

CSA Notice of Amendments to**National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*****and to****Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*****to Enhance Protection of Older and Vulnerable Clients****July 15, 2021****Introduction**

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments (the **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** or the **Companion Policy**, together the **Instrument**). The Amendments relate to the provisions of the Instrument relating to business operations and client relationships and will enhance protection of older and vulnerable clients by providing registrants with tools and guidance to address issues of financial exploitation and diminished mental capacity.

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 Amendments. The Amendments will apply to all registered firms, including members of IIROC and MFDA. IIROC and the MFDA plan to implement corresponding amendments to the IIROC Rules and the MFDA Rules, respectively. Subject to the necessary approvals, these SRO rule amendments will come into effect on December 31, 2021.

The Amendments are expected to be adopted by each member of the CSA. Provided all necessary ministerial approvals are obtained, the Amendments will come into force on December 31, 2021. Where applicable, Annex F of this notice provides information about each jurisdiction's approval process. Implementation of the Amendments will be subject to a transition provision discussed below.

This notice contains the following annexes:

- Annex A – Summary of Comments and Responses
- Annex B – List of Commenters

- Annex C – Amendments to NI 31-103
- Annex D – Changes to 31-103CP
- Annex E – Adoption of the Amendments

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

www.albertasecurities.com

www.lautorite.qc.ca

www.bcsc.bc.ca

www.fcaa.gov.sk.ca

www.fcnb.ca

www.mbsecurities.ca

nssc.novascotia.ca

www.osc.ca

Substance and Purpose

Seniors are a growing segment of investors whose needs and issues demand attention. Delivering strong investor protection and responding to the needs and priorities of older and vulnerable investors are key components of the CSA's mandate. The Amendments are part of the CSA's initiative to enhance protection of older and vulnerable clients by providing registrants with tools and guidance to address issues of financial exploitation and diminished mental capacity.

Trusted Contact Person

The 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.

Temporary Holds

In addition, the Amendments will clarify that registered firms and registered individuals are not prohibited from placing a temporary hold on the purchase or sale of a security on behalf of a client or on the withdrawal or transfer of cash or securities from a client's account, provided that they take certain prescribed steps, in the following circumstances:

- where a registered firm reasonably believes that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or
- where a registered firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.

Background

Canadians are living longer than ever before, and older Canadians are increasingly making up a greater proportion of the total population.¹ As investors live longer, there is a greater need for

¹ In 2016, Canadian census data showed that approximately 5.9 million Canadians were aged 65 or older, representing nearly 17 per cent of Canada's total population. Source: Statistics Canada, "Census Profile, 2016 Census" (2016).

targeted financial advice and strategies associated with aging,² as well as the need to be more attuned to the sometimes-subtle changes clients may present as they age.

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

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 or rely on to take action against financial exploitation and to address issues arising from a client's diminished mental capacity, while being mindful of the importance of upholding client autonomy. It is also important to provide clients with avenues and the autonomy to protect themselves in vulnerable situations. We believe that the Amendments are a step towards achieving these goals.

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.

Relevant Publications

We published proposed amendments to the Instrument for comment on March 5, 2020 (the **Proposals**), and refer to the Proposals for additional background on this initiative, including work by Canadian securities regulators over the past several years to address issues of financial exploitation and diminished mental capacity affecting older and vulnerable investors.³ We also refer to publications released after the Proposals, including OSC Staff Notice 11-790 *Protecting Aging Investors through Behavioural Insights*, published in November 2020, which identifies behaviourally-informed techniques to encourage older clients to provide TCP information.

As provided in CSA Staff Notice 31-354 *Suggested Practices for Engaging with Older or Vulnerable Clients*, registered firms are encouraged to develop training programs for their employees on: (1) recognizing the potential warning signs that a client could be suffering from diminished mental capacity, how these changes can affect a client's financial decision-making abilities, and the implications that these changes may have for the client; and (2) detecting and responding to potential financial exploitation of their older or vulnerable clients, including training to identify warning signs that a power of attorney or limited trading authorization is being misused to exploit a client. Such training will assist firms in meeting their obligations set out in subsection 11.1(2) of the Rule.

The Autorité des marchés financiers also refers registrants operating in Quebec to Bill 101, An Act to strengthen the fight against maltreatment of seniors and other persons of full age in vulnerable situations as well as the monitoring of the quality of health services and social services⁴ that was introduced in Québec on June 9, 2021. The amendments introduced by this bill

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 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* (2020), 43 OSCB 1967.

⁴ Bill 101 was introduced during the 42nd Legislature, 1st Session of the Assemblée Nationale du Québec

will impact the financial sector and therefore the registrants operating in Quebec. Accordingly, once the bill is assented to, the Autorité des marchés financiers will propose further amendments to NI 31-103 in order to harmonize the definition of “vulnerable client” with the definition of “person in a vulnerable situation” found in this Act.

Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 27 commenters. We have considered the comments received and thank all commenters for their input. A summary of comments, together with our responses, is set out in Annex A of this notice. The names of commenters are contained in Annex B of this notice.

Copies of the comment letters were posted on the following websites:

- the Alberta Securities Commission at www.albertasecurities.com
- the Autorité des marchés financiers at www.lautorite.qc.ca
- the Ontario Securities Commission at www.osc.ca

Summary of Changes

In developing the Amendments, we carefully reviewed the comments we received on the Proposals. We found some of the comments recommending changes to be persuasive and revised the Proposals accordingly, and made other drafting changes which are intended to clarify the interpretation of the new requirements. As these changes are not material, we are not publishing the Amendments for a further comment period.

Key changes to the Proposals are summarized below. The changes to the Proposals and our reasons for making them are discussed in more detail in Annex A of this notice.

Definitions

- The Amendments do not include a definition of “mental capacity”. In lieu of a definition in the Rule, the Companion Policy includes additional guidance on factors a registrant might consider in identifying warning signs that a client lacks mental capacity to make decisions involving financial matters.
- A definition of “trusted contact person” has been added as “an individual identified by a client to a registrant whom the registrant may contact in accordance with the client’s written consent.”
- We added guidance to clarify that the examples in the Companion Policy of warning signs of financial exploitation of a client, and signs of a lack of mental capacity of a client to make decisions involving financial matters, are not exhaustive. The guidance also provides that one sign alone may not be indicative of financial exploitation or a lack of mental capacity of a client to make decisions involving financial matters.

Trusted Contact Person

- We moved the TCP requirement from section 13.2 [*know your client*] to a new section 13.2.01 [*know your client – trusted contact person*] to clarify that a registrant is not prevented from opening or maintaining an account if a client refuses or fails to identify a TCP as long as the registrant has taken reasonable steps to obtain the TCP information concurrently with taking reasonable steps to obtain know your client (**KYC**) information. We also added guidance in the Companion Policy around collecting and updating TCP information as part of the KYC process.
- We removed the requirement that the TCP be of the age of majority or older in the TCP's jurisdiction of residence and instead added guidance in the Companion Policy to note that registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in potentially difficult conversations with the registrant about the client's personal situation.
- We added guidance in the Companion Policy to clarify that, although the TCP requirement only applies with respect to clients who are individuals, a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.
- We removed the specific list of individuals (i.e., a legal guardian of the client, an executor of an estate under which the client is a beneficiary, a trustee of a trust under which the client is a beneficiary) about whom a registrant may confirm or make inquiries with the TCP, and only retained "a legal representative of the client, if any" in the Rule. In the Companion Policy, we added guidance that a TCP could be utilized by the registrant to confirm or make inquiries about the name and contact information of a legal representative of the client, including a legal guardian of the client, an executor of an estate under which the client is a beneficiary, or a trustee of a trust under which the client is a beneficiary.
- We added guidance in the Companion Policy on updating TCP information, including with respect to clients who may have previously refused to provide TCP information.

