management of a client's account should certain circumstances occur. Practices in this area include:

- Encouraging advisors to have conversations about the benefits of executing powers of attorney with clients as appropriate as a matter of routine during the account opening process.
- Encouraging advisors to have a conversation with the client prior to opening an account as to whether anyone else should be consulted with regard to the account in the event of the client's unavailability or incapacity.
- Encouraging advisors to ask the client whether a trusted third party (e.g. accountant, lawyer) should regularly receive duplicate copies of account statements and confirmations (i.e. an "interested party").
- Incorporating appropriate disclosures about privacy regulations and policies, and client consent to share information authorizations in standard form documentation.

Firms were mindful that powers of attorney can be abused and have developed practices to address risks associated with abuse of a power of attorney. Practices identified in this area include:

- Educating employees on the need to be alert for situations where a power of attorney is added or changed, followed by a change in activity compared with the investor's stated financial objective and profile. This is particularly applicable if there is evidence of unusual cheques written out of the account within a given timeframe, and a concentration of cheques to a single, third-party payee.
- Offering clients the option of using a limited power of attorney, which does not permit withdrawals from the account, and ensuring such restrictions are adhered to.
- Requiring that copies of all confirmations and account statements be sent to both the account holder and the power of attorney.
- Requiring that powers of attorney be reviewed by a specialist group, such as the firm's compliance department, before the firm acts on them.
- Having a process to check the signature of the investor against other signed documents received in order to determine authenticity.

Whether by encouraging investors to provide alternate contact information or to execute a power of attorney, firms stated that encouraging all investors to be prepared for the future was an increasingly important issue.

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2F. Advertising and Marketing to Seniors

Mr. Investor met with Adam Advisor to discuss his portfolio. At the meeting, Mr. Investor showed Adam Advisor an advertisement that he had received from another investment advisor. The advertisement indicated that Mr. Investor would receive a 50% return on his investment. The bottom of the advertisement included the designation "Senior Specialist." The title confused Mr. Investor.

Firms stated that they typically do not have advertising and marketing policies and procedures directed specifically at senior investors. However, firms also indicated they have extensive policies and procedures for general standards of conduct as required by IIROC Dealer Member Rule 29.1, particularly the obligations to observe high standards of ethics and conduct in the transaction of their business, not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and be of such character and business repute and have experience and training as is consistent with the foregoing standards.

Firms also identified the specific advertising, sales literature and correspondence standards and requirements under IIROC Dealer Member Rule 29.7, including prohibitions on false or misleading statements (including omissions that would have that effect), unjustified promises of specific results and failing to fairly present potential risks to the client.

i) The Use of Senior Designations

Some advisors use titles or designations that imply they are experts at helping seniors with financial issues; these titles are known as senior designations. This does not appear to be a common practice. Regulators have identified the use of senior designations as a possible risk to investors because a designation may be used to imply expertise, training or specialization in advising senior investors which may be inaccurate or misleading.

This has been a particular focus of U.S. securities regulators who have identified a number of predatory and abusive practices in this regard in relation to seniors[9]. It was observed that the U.S. experience seemed to revolve around "one-time" sales, particularly of insurance products. Our process identified the significant value that Canadian firms attach to long-term client satisfaction and associated reputational considerations which significantly negate applicability of U.S. case studies with regards to IIAC member firms.

While general business conduct and marketing, advertising and sales communications regulations and standards discussed elsewhere in this document apply to the use of senior designations, there has been little in the way of Canadian

9 For instance, see the Joint Report of the SEC's Staff, NASAA, and FINRA September 2007 available at http://www.sec.gov/spotlight/seniors/freelunchreport.pdf and the discussion around implementation of the Massachusetts "Senior Designations Regulation" at https://www.sec.state.ma.us/sct/sctpropreg/adminrec.pdf

regulatory guidance specific to the use of senior designations until recently.[10] This topic can benefit from greater clarity and certainty, particularly in relation to an increased public and industry understanding of which externally conferred designations, accreditations and similar credentials reflect legitimate attainment of a higher level of expertise, training or specialization in seniors' issues.

This topic is broader and more complex than the scope of this document, and industry participants are encouraged to review the relevant regulatory guidance and consider its application to their firm. It was identified that a number of firms had already either specifically considered the subject or addressed it through pre-existing standards of general application. Some examples of these policies and procedures include:

- Ensuring there is understanding across the firm, including senior management, sales management, training, marketing, compliance, legal, supervisors, advisors and others, of general marketing, advertising and sales communications regulatory requirements and the firm's standards in that regard.
- Engaging multi-disciplinary expertise from specialist groups such as training, marketing, compliance and legal in firm determinations on titles and designations.
- Defining the specific permissible titles which can be used by advisors and controlling the use of nonstandard titles.
- Requiring that titles implying specific expertise, training or specialization be supported by appropriate education, training, experience and other relevant considerations.
- Maintaining a list of approved and/or prohibited externally conferred designations.
- Conducting firm due diligence on externally conferred designations to establish the legitimacy of such designations.
- Ensuring there are controls and verification processes around the use of titles and designations, such as supervisory approval and centralized business card ordering processes.

