

## CSA Notice and Request for Comment

### Proposed Amendments to

### *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations*

### and Changes to

### *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations*

### to Enhance Protection of Older and Vulnerable Clients

March 5, 2020

#### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing, for a 90-day comment period, proposed amendments (the **Proposed Amendments**) to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103** or the **Rule**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**, together the **Instrument**). We are proposing amendments to the provisions of the Instrument relating to business operations and client relationships in order to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients.

The CSA worked together with the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together referred to as the self-regulatory organizations or the **SROs**) to develop the Proposed Amendments. The Proposed Amendments would apply to all registered firms, including IIROC Dealer Members and MFDA Members. We encourage all registrants, including SRO members, to provide their comments on the Proposed Amendments. At a later date, the SROs may propose conforming amendments to SRO rules consistent with the CSA Rule.

This notice contains the following annexes:

- Annex A – Proposed Amendments to NI 31-103
- Annex B – Changes to 31-103CP
- Annex C – Local matters

This notice will also be available on the following websites of CSA jurisdictions:

www.lautorite.qc.ca  
www.albertasecurities.com  
www.bcsc.bc.ca  
www.fcnc.ca  
nssc.novascotia.ca  
www.osc.gov.on.ca  
www.fcaa.gov.sk.ca  
www.mbsecurities.ca

## **Substance and Purpose**

The Proposed Amendments are part of the CSA's initiative to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients.

### ***Trusted Contact Person***

The Proposed Amendments will require registrants to take reasonable steps to obtain the name and contact information of a trusted contact person (**TCP**), as well as the client's written consent to contact the TCP in prescribed circumstances.

The TCP is intended to be a resource for registrants to assist in protecting their clients against possible financial exploitation or if there are concerns about a client's mental capacity. The Proposed Amendments do not prevent registrants from opening and maintaining an account if a client refuses or fails to identify a TCP as long as the registrant takes reasonable steps to obtain the information.

### ***Temporary Holds***

In addition, the Proposed Amendments will:

- not prohibit registered firms and registered individuals from placing a temporary hold on the purchase or sale of a security or withdrawal or transfer of cash or securities from a client's account, if the registered firm reasonably believes that either:
  - a vulnerable client is being financially exploited, or
  - with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions, and
- require registered firms to take certain prescribed steps if they place a temporary hold in the above noted circumstances.

We believe that the Proposed Amendments provide an appropriate balance between a client's autonomy and investor protection, given that registered firms must have a reasonable belief of financial exploitation of a vulnerable client or lack of mental capacity of a client before placing a temporary hold. We also believe that the Proposed Amendments clarify how firms must proceed

if they do place a temporary hold in such circumstances, and that these are steps they must take in order to meet their duty to deal fairly, honestly and in good faith with their clients.

For greater certainty, Canadian securities legislation does not otherwise prevent a firm from placing a hold on a client's account that it is legally entitled to place.

We acknowledge that there are other circumstances under which a firm might place a hold on a transaction, withdrawal or transfer. The Proposed Amendments do not address these circumstances.

In addition, we note that the Proposed Amendments are not intended to create an obligation to place a temporary hold; however, we recognize that firms may be legally required to place holds in certain circumstances.

## **Background**

Canadians are living longer than ever before, and older Canadians are increasingly making up a greater proportion of the total population.<sup>1</sup> As investors live longer, there is a greater need for targeted financial advice and strategies associated with aging,<sup>2</sup> as well as the need to be more attuned to the sometimes-subtle changes clients may present as they age.

Registrants can be among the first to notice signs of vulnerability, diminished mental capacity and financial exploitation because of interactions they have with their clients and the knowledge they acquire through the client relationship.