Temporary Holds

- We clarified in the Companion Policy that the fact that a client has not named a TCP does not preclude a registered firm from placing a temporary hold in accordance with section 13.19 [*conditions for temporary hold*].
- Paragraph 13.19(3)(c) of the Rule clarifies that, where a registered firm or a registered individual places a temporary hold, the firm is required to review the relevant facts as soon as possible after placing the hold, and on a reasonably frequent basis, to determine if continuing the hold is appropriate. In the Companion Policy, we added clarifying guidance on what this review should include.
- We removed the paragraph which stated that the registered firm must "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” as we believe this is implied given that holds under section 13.19 are temporary.

Consequential Amendment

As a result of moving the TCP requirement from section 13.2 [*know your client*] to a new section 13.2.01 [*know your client – trusted contact person*], a consequential amendment to paragraph 11.5(2)(1) [*general requirements for records*] was required, which now includes a reference to section 13.2.01.

Transition

The Amendments will take effect at the same time as the KYC provisions of the Client Focused Reforms (i.e., December 31, 2021).⁵

For clarity, there is no expectation that registrants take reasonable steps to collect TCP information from existing clients as of the effective date of the Amendments. Rather, we would expect registrants to take reasonable steps to collect TCP information from existing clients the first time they update the client’s KYC information in accordance with section 13.2 [*know your client*] after December 31, 2021.

Questions

Please refer your questions to any of the following:

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⁵ CSA Notice of Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations – Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms)* (2019), 42 OSCB.

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**ANNEX A
SUMMARY OF COMMENTS AND RESPONSES**

This annex summarizes the written public comments we received on the Proposals and our responses to those comments. Out of 27 comment letters we received, eight were from industry associations, nine were from registrants, two were from the legal community, and eight were from investors and investor advocates.

We thank all the commenters for their comments.

No.	Subject	Comment	Response
<i>I. General Comments</i>			
1.	General support	<p>Overall, commenters expressed support for the Proposals as a tool to enhance investor protection.</p> <p>A few commenters expressed support for the harmonized approach across Canada, applicable to CSA registrants and members of IIROC and MFDA.</p> <p>A few commenters applauded the CSA for achieving the delicate balance between upholding clients' autonomy and providing registrants with tools to address issues of financial exploitation and diminished mental capacity.</p>	We thank you for your support.
2.	Transition	<p>A few commenters expressed support for aligning the transition period with the KYC provisions of the Client Focused Reforms. In their view, implementing the Proposals would require technology enhancements, which would result in the need for additional resources in time and investments. Aligning the two regulatory initiatives would result in efficiencies by allowing for concurrent implementation.</p> <p>One commenter recommended extending the transition period. They asked that there be a reasonable and sufficient transition period to collect TCP information from existing clients.</p>	<p>The Amendments will come into force at the same time as the KYC provisions of the Client Focused Reforms.</p> <p>For clarity, there is no expectation that current registrants must take reasonable steps to collect TCP information from existing clients as of the effective date of the Amendments (i.e., December 31, 2021). Rather, we would expect registrants to take reasonable steps to collect TCP information from existing clients the first time they update the client's KYC information in accordance with section 13.2 [<i>know your client</i>] after December 31, 2021.</p>

No.	Subject	Comment	Response
3.	Drafting suggestions	We received a number of non-substantive drafting suggestions and comments.	While we incorporated some of these suggestions, this summary does not include a detailed list of all the drafting changes we made.
4.	Exploitation by registered individuals	One commenter expressed concern that vulnerable investors may also be exploited by registered individuals.	While the Amendments do not address circumstances where a vulnerable investor is exploited by a registered individual, registered individuals are subject to conduct requirements under securities laws, which include the requirement to deal fairly, honestly and in good faith with their clients.
II. Definitions / Concepts			
1.	“Vulnerable client”	<p>Some commenters were of the view that the definition of vulnerable client is too narrow. The commenters suggested expanding the definition to include factors such as language barriers, social isolation, substantial dependence on another person, registrant misconduct, age, visible minority status, and level of knowledge.</p> <p>One commenter suggested that reference to age should be eliminated in describing the class of investors to be protected as tying age to vulnerability could lead to ageism.</p>	<p>We have carefully considered the comments, and at this time, we are not proposing any substantive changes to the definition of “vulnerable client”. The definition aligns with the purpose of the Amendments. Broadening the definition to include registrant misconduct or vulnerabilities caused by other factors is outside the scope of this project. However, the CSA may consider conducting a retrospective review to assess the efficacy and engagement of the Amendments, which may include consideration of their relevance for other groups and could lead to future modification of the definition.</p> <p>Recognizing that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests, the definition of “vulnerable client” does not include an age-marker.</p>
2.	“Mental capacity”	One commenter suggested narrowing the definition of mental capacity to focus on the ability to understand <i>relevant</i> information instead of <i>any</i> information as the ability to understand <i>any</i> information is too broad. Narrowing it to <i>relevant</i> information relating to making financial decisions lowers the threshold.	<p>As discussed in the Notice, we have removed the definition of mental capacity in the Rule. In lieu of a definition in the Rule, the Companion Policy includes additional guidance on factors a registrant might consider in identifying warning signs that a client lacks mental capacity to make decisions involving financial matters.</p> <p>We believe the nuance raised in this comment is captured in s. 13.19(2) as the firm must reasonably believe that the client does not</p>

No.	Subject	Comment	Response
		Another commenter suggested that the definition be broadened to include the ability for the client to express their wishes.	<p>have the mental capacity <i>to make decisions involving financial matters</i>.</p> <p>We have included the difficulty for a client to express their will, intent or wishes among the warning signs that may suggest that a client lacks mental capacity to make decisions involving financial matters.</p>
3.	Registrants are not medical health professionals	A few commenters stated that registrants are not medical health professionals and should not be asked to make an assessment of mental capacity.	We appreciate that registrants do not have the expertise to assess and determine whether clients lack mental capacity, and we do not expect registrants to make such a determination. However, the Amendments recognize that registrants can be in a unique position to notice warning signs that a client lacks mental capacity to make decisions involving financial matters because of the interactions they have with the client, and the knowledge they acquire through the client relationship. The Amendments are intended to provide tools to assist registrants in responding to such situations.
4.	Examples of warning signs	One commenter noted that signs of financial exploitation and diminished mental capacity can be subjective, difficult to identify and may not be directly related to a client's financial decision-making capacity or ability. The commenter suggested that some of these subjective criteria be removed from the Companion Policy.	Because signs of financial exploitation and diminished mental capacity can be subjective and may be difficult to identify, we have provided examples of warning signs to assist registrants. To address the commenter's concern, we have included additional commentary in the Companion Policy that one warning sign alone may not be indicative, and that the examples provided are not exhaustive.
III. Trusted Contact Person			
1.	General comments	<p>A few commenters expressed concern that the Proposals may not achieve the intended outcome, would be costly and have unintended consequences.</p> <p>The commenters noted the following concerns:</p> <ol style="list-style-type: none"> a. The TCP may be the one exploiting the client. 	<p>We recognize that there may be costs to registrants associated with implementing the Amendments, and we are mindful of the need to strike an appropriate balance between costs and benefits.</p> <ol style="list-style-type: none"> a. As stated in the Companion Policy, if the registrant suspects that the TCP is 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

