CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to Enhance Protection of Older and Vulnerable Clients

March 5, 2020

Introduction

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

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

This notice contains the following annexes:

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

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

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.fcnb.ca

nssc.novascotia.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Substance and Purpose

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

Trusted Contact Person

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

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

Temporary Holds

In addition, the Proposed Amendments will:

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

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

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

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

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

Background

Canadians are living longer than ever before, and older Canadians are increasingly making up a greater proportion of the total population.[1] As investors live longer, there is a greater need for 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 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.[3] 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.[4] This made financial abuse the second most common form of elder abuse in Canada.[5]

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.[6]

1 Recent Canadian census data shows that approximately 5.9 million Canadians are aged 65 or older, representing nearly 17 per cent of Canada's total population. Source: Statistics Canada, "Canada's population estimates: age and sex" (2015).
2 Households led by Canadians aged 65 and older control approximately $541 billion in non-pension financial assets, representing 39 per cent of total non-pension financial assets held by Canadian households. Source: Statistics Canada, Survey of Financial Security (2016).
3 Innovative Research Group (commissioned by the CSA), *CSA Investor Index* (2017), at p. 52.
4 National Initiative for the Care of the Elderly, *Into the Light: National Survey on the Mistreatment of Older Canadians* (2015), at p. 55.
5 *Ibid*.
6 FCA, Occasional paper No. 31, *Ageing Population and Financial Services* (2017), at p. 26.

Additionally, the risk of Alzheimer's disease and other forms of dementia increases substantially as individuals get older: while only 7 per cent of Canadians over 65 years of age are affected by dementia, this percentage is 35-40 per cent among Canadians over 85 years of age.[7]
The CSA recognizes that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests. The CSA also recognizes that not all vulnerable clients are older clients. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature. Vulnerability can be caused by an illness, impairment, disability or aging process limitation. It is important for firms to recognize vulnerabilities in their clients, because vulnerable clients may be more susceptible to financial exploitation.

Canadian Policy Landscape

Over the past several years, Canadian securities regulators have been focusing on addressing issues of financial exploitation and diminished mental capacity affecting older and vulnerable investors. In March 2018, the Ontario Securities Commission (the **OSC**) published OSC Staff Notice 11-779 – *Seniors Strategy*, which included an action plan to respond to the needs and priorities of Ontario seniors.[8] 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.[9] 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*[10] and the Autorité des marchés financiers published *Protecting vulnerable clients – A practical guide for the financial services industry* in May 2019.[11]

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.[12]

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*.[13] 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.[14]

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

7 Canada, Senate, *Dementia in Canada: A National Strategy for Dementia-friendly Communities* (Standing Senate Committee on Social Affairs, Science and Technology, 2016), at p. 3.
8 *Seniors Strategy*, OSC SN 11-779, (2018) 41 OSCB 2268.
9 Financial and Consumer Services Commission of New Brunswick, *Recommendations and Results of Consultation: Improving Detection, Prevention and Response to Senior Financial Abuse in New Brunswick* (June 2018).
10 *An Act to combat maltreatment of seniors and other persons of full age in vulnerable situations as a means of combating abuse*, L-6.3, Québec, 2017.
11 *Protecting vulnerable clients – A practical guide for the financial services industry*, AMF, (2019).
12 CSA Staff Notice 31-354, *Suggested Practices for Engaging with Older and Vulnerable Clients*(2019) 42 OSCB 5555.
13 IIROC Notice 16-0114, *Guidance on compliance and supervisory issues when dealing with senior clients* (2016).
14 MFDA Bulletin #0797-P, *Seniors and Vulnerable Clients*(2019).

mindful of the client's autonomy. We believe that the Proposed Amendments are a step towards achieving these goals.

U.S. Policy Landscape

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

Summary of Proposed Amendments

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

Trusted Contact Person

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

In addition, the CSA proposes to amend section 14.2 [*Relationship disclosure information*] of NI 31-103 by adding a new paragraph 14.2(2)(l.1) that would require a registered firm to disclose to a client the circumstances under which the firm might disclose information about the client or the client's account to the TCP.

Temporary Holds

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

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

15 NASAA, *NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation*, https://bit.ly/2E4XYt6.
16 FINRA, *Senior Investors*, https://bit.ly/2Yxn3pS.

- 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 31-103CP with respect to our expectations for the use of temporary holds.

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

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

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

Questions for Comment

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

Trusted Contact Person

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

   Should registrants be required to take reasonable steps to obtain the name and contact information of a trusted contact person for the individuals who,
   (i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation, or
   (ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust?