Firms indicated they are using these mechanisms to heighten their review and approval processes for the use of senior designations by their employees, and to monitor and limit their use.

[10] See IIROC Rules Notice 13-0005, *Use of Business Titles and Financial Designations* dated January 8, 2013.

2G. Obtaining Information at Account Opening

Mr. Investor's Daughter opened an account with Betty Advisor. Daughter informed Betty Advisor that she was in her 50s and nearing retirement and was concerned she would not have sufficient retirement assets set aside to meet her needs after she retires. Daughter told Betty Advisor that she wants to pursue an aggressive investment program to increase her accumulated capital as much as possible before retirement. Betty Advisor had Daughter complete a KYC form that stated "speculative" as the investment objective and "high" under risk tolerance.

Pursuant to a variety of securities laws, and rules, financial services firms are required to obtain sufficient information about an investor to ensure that recommendations are appropriate for the investor, and that the investor's account is managed consistent with the investor's documented KYC profile, including the client's current financial situation, investment knowledge, investment objectives, time horizon and risk tolerance.

The importance of ensuring recorded KYC information appropriately reflects both the desire and ability of the client to experience and afford their documented level of risk tolerance. It was observed that some senior clients seek higher yield investments, but may not fully appreciate the related risks associated with seeking those returns. There is also a risk that some senior investors might portray themselves as being more willing and able to assume risk than is in fact the case, and subsequently seek compensation on the basis that their recorded investment objectives and risk tolerance were unsuitable for them, even if the investments and strategy aligned with what was recorded and agreed to by them. To address these issues firms are:

- Providing ongoing communications and education to advisors about the importance of ensuring the agreed upon and recorded KYC information is appropriate for the client, rather than making misplaced updates to the KYC information to "re-paper" otherwise unsuitable recommendations or holdings.[11]
- Enhancing their Relationship Disclosure as required by IIROC's CRM rules.

It was also noted that some firms use the account opening process and subsequent client interactions to ask questions that may broaden the conversation with investors. For example, some firms are:

- Using supplemental investment policy statements, financial plans and similar processes to document the response to lifestyle questions such as: "When do you plan to retire?"; "How much money do you need to retire in the fashion you want?"; "Do you have any other issues or expenses that we should contemplate as you retire?"; "Do you have children or grandchildren who are dependent on you financially?"; and "Do you have a will and a financial power of attorney?".

[11] There are a number of securities regulatory enforcement actions involving advisors who record aggressive investment objectives and risk tolerance to justify high risk investments and strategies for clients which would otherwise be viewed as unsuitable. See IIROC Rules Notice 12-0109, *Know your client and suitability - Guidance*, dated March 26, 2012 at 7-8 (regarding inappropriate updates to KYC information).

- Maintaining frequent ongoing contact with the client and updating KYC records as appropriate and required by regulations.
- Encouraging clients to identify a third party emergency contact. This allows the firm to notify the identified individual if there is an issue or concern related to diminished mental capacity or financial abuse by a third party.
- Requiring that the employment status field on the new account form include the option "retired". This data helps the firm identify clients who are in the "distribution" stage of life, as distinct from the "accumulation" stage.

Firms indicated these steps help them obtain information about investors at account opening to aid in determining whether particular investments are suitable.

2H. Ensuring the Suitability of Investments

Mr. Investor also maintains an account with Betty Advisor. Recently, Betty Advisor suggested that Mr. Investor re-evaluate his portfolio and shift his investments from income-orientated securities to growth stocks. She also suggested that Mr. Investor add more speculative investments, in order to generate higher returns. Mr. Investor had difficulty understanding the complex structure of some of the recommendations. Currently Mr. Investor's portfolio is diversified and holds bonds and other income-producing products.

Investors who are the same age can have very different investment profiles, and what is suitable for one investor may not be suitable for another investor. However, an investor's age and life stage are important factors in assessing the suitability of recommendations for that investor.

IIROC's enhanced suitability rule changes were made as part of the CRM rule amendment that came into effect (for new clients) in March 2013 (and will be effective for existing clients in March 2014), and it should be recognized that suitability standards and expectations have and will continue to evolve under both IIROC rules and across the investment industry generally.