Unfortunately, older Canadians are at a heightened risk of losing money to fraud and abuse. A study commissioned by the CSA in 2017 revealed that Canadians aged 65 or older are the likeliest age group to report being the victims of financial fraud.<sup>3</sup> At the same time, many older Canadians are also at risk of financial abuse. This can take the form of theft, misuse or underuse of funds intended for care and other household expenses, or abuses of a power of attorney or other authority over the older person's decision-making. A 2015 national study on the mistreatment of older Canadians found that 2.6 per cent of Canadians aged 65 or older, representing 244,176 Canadians, reported having been a victim of financial abuse in the 12 months prior to when they were interviewed.<sup>4</sup> This made financial abuse the second most common form of elder abuse in Canada.<sup>5</sup>

Diminished mental capacity also has the potential to endanger the financial security of investors. As the human body ages, it is normal for changes in the brain to take place. However, these changes do not impact everyone in the same way and at the same time. These normal changes in cognition may not have a noticeable effect on one's ability to perform routine financial tasks, such as paying bills, but they can become more obvious when one faces more complex or unfamiliar contexts, such as financial planning or deciding to buy or sell investments.<sup>6</sup>

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1 Recent Canadian census data shows that approximately 5.9 million Canadians are aged 65 or older, representing nearly 17 per cent of Canada's total population. Source: Statistics Canada, "Canada's population estimates: age and sex" (2015).

2 Households led by Canadians aged 65 and older control approximately \$541 billion in non-pension financial assets, representing 39 per cent of total non-pension financial assets held by Canadian households. Source: Statistics Canada, Survey of Financial Security (2016).

3 Innovative Research Group (commissioned by the CSA), *CSA Investor Index* (2017), at p. 52.

4 National Initiative for the Care of the Elderly, *Into the Light: National Survey on the Mistreatment of Older Canadians* (2015), at p. 55.

5 *Ibid.*

6 FCA, Occasional paper No. 31, *Ageing Population and Financial Services* (2017), at p. 26.

Additionally, the risk of Alzheimer’s disease and other forms of dementia increases substantially as individuals get older: while only 7 per cent of Canadians over 65 years of age are affected by dementia, this percentage is 35-40 per cent among Canadians over 85 years of age.<sup>7</sup>

The CSA recognizes that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests. The CSA also recognizes that not all vulnerable clients are older clients. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature. Vulnerability can be caused by an illness, impairment, disability or aging process limitation. It is important for firms to recognize vulnerabilities in their clients, because vulnerable clients may be more susceptible to financial exploitation.

### *Canadian Policy Landscape*

Over the past several years, Canadian securities regulators have been focusing on addressing issues of financial exploitation and diminished mental capacity affecting older and vulnerable investors. In March 2018, the Ontario Securities Commission (the **OSC**) published OSC Staff Notice 11-779 – *Seniors Strategy*, which included an action plan to respond to the needs and priorities of Ontario seniors.<sup>8</sup> In June 2018, the Financial and Consumer Services Commission (New Brunswick) released a report on financial exploitation and cognitive impairment, outlining its recommendations as well as results from public feedback on an earlier consultation paper.<sup>9</sup> In early 2017, the Québec government adopted *An Act to combat maltreatment of seniors and other persons of full age in vulnerable situations as a means of combating abuse*<sup>10</sup> and the Autorité des marchés financiers published *Protecting vulnerable clients – A practical guide for the financial services industry* in May 2019.<sup>11</sup>

In June 2019, the CSA published CSA Staff Notice 31-354 *Suggested Practices for Engaging with Older and Vulnerable Clients*, which, among other things, encourages registrants to consider asking their clients to provide TCP information.<sup>12</sup>

Similarly, the SROs have taken measures to address these issues. In 2016, IIROC published IIROC Notice 16-0114 - *Guidance on compliance and supervisory issues when dealing with senior clients*.<sup>13</sup> In October 2019, the MFDA published MFDA Bulletin #0797-P - *Seniors and Vulnerable Clients* which sets out its recommendations in respect of the use of TCPs and the placing of temporary holds on transactions.<sup>14</sup>

The CSA acknowledges that in order to protect older and vulnerable clients, it is important to provide registrants with tools and guidance that they can use to take action against financial exploitation and to address issues arising from a client’s diminished mental capacity, while being mindful of the client’s autonomy. We believe that the Proposed Amendments are a step towards achieving these goals.

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7 Canada, Senate, *Dementia in Canada: A National Strategy for Dementia-friendly Communities* (Standing Senate Committee on Social Affairs, Science and Technology, 2016), at p. 3.

8 *Seniors Strategy*, OSC SN 11-779, (2018) 41 OSCB 2268.

9 Financial and Consumer Services Commission of New Brunswick, *Recommendations and Results of Consultation: Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick* (June 2018).

10 *An Act to combat maltreatment of seniors and other persons of full age in vulnerable situations as a means of combating abuse*, L-6.3, Québec, 2017.

