



July 20, 2020

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of
Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission
(New Brunswick)

Superintendent of Securities, Department of
Justice and Public Safety, Prince Edward
Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and
Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
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Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
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Dear Sirs/Mesdames,

RE: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 to Enhance Protection of Older and Vulnerable Clients (the “Proposed Amendments”)

Leede Jones Gable Inc. (“LJG” or “we”) appreciates the opportunity to comment on the Proposed Amendments. LJG is an independent, employee-owned firm with offices across Canada.

Financial exploitation is an issue of great significance to our country, especially as our population ages. Financial exploitation is generally domestic in nature and perpetrated by persons that were, at least initially, trusted. The New York State Cost of Financial Exploitation Study (“The New York State Study”)¹ found family members were the perpetrators of 67% of verified financial exploitation cases and that 35% of victims lived with their perpetrators.

¹<https://ocfs.ny.gov/main/reports/Cost%20of%20Financial%20Exploitation%20Study%20FINAL%20May%20202016.pdf>

The Proposed Amendments will not be effective in reducing harm to vulnerable clients, in fact the trusted contact person would have greater authority over the client's financial affairs and could afflict greater financial harm.

Advisors do not have the expertise to perform an assessment of client vulnerability, and even with training, do not have adequate interaction with the client to make a reliable determination. Advisors are less suited for this task than close family members, and close family members often do not realize their loved one is being exploited. The Proposed Amendments will be unreliable in identifying financial exploitation and as a result will transfer undue risk to advisors and their firms.

The proposed amendments will have unintended consequences for clients. Vulnerable clients will have a more difficult time finding an advisor, take their assets elsewhere, or have a trade held that causes a loss.

The proposed amendments will also increase regulatory burden for advisors and firms that is certain to exceed any benefit that is produced. Potential costs to clients, advisors, firms, and the industry will outweigh the potential benefits of implementing the proposed amendments.

Effectiveness of Amendments

Despite good intentions, the trusted contact person ("TCP") concept is flawed because those that are exploited are usually exploited by family and friends. The TCP and the perpetrator of financial exploitation will overlap in most cases. Most investors will use a family member or friend as the TCP. As noted above, most financial exploitation is done by family, and close to 90% of the verified cases noted in the New York States study were due to family and friends; trusted people.

The proposed amendments rely on advisors' ability to identify situations where an individual is being financially exploited or has diminished mental capacity. Both situations are difficult to identify by trained professionals or close family members. It is not reasonable to believe that investment advisors can perform this task effectively.

Unintended Harm to Clients

The proposed amendments will cause unintended harm to clients. The most apparent consequences are advisors or firms choosing not to service clients based on age or perceived mental capacity. This could discourage vulnerable clients and lead to suboptimal returns as clients move to other products or financial service providers.

There will be instances where the proposed amendments will create a dispute between client and advisor. For instance, an advisor could determine a client is being financially exploited but risks the

relationship with the client by pointing this out. The client may resent this assessment and reduce communication between the client and advisor or even cause the client to move their assets elsewhere.

The proposed amendments will also cause direct investment losses for clients. The temporary hold concept creates additional risk to clients. A temporary hold could be incorrectly applied and cost the client a significant amount of money. Considering the market volatility, a hold could have significant negative impact on a client. The companion policy notes that firms worry putting temporary holds will cause regulatory repercussions. A far bigger risk is that a temporary hold will result in the client losing money.

Cost Benefit Analysis

We believe that the OSC Qualitative and Quantitative Analysis of the Anticipated Costs of the Proposed Amendments is overly optimistic and may overstate potential benefits and understate potential costs. We question the following:

- 30 minutes of training per advisor is not adequate to implement the amendments, we expect the training per advisor is more likely requires 2 hours to be affective.;
- Explaining the TCP concept to clients and obtaining TCP info will take much longer than 1 minutes 20 seconds, we anticipate that this is more likely to take 5 – 10 minutes;
- There is no estimate included in the costs for client losses due to trades put on hold;
- The New York State study reported financial exploitation costs individuals \$123 million annually within the state (population 19.5 million), while the OSC determines the benefits will exceed \$200 million for the province of Ontario (population 14.5 million); and,
- Only 3% of the New York State study involved stocks and bonds. The \$123 million figure includes real estate, automobiles, use of credit cards, etc.

Based on the above, we believe that the costs of the Proposed Amendments will significantly higher and the benefits much lower than suggested.

Alternatives

We believe the right approach is to further educate advisors, clients, and the public on this topic. Financial exploitation is a crime, and investment advisors are not the appropriate individuals to address this crime.

The New York State Study provides suggestions for reducing financial exploitation, mainly increased training to identify financial exploitation. We believe that additional training is the most appropriate next step in addressing this issue. Training on identifying and understanding how to deal with this issue would be more beneficial. If the CSA wants to highlight this issue, this training could be required for licencing advisors.

Investors should also be educated on both what financial exploitations looks like and what resources are available to them if they believe they are being financially exploited. This could potentially take the form of a pamphlet or discussion with an investment advisor. This could also take the form of advertising or webinars by the securities commissions.

If the TCP concept is adopted, we believe the implementation should be a “best effort” by an advisor. While new fields are added to new client account documents, the burden of obtaining this information should be limited to asking if the client wants to include the TCP information upon account opening or update. If the client does not wish to provide the information, that should end the advisor’s responsibility.

In addition, if the TCP concept is implemented, a safe harbour provision must be included. This would need to be explained to the client and accepted at the time the TCP information obtained. The safe harbour provision would cover any losses a client incurs due to a trading halt an advisor placed when they have reason to believe the client was being exploited.

We appreciate the opportunity to comment on the proposed amendments. If you have any questions or further inquiry, please feel free to contact us.

Sincerely,

Leede Jones Gable Inc.



Jim Dale,
Chief Executive Officer