No.	Subject	Comment	Response
		<ul style="list-style-type: none"> b. Asking for a TCP may strain the adviser-client relationship. c. Advisors may choose not to service older or vulnerable adults. d. The TCP may have little or no information about the client’s arrangement for personal representation and for financial decision making. 	<p>appropriate resources from which to seek assistance, such as the police, the public guardian and trustee, or an alternative TCP, if named.</p> <ul style="list-style-type: none"> b. We appreciate that conversations about TCPs are personal, and clients may be reluctant to provide this information. Personal conversations with clients are not unique to the Amendments – registrants face similar challenges under current requirements to collect know your client (KYC) information. In the Companion Policy, we set out guidance that 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 as part of the KYC process. In doing so, we expect that registrants will use their professional judgment to consider how best to approach this subject of conversation. c. Since registrants will be required to take reasonable steps to obtain TCP information from all clients, and not just from clients over a certain age or clients a registrant perceives as vulnerable, we do not believe the Amendments will result in registrants choosing not to service older or vulnerable clients. <p>With respect to the temporary hold provision in s. 13.19, the Amendments provide a tool for use by registered firms and registered individuals without an obligation to use the tool.</p> <ul style="list-style-type: none"> d. Even in circumstances where a TCP may have little or no information to contribute regarding the client, the TCP may still be able to assist, for example, by having a conversation with the client about their finances or health, reaching out to other family members or trusted people such as a power of attorney (POA), making application to the court to be

No.	Subject	Comment	Response
			<p>appointed to assist the client in handling their affairs, or seeking the assistance of a public guardian and trustee.</p>
2.	Role and purpose of TCP	<p>Many commenters sought additional guidance on the role and the purpose of the TCP, including:</p> <ul style="list-style-type: none"> a. Additional details on how and when to contact the TCP and the level of information that can be discussed with the TCP, especially when the TCP contacts the registrant. b. Additional guidance on who should be a TCP. One commenter recommended that a TCP should be an independent person outside of the client’s immediate family; another commenter proposed a prohibition against designating a client’s attorney under the POA or a client’s registered representative as a TCP; and another commenter suggested allowing a client’s healthcare or social worker to act as a TCP. c. Requiring clients to rank the TCPs in order of preference where more than one TCP is named. 	<ul style="list-style-type: none"> a. We believe the Rule and Companion Policy provide sufficient information for registrants to exercise their professional judgment in deciding how and when to contact the TCP to discuss issues of financial exploitation or diminished mental capacity, as well as the level of information to share in the circumstances. Additionally, registrants are expected to act in accordance with privacy laws and client agreements. b. We believe that the Companion Policy adequately addresses this topic, including guidance relating to appointing a client’s POA or registered representative as a TCP. We do not agree with excluding family members to be appointed as TCPs as that may be too restrictive, especially for individuals with smaller social circles or support systems. c. The Companion Policy contemplates that a client may name more than one TCP on their account. If the client wishes to do so, there is nothing that would prevent a client from ranking the TCPs in the client’s order of preference. However, the Amendments do not require that the TCPs be ranked because such a requirement could take away the flexibility for registrants to use their professional judgment in determining which TCP to contact first in the specific circumstances. For example, if the registrant suspects that the TCP that is ranked first is financially exploiting the client, then the registrant may wish to contact another TCP.

No.	Subject	Comment	Response
3.	<p>Non-individual clients</p> <p><i>(Responses to question #1 in the Proposals)</i></p>	<p>Some commenters recommended that the TCP requirement should not apply in respect of non-individual clients because:</p> <ul style="list-style-type: none"> a. it could be challenging for a registrant to collect TCP information and keep this information current, particularly where there are numerous beneficial owners; b. it is the responsibility of the business owner or manager (and not of a registrant) to establish a succession plan; c. the TCP may not be familiar with or be in a position to deal with matters related to the entity. <p>One commenter suggested not applying the TCP requirement in respect of non-individual clients at this time and re-examining the possibility of expanding the rule at a later time.</p> <p>On the other hand, many commenters supported the idea of the TCP requirement applying to certain types of non-individual clients as there may be value in requiring the collection of TCP information from non-individual clients that are closely held and are, in effect, a part of an individual's personal investment plan.</p>	<p>After considering the comments received, we have decided to proceed with having the TCP provision apply only in respect of clients that are individuals. However, the Companion Policy provides that a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.</p>
4.	<p>Firms that exclusively offer order execution only services</p> <p><i>(Responses to question #2 in the Proposals)</i></p>	<p>Some commenters were of the view that the TCP requirement should apply to IIROC Dealer Members that exclusively offer order execution only services (OEO firms) as OEO firms can play a role in detecting unusual trading or requests for withdrawals or transfers through use of technology. In addition, carving out OEO firms from the requirement may result in exploiters encouraging vulnerable clients to move their accounts to OEO firms to circumvent these investor protection measures.</p>	<p>After considering the comments received, we have decided not to carve out OEO firms from the TCP requirement. Since there is no prescribed form for fulfilling the TCP requirement, we believe there is sufficient flexibility for OEO firms to comply with the TCP requirement in a way that fits with their business model.</p>

No.	Subject	Comment	Response
		<p>On the other hand, a few commenters recommended carving out OEO firms from the TCP requirement on the basis that OEO firms do not have a suitability obligation, have little information on their clients, and do not have regular communications with their clients for them to be able to identify issues of financial exploitation or diminished mental capacity. One of these commenters asked that the carve out be extended to online advisers. In the absence of a carve out for OEO firms and online advisers, the commenter asked that careful consideration be given to tailor the provisions to the unique constructs of these business channels.</p>	
5.	<p>“Reasonable steps” to obtain the name and contact information of a TCP</p>	<p>Several commenters sought additional guidance on what constitutes “reasonable steps” to obtain TCP information. Several commenters recommended that the account opening forms have a defined entry block where the client can decide if they want to name a TCP – this would provide objective evidence that the firm has taken reasonable steps. One commenter suggested that a draft model of authorization to communicate with the TCP should be included in an Appendix of the Companion Policy, as suggested in <i>Protecting Vulnerable Clients - A practical guide for the financial services industry</i> published by the Autorité des marchés financiers (the AMF Guide).</p> <p>One commenter queried how a registrant will be able to produce documents to satisfy the requirement to keep records that demonstrate that they took reasonable steps to collect TCP information, if a client refuses to designate a TCP and does not provide reasons for the refusal.</p>	<p>Please see the Companion Policy under “<i>Obtaining trusted contact person information and consent</i>” for relevant guidance.</p> <p>The Amendments do not prescribe a form in order to provide registrants with sufficient flexibility to comply with the TCP requirement in a way that fits their business model. However, registrants are encouraged to refer to other supportive resources, such as the AMF Guide and OSC Staff Notice 11-790 <i>Protecting Aging Investors through Behavioural Insights</i>. Registrants should keep in mind that these sample forms are for information purposes only and should be mindful of obligations under applicable privacy legislation and client agreements relating to the collection, use and disclosure of personal information.</p> <p>If a client refuses to provide TCP information, registrants should document the refusal. Documenting the refusal will help demonstrate that the registrant took reasonable steps to collect the TCP information.</p>