11 *Protecting vulnerable clients – A practical guide for the financial services industry*, AMF, (2019).

12 CSA Staff Notice 31-354, *Suggested Practices for Engaging with Older and Vulnerable Clients*, [http://www.nbsc-cvmnb.ca/nbsc/uploaded\\_topic\\_files/31-354-CSAN-2019-06-21-E.pdf](http://www.nbsc-cvmnb.ca/nbsc/uploaded_topic_files/31-354-CSAN-2019-06-21-E.pdf).

13 IIROC Notice 16-0114, *Guidance on compliance and supervisory issues when dealing with senior clients* (2016).

14 MFDA Bulletin #0797-P, *Seniors and Vulnerable Clients*(2019).

## ***U.S. Policy Landscape***

In recent years, the North American Securities Administrators Association<sup>15</sup> and the Financial Industry Regulatory Authority<sup>16</sup> have taken steps to address issues of financial exploitation of older and vulnerable clients. In drafting the Proposed Amendments, CSA staff considered these two regimes and adopted certain elements of these frameworks that were appropriate for the Canadian landscape.

## **Summary of Proposed Amendments**

CSA Staff have organized the Proposed Amendments into two topics: 1) Trusted Contact Person and 2) Temporary Holds. Unless otherwise noted, section references in the summary below are to provisions in NI 31-103.

### ***Trusted Contact Person***

The CSA proposes to amend section 13.2 [*Know your client*] of NI 31-103 by adding a new paragraph 13.2(2)(e) that would require registrants to take reasonable steps to obtain from the client the name and contact information of a TCP and the written consent of the client to contact the TCP in circumstances set out in the Rule. We also propose to provide guidance in 31-103CP with respect to our expectations for the use of the TCP. This requirement would not apply to a registrant in respect of a client who is not an individual.

In addition, the CSA proposes to amend section 14.2 [*Relationship disclosure information*] of NI 31-103 by adding a new paragraph 14.2(2)(1.1) that would require a registered firm to disclose to a client the circumstances under which the firm might disclose information about the client or the client's account to the TCP.

### ***Temporary Holds***

The CSA proposes to add a new section 13.19 [*Conditions for temporary hold*] to NI 31-103 that would:

- not prohibit registered firms and registered individuals from placing a temporary hold on the purchase or sale of a security or withdrawal or transfer of cash or securities from a client's account, if the registered firm reasonably believes that either:
  - a vulnerable client is being financially exploited, or
  - with respect to an instruction given by a client, the client does not have the mental capacity to make financial decisions, and
- require registered firms to take certain prescribed steps if they place a temporary hold in the above noted circumstances.

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<sup>15</sup> NASAA, *NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation*, <https://bit.ly/2E4XYt6>.

<sup>16</sup> FINRA, *Senior Investors*, <https://bit.ly/2Yxn3pS>.

We also propose to provide guidance in 31-103CP with respect to our expectations for the use of temporary holds.

The Proposed Amendments would add definitions of “financial exploitation”, “mental capacity”, “temporary hold” and “vulnerable client” to section 1.1 of NI 31-103. The CSA proposes to add guidance to 31-103CP on the signs registrants may observe if a client is being financially exploited or is suffering from diminished mental capacity.

The CSA proposes to amend section 11.5 [*General requirements for records*] of NI 31-103 by adding a new paragraph 11.5(2)(s) to require firms to maintain records to demonstrate compliance with the proposed section 13.19.

The CSA also proposes to amend section 14.2 [*Relationship disclosure information*] of NI 31-103 by adding a new paragraph 14.2(2)(p) that would require a registered firm to provide clients with a general explanation of the circumstances under which the firm or registered individual may place a temporary hold and a description of the notice that will be given.

### **Questions for Comment**

In addition to comments on any aspect of the Proposed Amendments, we invite views on the questions below. Please provide a specific response.

#### ***Trusted Contact Person***

1. We have proposed that the new paragraph 13.2(2)(e) not apply to a registrant in respect of a client that is not an individual. We acknowledge that some individuals structure their accounts as holding companies, partnerships or trusts for various reasons.