Both pre- and post-CRM, IIROC Rules dealing with suitability and associated supervisory requirements, including Rules 1300 and 2500, do not specifically refer to a client's age. However, suitability determinations are to be "based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level".[12] Age and life stage are often key factors associated with a number of these considerations, particularly financial situation, investment objectives, time horizon and risk tolerance.

Further, the obligation for a suitability determination whenever there "has been a material change to the client's life circumstances or objectives that has resulted in revisions to the

[12] For instance, under IIROC Rules 1300.1(p), (q) and (r) effective March 26, 2013.

client's "know your client" information"[13] would often be expected to be triggered by life circumstance changes typically associated with seniors, such as:

- Commencement of retirement with the associated loss of employment income.
- Death or incapacity of a spouse, particularly if that person was the primary income source or manager of the family's finances.
- Diagnosis of a medical condition resulting in expenses which need to be funded.

Firms use a number of techniques and processes to ensure the suitability of investments for seniors, including:

- Ensuring generally applicable KYC, Know-Your-Product ("KYP"),[14] and suitability regulatory requirements are effectively implemented and applied across the firm and are properly designed with sufficient detail to reflect, identify and address considerations relevant to seniors.
- KYP standards were identified as being of particular significance in relation to new, complex and non-conventional products because of the heightened risk that advisors may not have a full understanding of the product resulting in inappropriate suitability determinations combined with the increased likelihood that investors may not appreciate the nature of the investment.
- Educating and cautioning advisors about suitability considerations which may be more prevalent among seniors. This includes managing clients' investment return expectations, particularly in a low-yield environment, and not misinterpreting an investor's desire for higher returns with a willingness to assume the associated risks.
- Using financial planning tools that help investors plan for retirement, and anticipate expenses, lifestyle changes, and goals during retirement. These tools provide guidance to advisors regarding investment choices that may help the investor reach their stated objectives.
- Encouraging advisors to maintain frequent contact with clients, including conducting periodic investment portfolio reviews, part of which encompasses inquiring if there have been any material changes in the client's circumstances.
- Asking the following questions as part of the client interactions: How recently has the client's KYC information been updated? Have there been any significant changes with regard to the client's employment status, marital status, physical condition or the needs of the client's family or significant others? Has the client made the advisor aware of recent changes or plans to change living arrangements that may have an impact on the client's present or future financial needs? When an advisor is informed or becomes aware that a client's circumstances have changed, the advisor should obtain updated information and further consult with the client about whether the client's investment

[13] See IIROC Rule 1300.1(r) effective March 26, 2013.
[14] For example, refer to IIROC Rules Notice 09-0087, *Best Practices for Product Due Diligence*, dated March 25, 2009.

objectives or needs have also changed.

- Some firms have established processes to directly provide or refer[15] senior investors to specialists on topics of particular relevance to seniors, such as succession planning, wills, estates and trusts.
- Having centralized specialist groups with the requisite expertise to provide support on complex and technical aspects of investment services and advice, including financial and retirement planning, registered plans, pensions and similar matters.
- Assigning investment objectives and risk factors to each product that the firm sells in order to aid advisors in assessing the suitability of the product for a particular investor, and to facilitate comparisons between the objective of the product and the investor's stated investment objective and risk tolerance by supervisors and compliance personnel.
- Using a filtering program based on age, investment objectives and risk tolerance to assist advisors in selecting suitable products for investors.
- Recommending that advisors keep extensive correspondence, notes and other documentation, particularly where an investment or strategy is inconsistent with the expected "norm" for a client of that age or circumstance(s).
- Reminding advisors that clients will experience life stages and at each stage, the suitability or appropriateness of a product or service may shift. For example, clients in their late twenties might be getting married or starting a family.

As described above, firms are using a variety of techniques to help ensure the suitability of investments for seniors.

3. CONDUCTING SENIOR-FOCUSED SUPERVISION, SURVEILLANCE AND COMPLIANCE REVIEWS

Mr. Investor, Jr. is 49 years old and plans to retire next year. Mr. Investor's investment objective is conservative and he holds bonds and blue chip stocks in his portfolio. Last month, a highly speculative investment was purchased in his account. The Branch Manager/Compliance Officer noted this apparent discrepancy during his review of transactions and inquired further.

While firms conduct supervisory and surveillance reviews of the activity in investors' accounts regardless of the age of the investor,[16] some firms stated that they use age and/or other parameters in their exception reports and other supervisory review activities in order to remain attuned to seniors' accounts. These firms attempt to capture transactions and practices that may particularly impact seniors. Some examples of these practices include:

- Analyzing the firm's client base with respect to age demographics and using this information to help meet current and prospective client needs.

[15] Referral arrangements are subject to specific regulations, including National Instrument 31-103.
[16] As required by numerous securities regulations, notably IIROC Rules 29, 38, 1300 and 2500.

