

# Best practices when working with vulnerable investors

# Agenda

- What is a vulnerable investor?
- What are the common vulnerability issues?
- What steps can be taken to protect vulnerable investors?
- How do I identify individuals that may be at risk?
- What do I do when I'm concerned that my client is acting in a manner that is out of character or is contrary to what I believe is best for them?

# What is a vulnerable investor?

- The Oxford Dictionary defines a “vulnerable person” to be “a person in need of special care, support, or protection because of age, disability or risk of abuse or neglect”
- Specific to investment dealer clients, IIROC considers a client who requires more than the normal level of assistance / education / advice or relies in part on the advice of outsiders to make investment decisions to be a “vulnerable investor”

# What is a vulnerable investor?

- This definition captures investors:
  - with mental capacity issues
  - with language barriers
  - who are financially unsophisticated
  - who are dependent on generating investment income to meet their financial needs
  - who are dependent on the assistance of others to live comfortably (i.e. reliance on personal caregiver)
  - who are or may be subject to pressure from others when making investment decisions

# What is a vulnerable investor?

- This definition also captures investors:
  - at various stages in life
  - with mental capacity issues, physical capacity issues or both
  - who are seniors, subject to certain exclusions

# What is a vulnerable investor?

- For example:
  - most clients, unless they have previous investment experience, start their account relationship with a firm /advisor as an unsophisticated and vulnerable client
  - some clients never become sophisticated clients due to mental capacity issues, language barriers or lack of interest in learning about investing
  - other clients become sophisticated through education and experience but then may subsequently suffer either a temporary or permanent decline in their mental capacity due to an illness or accident

# What is a vulnerable investor?

- For example:
  - clients with physical capacity issues or who are otherwise dependent upon others to meet their daily needs may be considered to be vulnerable to abuse by others
  - clients who are dependent on generating investment income to meet their daily needs might also be considered to be a vulnerable client if they have inadequate financial resources to generate the income they require – either under any circumstances or without assuming higher risk than they are comfortable assuming

# What is a vulnerable investor?

- For example:
  - clients who place great importance on the opinion of others when making investment decisions (either individuals or groups) might also be considered to be a vulnerable client if the client feels unwarranted pressure to invest in a certain manner, particularly if failure to do so might result in loss the of an individual friendship or the loss of social standing within a group

# What is a vulnerable investor?

- While many vulnerable investors are seniors, not all seniors are vulnerable investors
- Seniors (and individuals of any age) who:
  - are not affected by mental or physical capacity issues
  - are financially sophisticated
  - are not dependent on others
  - have adequate financial resources to generate sufficient income to meet their daily needs

would not be considered to be a vulnerable investor

# What are the common vulnerability issues?

- Diminished mental capacity - the investor no longer has the mental capacity to make investment decisions
- Financial exploitation - the investor is being exploited by others to make financial decisions that are not in their interest
- Lack of access to assistance – the investor may require assistance to make investment decisions because of vision or hearing impairments, language barriers, or not being technologically savvy

# What steps can be taken to protect vulnerable investors?

- It is important that steps are taken well before significant client vulnerabilities materialize, preferably early on in the client relationship

# What steps can be taken to protect vulnerable investors?

- One of the first early steps that can be taken is to spend adequate time with the client at the outset of and early on in the account relationship to:
  - assess their investment knowledge and sophistication
  - identify existing and potential client vulnerabilities
  - determine client ability and level of interest in improving their investment knowledge and sophistication

# What steps can be taken to protect vulnerable investors?

*client discussion items continued...*

- assess the degree to which the client wishes to rely on investment advice provided by their account advisor
- determine whether the client intends on consulting with others before making investment decisions
- Carrying out these steps is important to establishing a baseline understanding with the client as to how they intend to assess and decide on advisor recommendations

# What steps can be taken to protect vulnerable investors?

- Another early step to be taken is to encourage the client to plan for the possibility that they may have a future material vulnerability
- The importance of this type of planning should be emphasized – specifically, its just as important to plan for possible future life events as it is to plan for one’s death through the execution of a will
- The client should also be informed that this is a standard conversation that takes place with all clients in order to minimize the awkwardness of the planning discussion

# What steps can be taken to protect vulnerable investors?

- The elements of a future life events plan include:
  - the appointment of a trusted contact person
  - the appointment of an individual to:
    - serve as a power of attorney for property, or
    - assume a property protection mandate
  - setting out the circumstances under which a trusted contact person is to be contacted and under which a power of attorney arrangement or protection mandate is to be invoked

# What is a trusted contact person?

- A trusted contact person is an individual:
  - who serves as a resource for the advisor when client circumstances arise such as a change in the client's mental capacity, availability, behaviour or financial activity
  - authorized to receive information relating to the existence of a power of attorney and other persons authorized to make account decisions, either currently or in the future
  - not authorized to place trades, make withdrawals, enter into other account transactions or change account ownership or address information