Should registrants be required to take reasonable steps to obtain the name and contact information of a trusted contact person for the individuals who,

- (i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation, or
  - (ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust?
2. For IIROC Dealer Members exclusively offering order execution only services, please comment on any specific considerations or factors that may impact the appropriateness of the proposed framework in the order execution only service context, particularly the requirement to take reasonable steps to obtain TCP information under new paragraph 13.2(2)(e).

### ***Temporary Holds***

3. We have proposed that the new temporary hold requirements apply to holds that are placed if there is a reasonable belief that, with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions. We have heard from stakeholders that an individual that is suffering from diminished mental capacity is more susceptible to financial exploitation, and, because of their diminished mental capacity, may need to be protected from mishandling or dissipating their own assets. Should the temporary hold requirements apply to holds that are placed where there is a reasonable belief that the client does not have the mental capacity to make financial decisions or should they be limited to cases of financial exploitation of vulnerable clients?
4. We have proposed that the new temporary hold requirements apply to holds that are placed, not only on the withdrawal of cash or securities from an account, but also on the purchase or sale of securities and the transfer of cash or securities to another firm. We have heard from stakeholders that transactions and transfers, in cases of financial exploitation or diminished mental capacity, can be just as harmful to clients as withdrawals. Should the temporary hold requirements apply to holds that are placed on the purchase or sale of securities and the transfer of cash or securities to another firm?
5. We have not proposed a time limit on temporary holds considering the complex nature of issues relating to financial exploitation and diminished mental capacity, and the length of time it takes to engage with third parties such as the police and the relevant public guardian and trustee. Instead of a time limit on the temporary holds, we are proposing to require firms to provide the client with notice of the decision to not terminate the temporary hold, and reasons for that decision, every 30 days. Should we prescribe a time limit on temporary holds? Or is the notice requirement proposed by the CSA sufficient to protect investors?
6. Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

### **Transition**

Subject to the nature of comments we receive, as well as any applicable regulatory requirements, we are proposing that if approved, the Proposed Amendments would come into force at the same time as the Client Focused Reforms relating to know your client.

We invite your comments on this implementation plan.

### **Local Matters**

Annex D includes, where applicable, additional information that is relevant in a local jurisdiction only.

## **Request for Comments**

We welcome your comments on the Proposed Amendments.

Please submit your comments in writing on or before June 3, 2020. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2640, boulevard Laurier, bureau 400  
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Fax: 514-864-8381  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## Questions

Please refer your questions to any of the following:

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**ANNEX A**  
**PROPOSED AMENDMENTS TO**  
**NATIONAL INSTRUMENT 31-103**  
***REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT***  
***OBLIGATIONS***

1. *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions:*

“financial exploitation” means, in respect of an individual, the use, control or deprivation of the individual’s financial assets through undue influence or wrongful or unlawful conduct;

“mental capacity” means the ability to understand information or appreciate the foreseeable consequences of a decision or lack of decision;

“temporary hold” means a hold that is placed on the purchase or sale of a security or withdrawal or transfer of cash or securities from a client’s account;

“vulnerable client” means a client of a registered firm or a registered individual, who may have an illness, impairment, disability or aging process limitation that places the client at risk of financial exploitation;.

3. *Subsection 11.5 (2) is amended:*

(a) *in paragraph (r) by replacing “.” with “;”, and*

(b) *by adding the following paragraph:*

(s) demonstrate compliance with section 13.19 [*conditions for temporary hold*].

4. *Subsection 13.2 (2) is amended by deleting “and” at the end of subparagraph (c) (vi), by replacing “.” with “, and” at the end of paragraph (d), and by adding the following paragraph:*

(e) obtain from the client the name and contact information of a trusted contact person, who is an individual of the age of majority or older in the individual’s jurisdiction of residence, and the written consent of the client for the registrant to contact the trusted contact person to confirm or make inquiries about any of the following:

(i) possible financial exploitation of the client;

(ii) concerns about the client’s mental capacity as it relates to the client’s financial decision making or lack of decision making;

- (iii) the name and contact information of any of the following:
  - (A) a legal guardian of the client,
  - (B) an executor of an estate under which the client is a beneficiary,
  - (C) a trustee of a trust under which the client is a beneficiary,
  - (D) any other personal or legal representative of the client;
- (iv) the client's current contact information..

5. ***Section 13.2 is amended by adding the following subsection:***

- (8) Paragraph (2)(e) does not apply to a registrant in respect of a client that is not an individual..