No.	Subject	Comment	Response
			More generally, registrants are reminded of the obligation to maintain records in accordance with section 11.5 [<i>General requirements for records</i>].
6.	Risk-based approach to collecting TCP information	While commenters were generally supportive of the requirement to collect TCP information from all clients (and not just vulnerable clients or those over a certain age), one commenter suggested allowing registrants to take a risk-based approach to collecting TCP information. Example of a risk-based approach included some criteria that would indicate that a client could be at risk of being vulnerable.	<p>We believe that asking all clients for TCP information at the outset of the client relationship and on an ongoing basis will help the registrant respond promptly if any concerns around financial exploitation or diminished mental capacity arise. Collecting this information from a client when the client may already be vulnerable or have diminished mental capacity might be challenging or too late for registrants to be able to take protective action.</p> <p>We also believe that asking all clients for this information at the outset and on an ongoing basis will encourage clients to turn their mind to these issues to better prepare themselves and plan for how they wish to manage their affairs.</p>
7.	TCP – age requirement	A few commenters were of the view that the TCP need not have reached the age of majority given their limited role with no ability to transact on the client’s account.	After considering the comments received, we have eliminated the requirement for the TCP to be of the age of majority or older. In the absence of such a requirement, we have provided guidance in the Companion Policy that registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in these difficult conversations with the registrant about the client’s personal situation.
8.	Location of the TCP provision	Some commenters were of the view that the fact that a client may proceed with account opening without naming a TCP could be made clearer. To clarify this, several commenters recommended that the TCP requirement be placed outside of subsection 13.2(2) as other information to be collected under subsection 13.2(2) (i.e., KYC information) are, for all intents and purposes, essential.	To address this concern, we have relocated the TCP requirement to a new section 13.2.01 [<i>Know your client – trusted contact person</i>]. In addition, the Companion Policy clarifies that registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP.

No.	Subject	Comment	Response
9.	Updating TCP information for a client who previously refused to appoint a TCP	One commenter requested guidance on regulatory expectations relating to updating existing TCP appointments or refusals to make one. This commenter suggested that “the purpose of updating should be to ensure that the registrant has the correct TCP for the client, along with the TCP’s address and contact information. If a client has previously refused to appoint a TCP, the registrant may discuss the reasons for appointing a TCP and offer the client an opportunity to reconsider the prior decision.”	We have included guidance in the Companion Policy to clarify that when updating TCP information for a client who has previously refused to provide TCP information, registrants should ask the client if they would like to provide the TCP information.
10.	Timing of collecting and updating TCP information	One commenter recommended that the guidance indicate that at the time KYC information is being collected or updated, registrants should also take reasonable steps to obtain or update TCP information.	The Rule and Companion Policy contemplate that registrants are expected to take reasonable steps to obtain TCP information as part of the KYC process, and that TCP information be updated as part of the process to update KYC information.
IV. Temporary Holds			
1.	Firms that exclusively offer order execution only services <i>(Responses to question #2 in the Proposals)</i>	Commenters were uniformly of the view that the temporary hold provision could be a useful resource for OEO firms; accordingly, they felt that OEO firms should not be carved out for the purposes of this provision. One commenter added that it is important for regulators to focus on “reasonable belief” recognizing that these firms may not always be able to identify financial exploitation or diminished mental capacity.	In light of the comments, we have decided to proceed with having the temporary hold provision apply to OEO firms. We note that the Amendments provide a tool for use by registered firms where they have a reasonable belief of financial exploitation of a vulnerable client, or a lack of mental capacity of a client to make decisions involving financial matters. The Amendments do not impose an obligation to use the tool.
2.	Portfolio managers and exempt market dealers	One commenter felt that a portfolio manager acting under discretionary trading authority need not be included in the temporary hold provisions. The commenter also proposed a carve out for exempt market dealers in a transactional relationship as they would not have insight into a client’s ongoing mental capacity or vulnerability to exploitation.	Since the temporary hold provision is intended to be a tool and there is no obligation to use the tool, we do not believe that any carve outs are necessary. Registered firms that do not place any temporary holds will not need to comply with section 13.19.
3.	Free and informed	One commenter from Québec suggested adding the element of free and informed financial decision-making to	We appreciate the comment; however, we consider important that Québec registrants be subject to the same standard when placing

No.	Subject	Comment	Response
	financial decision-making (Applicable in Québec)	ensure consistency with the general principle of law set out on the Civil Code of Québec	temporary holds in situations where there is a reasonable belief that the client does not have the mental capacity to make decisions involving financial matters. The standard set out in section 13.19 (i.e., the conditions under which a temporary hold is placed) is meant to regulate a specific aspect of the relationship between registrants and their clients in the context of securities laws.
4.	Application – holds that are placed where there is a reasonable belief that the client does not have the mental capacity to make decisions involving financial matters <i>(Responses to question #3 in the Proposals)</i>	Many commenters supported having the temporary hold provision apply where there is a reasonable belief that the client does not have the mental capacity to make financial decisions. One commenter felt that the provision should be limited to cases of financial exploitation.	The temporary hold provision will apply to holds that are placed on the basis of a reasonable belief that the client does not have the mental capacity to make decisions involving financial matters.
5.	Application – purchase or sale of securities, and the transfer of cash or securities to another firm <i>(Responses to question #4 in the Proposals)</i>	Many commenters supported having the temporary hold provision apply to holds that are placed on the purchase and sale of securities, and the transfer of cash or securities to another firm as these transactions can be equally as harmful as withdrawals. On the other hand, one commenter believed that temporary holds should not be extended to the purchase and sale of securities because the risk can be mitigated in other ways (e.g., documenting waiving of suitability, terminating the client account, contacting the TCP to deal	The temporary hold provision will apply to holds that are placed on the purchase and sale of a security on behalf of a client, and on the withdrawal or transfer of cash and securities from a client’s account. We do not agree that the risk can be adequately mitigated in other ways. Documenting and allowing the client to waive suitability would not protect the client’s assets. Terminating the client account may result in the client being placed at greater risk (e.g., the client may be persuaded to take their money to a registrant that does not know the client well enough to identify any suspicious context). A client may not have chosen to name a TCP, or the TCP may not be

No.	Subject	Comment	Response
		with the issues, alerting the new registrant to the concerns).	willing or able to assist the firm. Registrants may not be willing to alert the new registrant because of privacy considerations. On the other hand, placing a temporary hold while the registered firm reviews the relevant facts and takes any other appropriate actions may help preserve client assets.
6.	Placing temporary holds in other circumstances	<p>A few commenters sought clarification that registrants are permitted to place temporary holds in situations other than financial exploitation of a vulnerable client or diminished mental capacity. For example, they wanted to ensure they could continue to place holds in cases of romance frauds, misuse of funds by family and friends of a client who might not be captured by the definition of “vulnerable client”.</p> <p>Two commenters also felt that temporary holds should be permitted in other contexts such as account opening or closing, transfer to another account within the same firm (e.g., a joint account), and client instructions generally (e.g., changes of account ownership, beneficiary, power of attorney, or banking instructions).</p>	<p>We understand that there may be other circumstances under which a registered firm and its registered individuals may want to place a temporary hold. The Amendments are not intended to restrict the registrant’s ability to place temporary holds in those circumstances. As stated in the Companion Policy, there is nothing in securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place. When placing a temporary hold, registered firms and their registered individuals are reminded of their obligation to comply with securities laws, including the obligation to deal fairly, honestly and in good faith with their clients.</p> <p>While, at this time, expanding the application of section 13.19 to other circumstances is out of scope for this project, the CSA may consider conducting a retrospective review to assess the efficacy and engagement of the Amendments, which could lead to future modification.</p>
7.	<p>Notice requirement v. time limit</p> <p><i>(Responses to question #5 in the Proposals)</i></p>	<p>Commenters uniformly preferred a notice requirement over a time limit for a temporary hold. In their view, setting a time limit may not be appropriate given the complex nature of issues of financial exploitation or diminished mental capacity. Requiring that holds be lifted after an arbitrary amount of time could result in rushed or incomplete analysis of each case and investor harm.</p>	<p>In light of the comments, we have retained the notice requirement rather than a time limit for the temporary hold provision.</p>