# What is a trusted contact person?

- Consulting with a trusted contact person can be invaluable when the advisor is concerned that a client may be experiencing diminished mental capacity or financial exploitation
- Since a trusted contact person does not make investment decisions, having investment knowledge and experience are not necessarily as important as appointing an individual who is in regular contact with the client and is familiar with the events and challenges that are taking place within the clients life

# What is a trusted contact person?

- Having a trusted contact person can be very helpful in assisting the advisor to distinguish between client behaviours and actions that are explainable or short in duration and client behaviours and actions that are contrary to the client's interests and re-occurring

# What is a trusted contact person?

- An industry concern with the trusted contact person concept is that sharing account information with them would be a violation of privacy legislation
- This privacy concern can be addressed by receiving client consent to share account information with the trusted contact person at the time they appoint the trusted contact person

# What is a Power of Attorney for Property?

- A Power of Attorney for Property is an individual authorized to place trades, make withdrawals and enter into other account transactions on the client's behalf
- In the case of an Ordinary Power of Attorney for Property:
  - the client must be competent with the appointment is made
  - the appointment remains valid until the client later becomes mentally incompetent

# What is a Power of Attorney for Property?

- In the case of an Enduring Power of Attorney for Property:
  - the client must be competent with the appointment is made
  - the appointment remains valid after the client later becomes mentally incompetent
  - the appointment becomes invalid when the client dies and cannot be used to disburse property upon the death of the client

# What is a Power of Attorney for Property?

- Having an Enduring Power of Attorney for Property can be very helpful in ensuring that the client's interests are looked after once they decide they no longer wish to be responsible for investment decision making or they become mentally incompetent
- Factors in selecting a power of attorney include:
  - Investment knowledge, investment experience and knowledge of the client's wishes (including investment goals and risk tolerance)
  - Trustworthiness
  - Good communicator

# Other individual appointment considerations

- It is recommended that the trusted contact person and power of attorney appointments be made relatively early on in the account relationship and periodically reviewed with the client
- When the client wishes to hand over decision making to their power of attorney should also be discussed with the client as part of any periodic review
- Under the best case scenario, the client will decide to hand over decision making to a long-standing power of attorney appointment before diminished mental capacity becomes a serious concern

## Other individual appointment considerations

- Where the client waits too long to hand over decision making and/or makes frequent changes to their power of attorney appointment, there is elevated risk that the client may be suffering from diminished mental capacity, financial exploitation or both
- Where the client makes frequent changes to their power of attorney appointment, it is also very important that the trusted contact person is someone other than the power of attorney, in order to reduce the likelihood that the power of attorney may be attempting to financially exploit the client

# How do I identify individuals that may be at risk?

- The two most challenging vulnerable investor issues to identify and address are:
  - An investor with diminished mental capacity that is no longer capable of making investment decisions
  - An investor that is being financially exploited

# How do I identify individuals that may be at risk?

- Signs or red flags that may indicate diminished mental capacity include the investor:
  - appears unable to process simple concepts
  - appears to have memory loss
  - appears to be unkempt or forgetful
  - appears to be disoriented with surroundings or social settings
  - appears to have difficulty speaking or communicating
  - has cognitive problems that appear to have become worse over time
  - appears unable to appreciate the consequences of decisions

# How do I identify individuals that may be at risk?

## *diminished mental capacity signs continued...*

- has difficulty understanding important aspects of the account
- displays behavior that is out of character
- wishes to make decisions that are inconsistent with her or her investment goals
- refuses to follow appropriate investment advice, provides no reason for the refusal and has not previously exhibited such behavior
- is concerned or confused about missing funds in his or her account, where no funds are missing
- is unaware of or does not understand recent account transactions

# How do I identify individuals that may be at risk?

- Signs or red flags that may indicate an investor that is being financially exploited include the investor:
  - does not appear to have control or access to their money
  - has changed their mailing address to an unfamiliar or unexplained address
  - cannot be contacted directly by the advisor, despite repeated attempts to do so
  - appears to be isolated from their network of friends and family
  - displays behavior that is out of character, suggesting that someone else may be influencing their behavior

# How do I identify individuals that may be at risk?

## *financial exploitation signs continued...*

- wishes to make decisions that are inconsistent with her or her investment goals
- refuses to follow appropriate investment advice, provides no reason for the refusal and has not previously exhibited such behavior
- has made withdrawals from the account that are unexplained and outside of the norm
- has suddenly involved a new individual in making decisions about their financial affairs
- gives property Power of Attorney to someone who appears to be inappropriate

# What do I do when I'm concerned about my client?

- Escalate concerns to compliance staff and to any experts within the firm
- Where a client-initiated or power of attorney-initiated transaction or withdrawal does not appear to be client's interest:
  - place a temporary hold on the transaction or withdrawal
  - perform an immediate review to determine whether diminished mental capacity or financial exploitation is likely
- Where necessary, consult with the applicable provincial public guardian and trustee