6. ***The Instrument is amended by adding the following division:***

*Division 8 Temporary holds*

**13.19 Conditions for temporary hold**

- (1) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold in relation to the financial exploitation of a vulnerable client unless the firm reasonably believes:
  - (a) the client is a vulnerable client, and
  - (b) financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.
- (2) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold in relation to the lack of mental capacity of a client unless the firm reasonably believes, with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions.
- (3) If a registered firm, or a registered individual whose registration is sponsored by the registered firm, places a temporary hold in accordance with subsection (1) or (2), the firm must do the following:
  - (a) document the facts that caused the firm or individual to place and continue the temporary hold;
  - (b) as soon as possible following the date the firm or individual initially placed the temporary hold, provide notice of the temporary hold and the reasons for the temporary hold to the client;
  - (c) as soon as possible following the date the firm or individual initially placed the temporary hold and until the hold is terminated, further review the facts that caused the firm or individual to place the temporary hold;

- (d) within 30 days of placing the temporary hold, and unless the hold has been previously terminated, within every subsequent 30-day period, take either of the following actions:
  - (i) terminate the temporary hold;
  - (ii) provide the client with notice of the firm's decision to not terminate the hold and the reasons for that decision;
- (e) ultimately terminate the temporary hold and decide to proceed or not proceed with the purchase or sale of a security or withdrawal or transfer of cash or securities..

7. ***Subsection 14.2 (2) is amended:***

***(a) by adding the following paragraph:***

- (1.1) a description of the circumstances under which a registrant might disclose information about the client or the client's account to a trusted contact person in accordance with paragraph 13.2(2)(e);

***(b) in paragraph (o) by replacing “.” with “;”, and***

***(c) by adding the following paragraph:***

- (p) a general explanation of the circumstances under which a registered firm or registered individual may place a temporary hold under section 13.19 [*conditions for temporary hold*] and a description of the notice that will be given to the client, if a temporary hold is placed under that section..

8. This Instrument comes into force on •.

**ANNEX B**  
**PROPOSED CHANGES TO**  
**COMPANION POLICY 31-103CP**  
**REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT**  
**OBLIGATIONS**

1. *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations is changed by this Document.*

2. *Section 1.2 is changed by adding the following at the end of the section:*

**Definitions related to vulnerable clients**

Appendix G provides guidance on the terms “financial exploitation”, “mental capacity”, “temporary hold ” and “vulnerable client”..

3. *Section 13.2 is changed by adding the following:*

**“Identifying a trusted contact person of a client**

Appendix G sets out how we interpret the requirements under paragraph 13.2(2)(e) and section 13.19 relating to the trusted contact person and temporary hold requirements. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients and decline in clients’ mental capacity.” *immediately after the sentence* “This exemption does not change an insider’s reporting and conduct responsibilities.”.

4. *Part 13 is changed by adding the following at the end of the part:*

*Division 8 Temporary holds*

**13.19 Conditions for temporary hold**

Appendix G sets out how we interpret the requirements under paragraph 13.2(2)(e) and section 13.19 relating to the trusted contact person and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients and decline in clients’ mental capacity..

5. *The Document is changed by adding the following appendix:*

**Appendix G - Part 13 - Assisting Vulnerable Clients**

This appendix sets out how we interpret the requirements under paragraph 13.2(2)(e) and section 13.19 relating to the trusted contact person and temporary holds. This appendix also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients and decline in clients’ mental capacity.

## ***1. Definitions***

### ***Financial exploitation***

Financial exploitation of vulnerable clients may be committed by any person or company; however, it is often committed by an individual who is close to the vulnerable client, such as a family member, good friend, neighbour or trusted individual such as an attorney under a power of attorney (POA), service provider or caregiver. Warning signs that a client could be subject to financial exploitation include:

- unexplained or sudden withdrawals from accounts or account closures,
- unexplained changes in the risk profile of an account from low risk or capital preservation to high risk,
- sudden reluctance to discuss financial matters,
- being accompanied to meetings by new or unknown caregivers, friends or family members, or having difficulty communicating directly with the client without the interaction of others,
- sudden or unusual requests to change ownership of assets (for example, requesting that investments be transferred to a joint account held by family members, friends or caregivers),
- sudden or unexplained changes to legal or financial documents, such as POAs and wills, or account beneficiaries,
- an attorney under a POA providing instructions that seem inconsistent with the client's pattern of instructions to the firm,
- unusual anxiety when meeting or speaking to a firm employee (in-person or over the phone),
- unusual difficulty with, or lack of response to, communications or meeting requests,
- limited knowledge about their financial investments or circumstances when the client would have been customarily well informed in this area,
- increasing isolation from family or friends, or
- signs of physical neglect or abuse.