2. For IIROC Dealer Members exclusively offering order execution only services, please comment on any specific considerations or factors that may impact the appropriateness of the proposed framework in the order execution only service context, particularly the requirement to take reasonable steps to obtain TCP information under new paragraph 13.2(2)(e).

Temporary Holds

3. We have proposed that the new temporary hold requirements apply to holds that are placed if there is a reasonable belief that, with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions. We have heard from stakeholders that an individual that is suffering from diminished mental capacity is more susceptible to financial exploitation, and, because of their diminished mental capacity, may need to be protected from mishandling or dissipating their own assets. Should the temporary hold requirements apply to holds that are placed where there is a reasonable belief that the client does not have the mental capacity to make financial decisions or should they be limited to cases of financial exploitation of vulnerable clients?

4. We have proposed that the new temporary hold requirements apply to holds that are placed, not only on the withdrawal of cash or securities from an account, but also on the purchase or sale of securities and the transfer of cash or securities to another firm. We have heard from stakeholders that transactions and transfers, in cases of financial exploitation or diminished mental capacity, can be just as harmful to clients as withdrawals. Should the temporary hold requirements apply to holds that are placed on the purchase or sale of securities and the transfer of cash or securities to another firm?

5. We have not proposed a time limit on temporary holds considering the complex nature of issues relating to financial exploitation and diminished mental capacity, and the length of time it takes to engage with third parties such as the police and the relevant public guardian and trustee. Instead of a time limit on the temporary holds, we are proposing to require firms to provide the client with notice of the decision to not terminate the temporary hold, and reasons for that decision, every 30 days. Should we prescribe a time limit on temporary holds? Or is the notice requirement proposed by the CSA sufficient to protect investors?

6. Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

Transition

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

We invite your comments on this implementation plan.

Local Matters

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

Request for Comments

We welcome your comments on the Proposed Amendments.

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

Address your submission to all of the CSA as follows:

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

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

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
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consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal

information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions

Please refer your questions to any of the following:

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

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

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

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

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

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

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

3. Subsection 11.5 (2) is amended:

(a) in paragraph (r) by replacing "." with ";", and

(b) by adding the following paragraph:

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

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

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

(i) possible financial exploitation of the client;

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

(iii) the name and contact information of any of the following:

(A) a legal guardian of the client,

(B) an executor of an estate under which the client is a beneficiary,

(C) a trustee of a trust under which the client is a beneficiary,

(D) any other personal or legal representative of the client;

(iv) the client's current contact information..

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

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

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

Division 8 Temporary holds

13.19 Conditions for temporary hold

(1) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold in relation to the financial exploitation of a vulnerable client unless the firm reasonably believes:

(a) the client is a vulnerable client, and

(b) financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.

(2) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold in relation to the lack of mental capacity of a client unless the firm reasonably believes, with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions.

(3) If a registered firm, or a registered individual whose registration is sponsored by the registered firm, places a temporary hold in accordance with subsection (1) or (2), the firm must do the following:

(a) document the facts that caused the firm or individual to place and continue the temporary hold;

(b) as soon as possible following the date the firm or individual initially placed the temporary hold, provide notice of the temporary hold and the reasons for the temporary hold to the client;

(c) as soon as possible following the date the firm or individual initially placed the temporary hold and until the hold is terminated, further review the facts that caused the firm or individual to place the temporary hold;

(d) within 30 days of placing the temporary hold, and unless the hold has been previously terminated, within every subsequent 30-day period, take either of the following actions:

(i) terminate the temporary hold;

(ii) provide the client with notice of the firm's decision to not terminate the hold and the reasons for that decision;

(e) ultimately terminate the temporary hold and decide to proceed or not proceed with the purchase or sale of a security or withdrawal or transfer of cash or securities**..**

7. Subsection 14.2 (2) is amended:

(a) by adding the following paragraph:

(l.1) a description of the circumstances under which a registrant might disclose information about the client or the client's account to a trusted contact person in accordance with paragraph 13.2(2)(e)**;,**

(b) in paragraph (o) by replacing "." with ";", and

(c) by adding the following paragraph:

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

8. This Instrument comes into force on •.

ANNEX B

NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

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16.2 [*lapsed*]
16.3 [*lapsed*]
16.4 [*lapsed*]
16.5 [*lapsed*]
16.6 [*lapsed*]
16.7 [*lapsed*]
16.8 [*lapsed*]
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16.15 [*lapsed*]
16.16 [*lapsed*]
16.17 [*lapsed*]
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16.19 [*lapsed*]
16.20 [*lapsed*]