No.	Subject	Comment	Response
8.	Initial notification	Some commenters suggested that the timeline for notification in section 13.19(3)(b) be specified rather than “as soon as possible”; however, there could be an exception when extenuating circumstances prevent notification within a specified timeline.	As the commenters noted, there could be extenuating circumstances that would prevent notification within a specified timeline. In order to provide flexibility in these circumstances, section 13.19(3)(b) will require registered firms to provide notice of the temporary hold and the reasons for the temporary hold to the client “as soon as possible” after placing a temporary hold.
9.	Subsequent notification every 30 days	Some commenters expressed that notification every 30 days may not be necessary. These commenters preferred a less prescriptive, principles-based or “reasonableness” approach.	We remain of the view that, where a temporary hold is in place, the client should receive a notification at least every 30 days. This requirement would ensure that the registered firm does not lose sight of the hold, and that the client is provided with reasons for not being able to access their property. However, the extent of the notice need not be burdensome and can be determined contextually and on a case by case basis.
10.	Method of delivery	A few commenters recommended that firms be permitted to make their own determination as to the best method of delivery of the notice to a client.	<p>The Amendments do not prescribe a method of delivery in order to provide registered firms with sufficient flexibility to use their professional judgement. For example, if the suspected perpetrator lives with the vulnerable client that the firm believes is being financially exploited, the firm may determine that notice by mail may not be appropriate as it may fail to reach the client or place the client at further risk.</p> <p>Registered firms are reminded of the obligation to maintain records in accordance with section 11.5 [<i>General requirements for records</i>].</p>
11.	Contacting third parties	A few commenters asked for guidance on whether a registrant can contact the TCP when a temporary hold is placed. A few other commenters proposed that registered firms be required to contact the TCP or the client’s legal representative when a temporary hold is placed.	<p>The Amendments do not require registered firms to contact any specific third party, such as the TCP, when placing a temporary hold as there may be circumstances where contacting the third party may not be appropriate (e.g., where the third party may be financially exploiting the vulnerable client).</p> <p>However, as stated in the Companion Policy, while there is no requirement to do so, registered firms may wish to contact a TCP or</p>

No.	Subject	Comment	Response
		Another commenter recommended that regulators provide information on when to involve parties such as the public guardian and trustee and local authorities.	any other third party, in accordance with applicable privacy laws and client agreements, to assist the client.
12.	TCP and temporary holds as distinct concepts	One commenter asked for clarification that TCP and temporary holds are distinct concepts, and that having a TCP in place is not a pre-condition for a firm to place a temporary hold.	We have added clarification language in the Companion Policy that the fact that a client has not named a TCP does not preclude a firm from placing a temporary hold in accordance with section 13.19.
13.	Non-suspicious transactions while temporary hold is placed	A few commenters asked for clarification that non-suspicious transactions (e.g. to cover living expenses, long-term care, transfer to a RRIF account, payment of regular fees) can continue to take place on an account that is subject to a temporary hold.	<p>As stated in the Companion Policy, 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 suspected 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.</p> <p>If the transaction, withdrawal or transfer involves all the assets in the account, it may be reasonable to place a temporary hold on the entire account while not limiting the payment of regular expenses.</p>
14.	Concern that temporary hold provision will be used in bad faith	One commenter expressed concern that holds could be used in bad faith by advisors. They asked that the CSA take all necessary steps to ensure that a temporary hold is treated as an investor protection measure that should only be used in good faith, with appropriate rationale and supporting documentation.	As stated in the Companion Policy, when placing a temporary hold 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.
15.	Policies and procedures	A few commenters recommended that registrants have policies and procedures addressing one or more of the following:	Please see the Companion Policy under “ <i>Conditions for temporary hold</i> ” for guidance on written policies and procedures registered firms should have in respect of temporary holds. As stated in the Companion Policy, decisions to place a temporary hold should be

No.	Subject	Comment	Response
		<ul style="list-style-type: none"> a. Identifying and addressing undue influence and diminished capacity. b. Criteria for placing a temporary hold. c. Internal review requirements. d. Criteria as to when a hold can be released. e. Whether fees, interest charges, and other expenses can continue to be charged during the hold period. f. Reporting to a third party (e.g., public guardian and trustee, law enforcement). <p>One commenter recommended that temporary holds only be made by authorized and qualified supervisory and compliance staff.</p>	<p>made by the CCO or authorized and qualified supervisory, compliance or legal staff.</p> <p>In considering whether fees, interest charges, and other expenses can continue to be charged during the hold period, we expect firms to use their professional judgment and act in accordance with client agreement and their obligation to deal fairly, honestly and in good faith with their clients.</p>
16.	Drafting suggestions	<p>As noted above, we received a number of drafting suggestions and comments, including the following:</p> <ul style="list-style-type: none"> a. A few commenters recommended that the temporary hold provision be rephrased to the permissive with one commenter noting they would prefer this approach but understood that this would require legislative amendments and therefore was not the optimal approach. b. One commenter questioned the need for a detailed list in section 13.2(2)(e)(iii) and suggested revising it to read that the TCP may be contacted to make inquiries regarding “the name and contact information of any personal or legal representative of the client.” The commenter suggested that the companion policy could include some of the examples currently set out in subparagraph (iii). 	<p>Responses to drafting suggestions and comments are as follows:</p> <ul style="list-style-type: none"> a. As stated in the Companion Policy, there is nothing in securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place, and accordingly, granting permissive authority for registered firms to place temporary holds is not strictly necessary. In any event, as one commenter appreciates, explicitly granting such permissive authority for the purposes of providing clarity on this point would require legislative amendment to the provincial securities legislation in many of the CSA jurisdictions. b. We agree with this drafting suggestion and have made revisions to the Rule and the Companion Policy accordingly. c. For the purposes of the Amendments, we have retained the language such that the temporary hold provision applies in cases where a registered firm reasonably believes that the client does not have the mental capacity to make decisions

No.	Subject	Comment	Response
		<p>c. One commenter suggested revising section 13.2(2)(e)(ii) to only refer to mental capacity and delete the remaining language (i.e. “as it relates to the client’s financial decision making or lack of decision making”).</p>	<p>involving financial matters. We have opted to retain the language because mental capacity is contextual and depends on the type of decision to be made. For the purposes of the Amendments, the relevant context relates to the ability of the client to make decisions involving financial matters.</p>
<p>V. Requests for “Safe Harbour”</p>			
<p>1.</p>	<p>Safe harbour</p>	<p>Many commenters were concerned that without an explicit “safe harbour” or other assurances that would lessen litigation risk or risk of regulatory action, the Proposals would not achieve the desired outcome.</p> <p>The commenters’ primary areas of concern could be categorized as follows:</p> <ul style="list-style-type: none"> a. Privacy – civil liability and regulatory action that may arise from disclosing a client’s personal information to a TCP or other third parties such as the public guardian and trustee, law enforcement, or another registrant. b. Temporary hold – civil liability and regulatory action that may arise in connection with placing a hold. c. Market loss – civil liability that may arise as a result of any market loss experienced in an account during a temporary hold period. d. Human rights – concerns relating to allegations of age discrimination. 	<p>We understand many commenters feel that a “safe harbour” from regulatory and/or civil liability would complement the TCP and temporary hold provisions, particularly as similar initiatives in other jurisdictions contemplate such protections. Below we set out responses in respect of the commenters’ primary areas of concern.</p> <ul style="list-style-type: none"> a. While we plan to forward the commenters’ concerns to the Office of the Privacy Commissioner of Canada, as securities regulators, we are unable to provide a regulatory safe harbour in relation to matters outside of our regulatory jurisdiction. For guidance on privacy law matters, we encourage firms to reach out to the Federal Privacy Commissioner or the privacy commissioners in their respective provinces, as applicable. b. We note that the regulatory context in Canada is such that there is nothing in securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place. Accordingly, a regulatory safe harbour provision is not required within securities legislation. c. In respect of potential civil liability, the Amendments must achieve a balance between protecting investors, offering assurances to registered firms, and respecting clients’ autonomy within a private contractual relationship. Accordingly, we are of the view that offering explicit