### ***Mental capacity***

Registered individuals can be in a unique position to notice the first warning signs of a decline in a client's mental capacity. These signs may arise subtly and over time. Examples of warning signs include:

- memory loss, such as forgetting previously given instructions or repeating questions,
- increased difficulty completing forms or understanding disclosure documents,
- increased difficulty understanding important aspects of investment accounts,
- confusion or unfamiliarity with previously understood basic financial terms and concepts,
- reduced ability to solve everyday math problems,
- exhibiting unfamiliarity with surroundings or social settings or missing appointments,
- difficulty communicating,
- changes in personality, or
- increased passivity, anxiety, aggression or other changes in mood, or an uncharacteristically unkempt appearance.

### ***Vulnerable client***

Vulnerable clients are those clients that may be at risk of being financially exploited because of an illness, impairment, disability or aging process limitation. Registered firms and individuals should recognize that not all older clients are vulnerable or unable to protect their own interests. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature. It is important to recognize vulnerabilities in clients because vulnerable clients may be more susceptible to financial exploitation.

## ***2. Trusted contact person***

### ***Purpose of the trusted contact person***

Paragraph 13.2(2)(e) requires registrants to take reasonable steps to obtain the name and contact information for a trusted contact person or “TCP” with whom they may communicate in specific circumstances in accordance with the client’s written consent. This requirement only applies with respect to clients who are individuals.

A TCP is intended to be a resource for a registrant to assist in protecting a client’s financial interests or assets when responding to possible circumstances of financial exploitation or concerns about declining mental capacity. A client may name more than one TCP on their account. The registrant may rely on confirmation from the client that the TCP is the age of majority or older in the individual’s jurisdiction of residence. A TCP does not replace or assume the role of a client-designated attorney under a POA. Nor does a TCP have the authority to transact on the client’s account or to make any other decision on behalf of the client by virtue of being named a TCP. A client-designated attorney under a POA can also be named as a TCP, but clients should be encouraged to select a different individual, who is not involved in making financial decisions with respect to the client’s account. A TCP should not be the client’s dealing representative or advising representative.

### ***Obtaining trusted contact person information and consent***

There is no prescribed form for obtaining TCP information. Registrants may wish to develop a separate form or incorporate the information into an existing form such as an account application. The form might include:

- an overview of the circumstances under which the registrant may contact the TCP,
- space to document information about the TCP, including the TCP’s name, mailing address, telephone number, email address and nature of the relationship to the client,
- a signature box to document a client’s consent to contact the TCP,
- a statement that confirms a client’s right to withdraw consent to contact the TCP, and
- a description of how to change a TCP.

Understanding the nature of the relationship between the client and the TCP may provide insight into the support network that the client has so that the registrant can assess whether it is appropriate to contact the TCP. Also, demonstrating that the registrant has knowledge of the relationship between the client and the TCP may alleviate concerns the TCP may have about speaking to the registrant about the client.

Registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP; however, they must still take reasonable steps to obtain the information. Examples of reasonable steps include explaining to the client the purpose of a TCP, providing the client with the disclosure required by paragraph 14.2(2)(1.1), asking the client to provide the name and contact information of a TCP, and obtaining the client's written consent to allow the registrant to contact the TCP in the circumstances set out in paragraph 13.2(2)(e). If a client refuses to provide the name and contact information for a TCP, the registrant may make further inquiries about the reasons for the refusal. Registrants are reminded that they are required to maintain records which demonstrate compliance with section 13.2 [*know your client*], document correspondence with clients, and document compliance and supervision actions taken under paragraphs 11.5(2)(l), (n) and (o).

### ***Contacting the trusted contact person and other parties***

When concerns about financial exploitation or decline in mental capacity arise, registrants should speak with the client about concerns they have with the client's account or wellbeing before contacting others, including the TCP.