- Requiring heightened supervisory review of new account application forms and KYC updates with recorded investment objectives and risk tolerance that are more aggressive than would be typically expected for investors over a certain age, particularly for investors with limited financial means and assets.
- Maintaining trade blotters and monthly account statements for review purposes that contain account information (such as age, net worth, investment objective) alongside the transactions for ease in supervisory and compliance reviews.
- Some firms are using age in their risk-based supervisory reviews of investors' accounts, as well as other information, to identify accounts or transactions for heightened review.
- Assigning investment objectives to each product that the firm sells in order to aid advisors in assessing the suitability of the product for a particular investor, and to facilitate comparisons between the objective of the product and the investor's stated investment objectives and risk tolerance by supervisors and compliance personnel.
- Using trending reports to identify patterns that may be indicative of potential abusive behaviour by advisors.
- Creating policies that require a discussion during the annual branch audit with supervisors and advisors about sales to seniors.
- Requiring corrective action be taken when there is incomplete client account documentation.
- Identifying advisors whose book of business includes a large percentage of sales to seniors where the activity associated with this business (such as Deferred Sales Charge transactions) could be an indicator of unsuitable sales practices.
- Reviewing the entire book of business and compliance records for those advisors where a concern has been identified.

Some firms use exception reports to identify and monitor portfolio allocations, commissions, and other issues in accounts. The thresholds used in some of these exception reports are designed to identify risks that are common to senior investors, however, the individual thresholds used differ between firms. Some practices include:

- Identifying accounts of investors over a certain age that generated a commission-to-asset ratio above a certain percentage over a preceding period.
- Identifying accounts of investors over a certain age that generated commissions in speculative or complex investments.
- Identifying accounts of investors over a certain age that have "conservative" or "income" stated as their investment objective, and also have a margin loan balance above a certain threshold, and/or have options trading losses above a certain threshold over the preceding several months.
- Identifying accounts of investors over a certain age that have concentration and margin debit balances above a certain threshold.

Firms stated that these types of supervisory, surveillance and compliance reviews were helpful in identifying potentially inappropriate or abusive transactions or practices with respect to senior investors. As critical as identifying the questionable transaction or activity is effective investigation and follow-up to ensure that the investor is receiving suitable financial service from the advisor and the firm.

4. CONCLUSION

Given the increasing number of Canadians who will need advice and guidance as they near and reach retirement age, the issues described in this Report are of critical importance for investment industry firms that provide services to senior investors. And, as noted at the outset of this Report, the IIAC views the protection of senior investors as a top priority.

This Report describes a myriad practices used by financial services firms when working with senior investors. Many firms are implementing new processes and procedures aimed at addressing common issues associated with their interactions with senior investors, including to the following: communicating effectively with senior investors; training and educating firm employees on senior-specific issues (such as how to identify signs of diminished capacity and elder abuse); establishing an internal process for escalating issues and taking next steps when issues or questions are identified; encouraging investors of all ages to prepare for the future; advertising and marketing to senior investors; obtaining relevant information at account opening; ensuring the suitability of investments; and conducting supervision, surveillance and compliance reviews focused on senior-specific issues.

The IIAC hopes that the information shared in this Report will be helpful to financial services firms that are seeking to ensure they serve senior investors in an ethical, respectful and informed manner. We also hope that the publication of this Report will encourage investment industry firms identify additional practices that will ensure senior investors receive premium advice and oversight.

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Resources

Below is a list of supplemental informational materials related to the topics discussed in this Report that may be helpful. We have included this list for your convenience.

1. "When the Baby Boom Era Becomes the Retirement Explosion: A Securities Compliance Professional's Guide to Protecting Her Firm and Senior Investors," (Sept. 2007), National Society of Compliance Professionals, et al, available at http://nscp.org/media/whitepapers/nscp-seniors.pdf
2. "Assessment of Older Adults With Diminished Capacity: A Handbook for Lawyers," (2005), American Bar Association Commission on Law and Aging & American Psychological Association.
3. "A Financial Professional's Guide to Working with Older Clients," AARP and the Financial Planning Association, www.aarp.org
4. Canadian Securities Institute Continuing Education (CE) Courses, such as "Working with Aging Clients" and "Safeguard Elderly Clients from Financial Fraud".
5. Various articles available through industry publications and related online resources, including www.advisor.ca and www.investmentexecutive.com.

Agencies on Aging

Organization	Website
Government of Canada – Seniors Canada (the Publications page provides an extensive list of links to other federal and provincial government agencies and resources)	http://www.seniors.gc.ca/
Canadian Association of Retired Persons (CARP)	http://www.carp.ca/
Canadian Securities Administrators (CSA)	http://www.securities-administrators.ca/
Canadian Centre for Elder Law	http://www.bcli.org/ccel