No.	Subject	Comment	Response
		<p>One commenter noted that a safe harbour is not unprecedented and referred to section 138.4(9) of the <i>Securities Act</i> (Ontario) and section 3.9(3) [<i>Standard of Care</i>] of National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i>.</p>	<p>protection from civil liability, which would require legislative amendment, is not appropriate in the circumstances. That being said, we believe that placing a temporary hold in good faith according to the prescribed conditions set out in the Amendments may assist registered firms in defending their actions, should they be challenged.</p> <p>d. We note that the definition of “vulnerable client” does not include an age-marker.</p> <p>For guidance on human rights matters, we encourage firms to reach out to the human rights agency in their respective province or territory, as applicable.</p>
2.	SRO account transfer rules	<p>A few commenters recommended that SROs consider exemptions or amendments to their account transfer rules where a temporary hold is in place. For example, IIROC Dealer Member Rules 2300 Account Transfers and MFDA Rule 2.12 Transfers on Account.</p>	<p>While IIROC and MFDA are proposing conforming amendments to SRO rules consistent with the Amendments, they are not proposing amendments to IIROC Dealer Member Rules 2300 Account Transfers and MFDA Rule 2.12 Transfers on Account at this time.</p>
VI. Other Comments			
1.	Client’s existing circle of care	<p>A few commenters stated that CSA guidance should acknowledge that clients likely have an existing circle of care, including medical and legal professionals who may be more equipped to make an informed decision on mental capacity. The commenters recommended collaboration with other trusted professionals.</p>	<p>We have included additional commentary in the Companion Policy to suggest that firms may also wish to consider whether there are other trusted friends and family in the client’s network that could assist the client, for example, by accompanying the client to a subsequent meeting. Before contacting another party, the firm should consider whether there may be a risk that the other party is involved in the financial exploitation of the vulnerable client. In addition, firms should be mindful of their privacy obligations under applicable privacy legislation and client agreements when contacting a third party.</p>

No.	Subject	Comment	Response
2.	Collaboration with other organizations	<p>Some commenters encouraged CSA members to engage with the office of the public guardian and trustee, law enforcement agencies and other relevant parties to provide guidance so that responsibilities of various parties are well-understood when dealing with cases of financial exploitation.</p> <p>One commenter recommended the establishment of an overarching agency or whistleblower program which specializes in the protection of vulnerable investors and which could investigate alleged cases of financial exploitation.</p>	<p>We plan to notify the Federal Minister of Seniors and the Office of the Privacy Commissioner of Canada of our consultation efforts to the extent that comments and suggestions received touch on matters within their respective mandates.</p> <p>As noted above, approaches to addressing issues of financial exploitation and mental capacity vary widely from province to province; however, several CSA members and SROs provide education resources and conduct outreach initiatives in conjunction with local agencies.</p>
3.	Collaboration with third parties	A few commenters recommended increased cooperation with insurance regulators to reduce regulatory burden.	We note that some CSA members, such as the Autorité des Marchés Financiers in Quebec, the Financial and Consumer Services Commission in New Brunswick, the Financial and Consumer Affairs Authority in Saskatchewan, and the Manitoba Securities Commission, are either integrated regulators or are part of a larger organization whose mandate includes regulating the insurance industry. Some of these members are identifying opportunities for synergies between different sectors that they regulate.
4.	Course on financial exploitation & mental capacity	One commenter recommended that the CSA work to develop a national course on issues of financial exploitation and diminished mental capacity.	<p>A national course on the issues of financial exploitation and mental capacity would be difficult to customize and deliver because approaches to addressing these issues vary widely from province to province. As individual securities regulators are better placed to provide more targeted and relevant educational resources, several CSA members provide educational resources and conduct outreach initiatives in conjunction with local agencies.</p> <p>For additional resources on these topics, we would refer you to organizations that specialize in these areas.</p>

No.	Subject	Comment	Response
5.	Training & educational resources	A few commenters recommended more guidance or requirements for dealing with older and vulnerable investors. Some of these commenters recommended additional requirements around planning and education for investors, training for advisors and escalation procedures.	<p>We believe that that the Amendments together with the requirements in section 11.1 [<i>Compliance system and training</i>] provide firms with sufficient direction and guidance.</p> <p>CSA Staff Notice 31-354 <i>Suggested Practices for Engaging with Older and Vulnerable Clients</i> provides additional guidance on engaging with older and vulnerable clients.</p>
6.	Reporting and monitoring data	Some commenters recommended that firms share data on temporary holds and TCP with relevant agencies such as the CSA to shape future policy development and to assess the efficacy of the proposed changes. Some commenters recommended that the CSA monitor the use of temporary holds and TCP to consider whether any modifications are required.	While the Amendments do not impose any external reporting requirements, the CSA will monitor the utilization of these tools. In addition, the CSA may consider conducting a retrospective review to assess the efficacy and engagement of the Amendments.
7.	Frequency for updating KYC information	One commenter recommended a minimum KYC update period of one year for vulnerable clients.	Although the frequency at which registrants are required to update a client's KYC information is not within the scope of this project, we encourage registrants to review CSA Staff Notice 31-354 <i>Suggested Practices for Engaging with Older and Vulnerable Clients</i> , which discusses the benefits of meeting with older or vulnerable clients more frequently to update their KYC information.
8.	Record retention rules across various legislation	One commenter expressed concern that there may be inconsistent legislation dealing with how long records must be kept under securities legislation, privacy legislation and criminal law requirements that might affect records retained in relation to the TCP and temporary holds. The commenter asked the CSA to highlight other legislations or obligations that the CSA is aware of with respect to these record retention rules.	It is beyond our mandate to comment on record retention requirements under other legislation. We note that the Amendments do not modify requirements under securities laws relating to record retention.

ANNEX B
LIST OF COMMENTERS

1. Jason Brooks, Rebecca Cowdery, Lynn McGrade, Laura Paglia, and Michael Taylor (Borden Ladner Gervais LLP)
2. Harold Geller (MBC Law Professional Corporation)
3. Jim Dale (Leede Jones Gable Inc.)
4. Raymonde Crête and Christine Morin (Antoine-Turmel Research Chair on Legal Protection of Seniors, Université Laval)
5. Greg Pollock and Abe Toews (Advocis, The Financial Advisors Association of Canada)
6. Mark Kent (Portfolio Strategies Corporation)
7. Matthew T. Latimer (Federation of Mutual Fund Dealers)
8. Paul C. Bourque (The Investment Funds Institute of Canada)
9. Andrew Fitzpatrick (Quadrus Investment Services Limited)
10. Melissa Lennox and Bill VanGorder (CARP)
11. Douglas Walker (Canadian Foundation for Advancement of Investor Rights)
12. Jeffrey R. Carney (IG Wealth Management)
13. The Canadian Advocacy Council of CFA Societies Canada
14. Rick Annaert (Manulife Securities)
15. Stéphane Rousseau (Université de Montréal)
16. Bernard Brun (Desjardins)
17. Karen Woodman (Sun Life Financial Investments Services (Canada) Inc.)
18. Katie Walmsley and Margaret Gunawan (Portfolio Management Association of Canada)
19. Linda Clunie
20. Wayne Bolton (Edward Jones)
21. Neil Gross (Investor Advisory Panel)
22. Nancy Allan (Independent Financial Brokers of Canada)
23. Manny DaSilva and Gary Legault (Association of Canadian Compliance Professionals)
24. Michelle Alexander (Investment Industry Association of Canada)

25. Gino-Sébastien Savard (MICA Capital Inc.)
26. Sandra Jakab and Veronica Armstrong (Jakab Law and Compliance and Veronica Armstrong Law Corporation)
27. Kenmar Associates

ANNEX C

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 the use or control of, or deprivation of the use or control of, a financial asset of an individual by a person or company through undue influence, unlawful conduct or another wrongful act;

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

“trusted contact person” means an individual identified by a client to a registrant whom the registrant may contact in accordance with the client’s written consent;

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

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

(a) *by replacing paragraph (l) with the following:*

(l) demonstrate compliance with sections 13.2, 13.2.01, 13.2.1 and 13.3;.