Although there is no requirement to notify a TCP that they have been named by a client, registrants should encourage their clients to notify a TCP that they have been named and explain that the TCP will only be contacted in the circumstances set out in paragraph 13.2(2)(e).

If consent has been obtained, a registrant might contact a TCP if they notice signs of financial exploitation or if the client exhibits signs of diminished mental capacity which they believe may affect the client's ability to make financial decisions. An overview of signs of financial exploitation and diminished mental capacity are discussed in section 1 of this appendix. If the TCP is suspected of being involved in the financial exploitation of the client, the TCP should not be contacted and consideration should be given as to whether there are other more appropriate resources from which to seek assistance. A registrant might also contact the TCP to confirm the client's contact information if the registrant is unsuccessful in contacting the client after repeated attempts and where failure to contact the client would be unusual. A registrant may also ask the TCP to confirm the name and contact information of a legal guardian, executor, trustee or any other personal or legal representative such as an attorney under a POA.

When contacting a TCP, registrants should be mindful of privacy obligations under relevant privacy legislation and client agreements relating to the collection, use and disclosure of personal information.

Notwithstanding that the client has named a TCP, a registrant may also contact an attorney under a POA, government organizations, departments or individuals including police, or the public guardian and trustee with which they might otherwise consult in instances where the registrant suspects financial exploitation or has concerns with diminished mental capacity.

### ***Policies and procedures***

We expect registered firms to have written policies and procedures that address:

- how to collect and document TCP information and keep this information up-to-date,
- how to obtain the written consent of the client to contact the TCP, and document any restrictions on contacting the TCP and what type of information can be shared, and
- how to document discussions with a client's TCP.

### ***3. Temporary Holds***

#### ***General principles***

Registered firms and individuals can be in a unique position to notice signs of financial exploitation, vulnerability and declining mental capacity in clients because of the interactions they have with them, and the knowledge they acquire through the client relationship. Yet, many firms and individuals express concerns about acting to protect their clients, particularly by placing temporary holds, fearing regulatory repercussion. The intent of section 13.19 is to clarify that if registered firms have a reasonable belief that their vulnerable clients are being financially exploited or that their clients lack mental capacity, there is nothing in Canadian securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place. Section 13.19 also prescribes requirements on how temporary holds in these circumstances must be placed. We acknowledge that there may be other circumstances under which a registered firm and its registered individuals may want to place a hold on an account. Section 13.19 and this guidance do not address these circumstances.

When placing temporary holds in accordance with section 13.19, registered firms and their registered individuals must act in a manner that is consistent with their obligation to deal fairly, honestly and in good faith with their clients. Registered firms and their registered individuals must not use a temporary hold for inappropriate reasons, for example, to delay a disbursement for fear of losing a client.

We do not expect registered firms and their registered individuals to be the final arbiter in matters of vulnerability, financial exploitation or mental capacity, but rather, believe that they may want to place temporary holds in these circumstances so that they can take steps to protect their clients.

We note that before a temporary hold is placed, the registered firm itself must reasonably believe that either a vulnerable client is being financially exploited or a client who has given the firm an instruction does not have the mental capacity to make financial decisions. We expect that decisions to place temporary holds be made by the CCO or authorized and qualified supervisory, compliance or legal staff.

A temporary hold contemplated under section 13.19 is not intended as a hold on the entire client account, but rather as a temporary hold over a specific purchase or sale of a security or withdrawal or transfer of cash or securities from a client's account. Transactions unrelated to the financial exploitation or lack of mental capacity should not be subject to the temporary hold. Each purchase or sale of a security or withdrawal or transfer of cash or securities should be reviewed separately. If the transaction, withdrawal or transfer involves the entire assets in the account, it may be reasonable to place a temporary hold on the entire account but continue to permit legitimate disbursements, such as for the payment of regular expenses.

A temporary hold contemplated under section 13.19 is not intended to be available where a registered firm or its registered individuals have decided not to accept a client order or instruction that does not, in their view, meet the criteria for a suitability determination. In this circumstance, the registered firm and registered individuals must comply with the requirements set out in subsection 13.3(2.1).

A client may provide an instruction to take an action which would not, in the registered firm's or registered individual's view, meet the criteria for suitability determination and which may

otherwise be considered a poor financial decision, but these facts alone do not necessarily mean that the client is being financially exploited or lacks mental capacity.

