

**CSA Notice of Consultation****Draft Amendments to Enhance Protection of Older and  
Vulnerable Clients*****Draft Regulation to amend Regulation 31-103 respecting Registration  
Requirements, Exemptions and Ongoing Registrant Obligations******Draft Amendments to Policy Statement to Regulation 31-103  
respecting Registration Requirements, Exemptions and Ongoing  
Registrant Obligations*****March 5, 2020****Introduction**

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

The CSA worked together with the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together referred to as the self-regulatory organizations or the **SROs**) to develop the Draft Amendments. The Draft Amendments would apply to all registered firms, including IIROC Dealer Members and MFDA Members. We encourage all registrants, including SRO members, to provide their comments on the Draft Amendments. At a later date, the SROs may propose conforming amendments to SRO rules consistent with CSA Regulation 31-103.

The Draft Amendments will be available on the following websites of CSA jurisdictions:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.osc.gov.on.ca](http://www.osc.gov.on.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

[www.mbsecurities.ca](http://www.mbsecurities.ca)

## **Substance and Purpose**

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

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

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

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

### ***Temporary Holds***

In addition, the Draft Amendments will:

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

We believe that the Draft Amendments provide an appropriate balance between a client's autonomy and investor protection, given that registered firms must have a reasonable belief of financial exploitation of a vulnerable client or lack of mental capacity of a client before placing a temporary hold. We also believe that the Draft Amendments clarify how firms must proceed if they do place a temporary hold in such circumstances, and that these are steps they must take in order to meet their duty to deal fairly, honestly and in good faith with their clients.

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

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

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

## Background

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

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

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

Diminished mental capacity also has the potential to endanger the financial security of investors. As the human body ages, it is normal for changes in the brain to take place. However, these changes do not impact everyone in the same way and at the same time. These normal changes in cognition may not have a noticeable effect on one's ability to perform routine financial tasks, such as paying bills, but they can become more obvious when one faces more complex or unfamiliar contexts, such as financial planning or deciding to buy or sell investments.<sup>6</sup> Additionally, the risk of Alzheimer's disease and other forms of dementia increases substantially as individuals get older: while only 7 per cent of Canadians over 65 years of age are affected by dementia, this percentage is 35-40 per cent among Canadians over 85 years of age.<sup>7</sup> The CSA recognizes that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests. The CSA also recognizes that not all vulnerable clients are older clients. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature. Vulnerability can be caused by an illness, impairment, disability or aging process limitation. It is important for firms to recognize

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

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

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

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

5 *Ibid.*

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

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

vulnerabilities in their clients, because vulnerable clients may be more susceptible to financial exploitation.

### ***Canadian Policy Landscape***

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

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

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

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

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

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

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

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

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

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

<sup>12</sup> CSA Staff Notice 31-354, *Suggested Practices for Engaging with Older and Vulnerable Clients* (2019):

<https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilières/0-avis-acvm-staff/2019/2019juin21-31-354-avis-acvm-en.pdf>

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

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

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

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

## **Summary of Draft Amendments**

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

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

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

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

### ***Temporary Holds***

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

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

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

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

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

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

### **Questions for Comment**

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

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

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

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

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

#### ***Temporary Holds***

3. We have proposed that the new temporary hold requirements apply to holds that are placed if there is a reasonable belief that, with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions. We have heard from stakeholders that an individual that is suffering from diminished mental capacity is more susceptible to financial exploitation, and, because of their diminished mental capacity, may need to be protected from mishandling or dissipating their own assets. Should the temporary hold requirements apply to holds that are placed where there is a reasonable belief that the client does not have the mental capacity to make financial decisions or should they be limited to cases of financial exploitation of vulnerable clients?
4. We have proposed that the new temporary hold requirements apply to holds that are placed, not only on the withdrawal of cash or securities from an account, but also on the purchase or sale of securities and the transfer of cash or securities to another firm. We have heard from stakeholders that transactions and transfers, in cases of financial exploitation or diminished mental capacity, can be just as harmful to clients as withdrawals. Should the temporary hold

requirements apply to holds that are placed on the purchase or sale of securities and the transfer of cash or securities to another firm?

5. We have not proposed a time limit on temporary holds considering the complex nature of issues relating to financial exploitation and diminished mental capacity, and the length of time it takes to engage with third parties such as the police and the relevant public guardian and trustee. Instead of a time limit on the temporary holds, we are proposing to require firms to provide the client with notice of the decision to not terminate the temporary hold, and reasons for that decision, every 30 days. Should we prescribe a time limit on temporary holds? Or is the notice requirement proposed by the CSA sufficient to protect investors?
6. Are the Draft Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

### **Transition**

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

We invite your comments on this implementation plan.

### **Local Matters**

An annex includes, where applicable, additional information that is relevant in a local jurisdiction only.

### **Request for Comments**

We welcome your comments on the Draft Amendments.

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

Address your submission to all of the CSA as follows:

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

Registrar of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

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

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The Secretary  
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20 Queen Street West, 22nd Floor  
Toronto, Ontario M5H 3S8  
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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## Questions

Please refer your questions to any of the following:

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