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

(c) *by adding the following paragraph:*

(s) demonstrate compliance with section 13.19..

4. *The Instrument is amended by adding the following section:*

13.2.01 Know your client - trusted contact person

(1) Concurrently with taking the reasonable steps required under subsection 13.2(2), a registrant must take reasonable steps to obtain from the client the name and contact information of a trusted contact person, 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:

(a) the registrant’s concerns about possible financial exploitation of the client;

- (b) the registrant's concerns about the client's mental capacity as it relates to the ability of the client to make decisions involving financial matters;
 - (c) the name and contact information of a legal representative of the client, if any;
 - (d) the client's contact information.
- (2) A registrant must take reasonable steps to keep current the information required under this section, including updating that information within a reasonable time after the registrant becomes aware of a significant change in the client's information required under subparagraph 13.2(2)(c)(i).
- (3) This section does not apply to a registrant in respect of a client that is not an individual..

5. Part 13 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 on the basis of financial exploitation of a vulnerable client unless the firm reasonably believes all of the following:
- (a) the client is a vulnerable client;
 - (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 on the basis of a client's lack of mental capacity unless the firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.
- (3) If a registered firm or a registered individual places a temporary hold referred to in subsection (1) or (2), the firm must do all of the following:
- (a) document the facts and reasons that caused the firm or individual to place and, if applicable, to continue the temporary hold;
 - (b) provide notice of the temporary hold and the reasons for the temporary hold to the client as soon as possible after placing the temporary hold;
 - (c) review the relevant facts as soon as possible after placing the temporary hold, and on a reasonably frequent basis, to determine if continuing the hold is appropriate;
 - (d) within 30 days of placing the temporary hold and, until the hold is revoked, within every subsequent 30-day period, do either of the following:
 - (i) revoke the temporary hold;
 - (ii) provide the client with notice of the firm's decision to continue the hold and the reasons for that decision..

6. 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 referred to in subsection 13.2.01(1);

(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 and a description of the notice that will be given to the client if a temporary hold is placed or continued under that section..

7. (1) This Instrument comes into force on December 31, 2021.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after December 31, 2021, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

**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 sections 13.2.01 and 13.19

Appendix G provides guidance on the terms “financial exploitation”, “temporary hold”, “trusted contact person” and “vulnerable client”..

3. *Division 1 of Part 13 is changed by adding the following, immediately before section 13.2.1:*

“13.2.01 Know your client – trusted contact person

Appendix G sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients’ mental capacity to make decisions involving financial matters.” *immediately after the sentence* “In those circumstances, registrants should consider restricting activities in the client’s account to liquidating trades, transfers or disbursements.”.

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 sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients’ mental capacity to make decisions involving financial matters..

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

Appendix G - Part 13 - Addressing Issues of Financial Exploitation and Concerns About Clients’ Mental Capacity

This appendix sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. This appendix also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients’ mental capacity to make decisions involving financial matters.

1. Financial exploitation

Financial exploitation of a client may be committed by any person or company. Examples of warning signs of financial exploitation of a client may 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 the registrant having difficulty communicating directly with the client without the involvement 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 a power of attorney (POA) or a will, 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 the registrant (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 customarily been well informed in this area,
- increasing isolation from family or friends, or
- signs of physical neglect or abuse.

One warning sign alone may not be indicative of financial exploitation. Additionally, the warning signs listed above are not exhaustive; a registrant may notice other signs that are not listed above.

2. Vulnerable client

Vulnerable clients are those clients that might have an illness, impairment, disability or aging process limitation that places them at risk of financial exploitation. 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 such vulnerabilities could make clients more susceptible to financial exploitation. While financial exploitation may be committed by any person or company, vulnerable clients may be especially susceptible to such exploitation by an individual who is close to the vulnerable client, such as a family member, friend, neighbour or another trusted individual such as an attorney under a POA, service provider or caregiver.

3. Mental capacity

Registrants can be in a unique position to notice the warning signs that a client lacks mental capacity to make decisions involving financial matters because of the interactions they have with the client, and the knowledge they acquire through the client relationship.

We acknowledge that registrants do not have the expertise to assess and determine whether clients lack mental capacity, and we do not expect registrants to make such a determination. However, where a registrant detects signs that a client lacks mental capacity to make decisions involving financial matters, the registrant may wish to take certain actions. For example, the registrant may wish to contact a trusted contact person or, in the case of a registered firm having formed a reasonable belief that the client lacks mental capacity to make decisions involving financial matters, place a temporary hold.

When considering whether one or more warning signs that a client lacks mental capacity to make decisions involving financial matters is present, registrants might consider, among others things, the client's ability to understand information that is relevant to their decision making and appreciate the reasonably foreseeable consequence of making or failing to make a decision. Examples of warning signs that a client lacks mental capacity to make decisions involving financial matters may include:

- memory loss, such as forgetting previously given instructions or repeating questions,
- increased difficulty completing forms or understanding disclosure documents,
- increased difficulty making decisions involving financial matters or 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, including expressing their will, intent or wishes, or
- increased passivity, anxiety, aggression or other changes in mood or personality, or an uncharacteristically unkempt appearance.

We acknowledge that one sign alone may not be indicative of a client's lack of mental capacity and that signs may arise subtly and over time. The warning signs listed above are not exhaustive; a registrant may notice other signs that are not listed above. It is also important to note that mental capacity can fluctuate over time, is contextual and depends on the type of decision to be made.

4. Trusted contact person

Purpose of the trusted contact person

Subsection 13.2.01(1) requires registrants to take reasonable steps to obtain the name and contact information of a trusted contact person or "TCP" with whom they may communicate in specific circumstances in accordance with the client's written consent. Although this requirement only applies with respect to clients who are individuals, a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.

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 a client's mental capacity. A TCP could also be utilized by the registrant to confirm or make inquiries about the name and contact information of a legal representative of the client, including a legal guardian of the client, an executor of an estate under which the client is a beneficiary, or a trustee of a trust under which the client is a beneficiary.

A client may name more than one TCP on their account.

While there is no requirement for the TCP to be at or over the age of majority, registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in potentially difficult conversations with the registrant about the client's personal situation.

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 be named as a TCP, but clients should be encouraged to select an individual who is not involved in making decisions with respect to the client's account. A TCP should not be the client's dealing representative or advising representative on the account.