### ***Conditions for temporary hold***

Section 13.19 contains the steps that registered firms must take if they place a temporary hold. These steps, when taken in good faith, are consistent with the obligation to deal fairly, honestly and in good faith with the client.

We expect registered firms to have written policies and procedures that:

- set out detailed warning signs of financial exploitation or lack of mental capacity;
- clearly delineate firm and individual responsibilities for addressing concerns of financial exploitation and lack of mental capacity, such as:
  - who at the firm is authorized to place and terminate temporary holds, for example, the CCO or authorized and qualified supervisory, compliance or legal staff;
  - who at the firm is responsible for supervising client accounts when a temporary hold is in place;
- set out the steps to take once a concern regarding financial exploitation or lack of mental capacity has been identified, such as:
  - escalating the concern;
  - proceeding or not proceeding with the instructions;
- establish lines of communication within the firm to ensure proper reporting; and
- outline when suspected abuse of a POA should be escalated to the appropriate external authorities, for example the public guardian and trustee or local law enforcement pursuant to section 331 of the *Criminal Code*.

Having written policies and procedures will show that firms have a system in place to address concerns that may result in a temporary hold. Additionally, it may assist in demonstrating that the registered firm or registered individual were acting fairly, honestly and in good faith in placing the temporary hold in accordance with their policies and procedures and the requirements under section 13.19.

Under paragraph 13.19(3)(a), when documenting the facts that caused the registered firm and its registered individuals to place and continue the temporary hold, reference should be made to the signs of financial exploitation or declining mental capacity that were observed. As the signs of financial exploitation and declining mental capacity often appear over a period of time, it is important to document signs and interactions with the client, the client's representatives, family or other individuals which led to the temporary hold.

Under paragraph 13.19(3)(b), the registered firm must, as soon as possible, provide notice of the temporary hold to the client. While firms often opt to send written notice, there may be some circumstances where they may also want to attempt to contact the client verbally. If a client is being financially exploited, the person perpetrating the exploitation may be withholding the client's mail. Additionally, if a client is experiencing a decline in mental capacity, they may not be reviewing their mail on a regular basis.

While there is no requirement that firms contact a TCP prior to or when a temporary hold is placed, they may wish to contact a TCP at this point if they have not already done so. The firm may want to contact the TCP for a number of reasons as outlined in the guidance in section 2 of this appendix.

However, before contacting the TCP, they should assess whether there is a risk that the TCP is perpetrating the exploitation. If the firm suspects that the TCP is involved in the financial exploitation, a notification to the TCP may have detrimental effects on the client.

Firms should also assess their contractual and statutory privacy obligations before contacting the TCP, other individuals or organizations with the intent of sharing or obtaining personal information regarding a client.

Under paragraph 13.19(3)(c), once a registered firm or a registered individual places a temporary hold, the firm must, as soon as possible, further review the facts that caused them to place the temporary hold. The review may prompt the registered firm or registered individual to review account activity or contact other parties who could provide assistance to the client, such as an attorney under a POA, a TCP, or if necessary, outside organizations such as the police or public guardian and trustee (in accordance with privacy laws and other applicable legislation). Before contacting another party, the firm should assess whether there may be a risk that the other party is financially exploiting the vulnerable client.

Paragraph 13.19(3)(d) requires the firm to notify the client of its decision to continue or terminate the temporary hold every 30 days. If the firm decides to continue the temporary hold, it must also provide the client with the reasons for its decision. Firms should be as transparent as possible with their clients about the reasons for placing the temporary hold, and be mindful of their obligation to deal fairly, honestly and in good faith with their clients. We expect that, while the temporary hold is in place, the registered firm is continuing its review of the facts that led to the hold. This may entail following up with relevant third parties, such as the police or a public guardian and trustee, who may be conducting their own review.

If the registered firm no longer has a reasonable belief that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted or no longer has a reasonable belief that their client does not have the mental capacity to make financial decisions, the temporary hold must end. If ending the temporary hold results in an investment action, a suitability determination will be required. A firm may also decide to end the temporary hold for other reasons, such as if it decides to accept the client instructions with respect to the transaction, withdrawal or transfer, or alternatively, decides not to accept the client's instructions..

6. These changes become effective on •.