Obtaining trusted contact person information and consent

There is no prescribed form for obtaining TCP information. Registrants may wish to develop a stand-alone form or incorporate the information into an existing form such as an account application form. The stand-alone form or relevant sections of an existing 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 with the client,
- a signature box to document the client's consent to contact the TCP,
- a statement that confirms the 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 as part of the know your client or "KYC" process. 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), and asking the client to provide the name and contact information of a TCP. 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. Registered firms are reminded of the requirement to maintain records which demonstrate compliance with section 13.2.01, document correspondence with clients, and document compliance, training and supervision actions taken by the firm, under paragraphs 11.5(2)(l), (n) and (o), respectively.

Updating trusted contact person information

Under subsection 13.2.01(2), registrants are required to take reasonable steps to keep the TCP information current. Registrants are expected to update the TCP information as part of the process to update KYC information. In a situation where a client may have previously refused to provide TCP information, at each update, registrants should ask such clients if they would like to provide the information.

Contacting the trusted contact person and other parties

When concerns about financial exploitation or mental capacity to make decisions involving financial matters 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 their TCP that they have been named and explain that the TCP will only be contacted in specific circumstances in accordance with the client's written consent.

If the client's consent has been obtained, a registrant might contact a TCP if the registrant notices signs of financial exploitation or if the client exhibits signs that they lack mental capacity to make decisions involving financial matters. Examples of warning signs of financial exploitation and a lack of mental capacity are discussed in sections 1 and 3 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, such as the police, the public guardian and trustee or an alternative TCP, if named. 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, an attorney under a POA or any other legal representative.

When contacting a TCP, registrants should be mindful of privacy obligations under applicable 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) that they might otherwise consult with in instances where the registrant suspects financial exploitation or has concerns about a client's mental capacity to make decisions involving financial matters.

Policies and procedures

We expect registered firms to have written policies and procedures in respect of TCPs. These policies and procedures should address:

- how to collect and document TCP information and keep this information up-to-date,
- how to obtain the written consent of a client to contact their TCP, and document any restrictions on contacting the TCP and what type of information can be shared,
- the specific circumstances in which a registrant may wish to contact a TCP,
- how to document discussions with a TCP, and
- circumstances where a decision to contact a TCP must be escalated for review (for example, to the CCO or to authorized and qualified supervisory, compliance or legal staff), and how to document this review.

Having written policies and procedures that address situations that may result in contacting a TCP or placing a temporary hold under section 13.19 will help the registered firm demonstrate that it

has a system of controls and supervision in accordance with section 11.1.

5. *Temporary Holds*

General principles

Registered firms and individuals can be in a unique position to notice signs of financial exploitation, vulnerability and a lack of 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 a registered firm reasonably believes that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that a client lacks mental capacity to make decisions involving financial matters, there is nothing in securities legislation that prevents the firm or its registered 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. Before a temporary hold is placed, the registered firm must reasonably believe that either financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or the client does not have the mental capacity to make decisions involving financial matters. Decisions to place temporary holds should be made by the CCO or authorized and qualified supervisory, compliance or legal staff.

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.

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 suspected 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 all the assets in the account, it may be reasonable to place a temporary hold on the entire account while not limiting the payment of regular expenses.

A temporary hold contemplated under section 13.19 is not intended to be available where a registrant has 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 registrant must comply with the requirements set out in subsection 13.3(2.1).

A client may provide an instruction to take an investment action which would not, in the registrant's view, meet the criteria for suitability determination and which may otherwise be considered a poor financial decision; however, these facts alone do not necessarily mean that financial exploitation of

a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that the client lacks mental capacity to make decisions involving financial matters.

Conditions for temporary hold

Section 13.19 contains the steps that a registered firm must take if it or its registered individuals 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 in respect of temporary holds. These policies and procedures should:

- set out detailed warning signs of financial exploitation of a vulnerable client, and signs of a lack of mental capacity of a client to make decisions involving financial matters,
- clearly delineate firm and individual responsibilities for addressing concerns of financial exploitation of a vulnerable client or a lack of mental capacity of a client, such as:
 - who at the firm is authorized to place and revoke a temporary hold, 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 of a vulnerable client, or a lack of mental capacity of a client, 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*.

Under paragraph 13.19(3)(a), when documenting the facts and reasons that caused the registered firm or its registered individuals to place and, if applicable, to continue the temporary hold, the firm is expected to include signs of financial exploitation and client vulnerability, or a lack of mental capacity of a client to make decisions involving financial matters, that were observed. As the signs of financial exploitation, vulnerability, and declining mental capacity often appear and change 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 decision to place and, if applicable, to continue the temporary hold.

Under paragraph 13.19(3)(b), the registered firm must, as soon as possible, provide notice of the temporary hold and the reasons for the temporary hold to the client. While firms often opt to send written notice, there may be circumstances where they may also want to attempt to contact the client verbally. In cases of financial exploitation, 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. 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.

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 after placing the temporary hold, and on a reasonably frequent basis, review the relevant facts to determine if continuing the hold is appropriate. This

review should include verifying whether the reasons for placing the temporary hold are still present, and considering any other information that is relevant to determining whether continuing the hold is appropriate. The review may prompt the registered firm to review account activity or initially contact or follow up with other parties who could provide assistance to the client, such as an attorney under a POA, a TCP, or provincial or federal government organizations and services such as the police, public guardian and trustee, which may be conducting their own review, or provincial seniors advocate offices. Firms may also consider whether there are other trusted friends and family in the client's network that could assist the client, for example, by accompanying the client to meetings. Before contacting another party, the firm should consider whether there may be a risk that the other party is involved in the financial exploitation of the vulnerable client. The review conducted under paragraph 13.19(3)(c) and, if applicable, the reasons for continuing the temporary hold are required to be documented under paragraph 13.19(3)(a).

While there is no requirement for firms to contact a TCP prior to or when a temporary hold is placed, firms may wish to contact a TCP at this point for a number of reasons, if they have not already done so, as outlined in the guidance in section 4 of this appendix. However, before contacting the TCP, firms should assess whether there is a risk that the TCP is a perpetrator of 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.

For clarity, the fact that a client has not named a TCP does not preclude a firm from placing a temporary hold in accordance with section 13.19.

Before contacting any third party with the intent of sharing or obtaining personal information regarding a client, firms should assess their obligations under applicable privacy legislation and client agreements.

Paragraph 13.19(3)(d) requires that every 30 days, the firm either notifies the client of its decision to continue the temporary hold, or revokes the temporary hold. 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 continuing the temporary hold, and be mindful of their obligation to deal fairly, honestly and in good faith with their clients.

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 decisions involving financial matters, the temporary hold must end. If ending the temporary hold would result in an investment action that requires a suitability determination, such a 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 December 31, 2021.

ANNEX E

ADOPTION OF THE AMENDMENTS

The Amendments to NI 31-103 will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon,
- a regulation in Québec, and
- a commission regulation in Saskatchewan.

The Changes to 31-103CP will be adopted as a policy in each of the CSA member jurisdictions.

In Ontario, the Amendments to NI 31-103, as well as other required materials, were delivered to the Minister of Finance on July 15, 2021. The Minister may approve or reject these Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action, the Amendments and the Changes will come into force on December 31, 2021.

In Québec, the Amendments to NI 31-103 are adopted as a regulation made under section 331.1 of the Securities Act (Québec) and must be approved, with or without amendment, by the Minister of Finance. The regulation will come into force on the date of its publication in the Gazette officielle du Québec or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Amendments to NI 31-103 is subject to ministerial approval. If all necessary approvals are obtained, British Columbia expects these Amendments to come into force on December 31, 2021.

In Saskatchewan, the implementation of the Amendments to NI 31-103 is subject to ministerial approval. If all necessary approvals are obtained, these Amendments will come into force on December 31, 2021 or if after December 31, 2021, on the day on which they are filed with the Registrar of Regulations.