Part 17 When this Instrument comes into force

17.1 Effective date

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FORM 31-103F2 SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE
FORM 31-103F3 USE OF MOBILITY EXEMPTION
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NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS
AND ONGOING REGISTRANT OBLIGATIONS

Part 1 Interpretation

1.1 Definitions of terms used throughout this Instrument

In this Instrument

"book cost" means the total amount paid to purchase a security, including any transaction charges related to the purchase, adjusted for reinvested distributions, returns of capital and corporate reorganizations;

"Canadian custodian" means any of the following:

(a) a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

(b) a trust company that is incorporated under the laws of Canada or a jurisdiction of Canada and licensed or registered under the laws of Canada or a jurisdiction of Canada, and that has equity, as reported in its most recent audited financial statements, of not less than $10,000,000;

(c) a company that is incorporated under the laws of Canada or a jurisdiction of Canada, and that is an affiliate of a bank or trust company referred to in paragraph (a) or (b), if either of the following applies:

(i) the company has equity, as reported in its most recent audited financial statements, of not less than $10,000,000;

(ii) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for the cash and securities the company holds for a client or investment fund;

(d) an investment dealer that is a member of IIROC and that is permitted under the rules of IIROC, as amended from time to time, to hold the cash and securities of a client or investment fund;

"Canadian financial institution" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"connected issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

"debt security" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"designated rating" has the same meaning as in paragraph (b) of the definition of "designated rating" in National Instrument 81-102 *Investment Funds*;

"designated rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions*;

"DRO affiliate" means an affiliate of a designated rating organization that issues credit ratings in a foreign jurisdiction and that has been designated as such under the terms of the designated rating organization's designation;

"eligible client" means a client of a person or company if any of the following apply:

(a) the client is an individual and was a client of the person or company immediately before becoming resident in the local jurisdiction;

(b) the client is the spouse or a child of a client referred to in paragraph (a);

(c) except in Ontario, the client is a client of the person or company on September 27, 2009 pursuant to the person or company's reliance on an exemption from the registration requirement under Part 5 of Multilateral Instrument 11-101 *Principal Regulator System* on that date;

"exempt market dealer" means a person or company registered in the category of exempt market dealer;

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

"foreign custodian" means any of the following:

(a) an entity that

(i) is incorporated or organized under the laws of a country, or a political subdivision of a country, other than Canada,

(ii) is regulated as a banking institution or trust company by the government, or an agency of the government, of the country under the laws of which it is incorporated or organized, or a political subdivision of that country, and

(iii) has equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

(b) an affiliate of an entity referred to in paragraph (a), (b) or (c) of the definition of "Canadian custodian", or paragraph (a) of this definition, if either of the following applies:

(i) the affiliate has equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100,000,000;

(ii) the entity referred to in paragraph (a), (b) or (c) of the definition of "Canadian custodian", or paragraph (a) of this definition, has assumed responsibility for all of the custodial obligations of the affiliate for the cash and securities the affiliate holds for a client or investment fund;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"IIROC provision" means a by-law, rule, regulation or policy of IIROC named in Appendix G, as amended from time to time;

"interim period" means a period commencing on the first day of the financial year and ending 9, 6 or 3 months before the end of the financial year;

"investment dealer" means a person or company registered in the category of investment dealer;

"managed account" means an account of a client for which a person or company makes the investment decisions if that person or company has discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"marketplace" has the same meaning as in section 1.1 of National Instrument 21-101 Marketplace Operation;

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

"MFDA" means the Mutual Fund Dealers Association of Canada;

"MFDA provision" means a by-law, rule, regulation or policy of the MFDA named in Appendix H, as amended from time to time;

"mutual fund dealer" means a person or company registered in the category of mutual fund dealer;

"operating charge" means any amount charged to a client by a registered firm in respect of the operation, transfer or termination of a client's account and includes any federal, provincial or territorial sales taxes paid on that amount;

"original cost" means the total amount paid to purchase a security, including any transaction charges related to the purchase;

"permitted client" means any of the following:

(a) a Canadian financial institution or a Schedule III bank;

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of any person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser, investment dealer, mutual fund dealer or exempt market dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed account managed by the trust company or trust corporation, as the case may be;

(k) a person or company acting on behalf of a managed account managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(l) an investment fund if one or both of the following apply:

  (i) the fund is managed by a person or company registered as an investment fund manager under the securities legislation of a jurisdiction of Canada;

  (ii) the fund is advised by a person or company authorized to act as an adviser under the securities legislation of a jurisdiction of Canada;

(m) in respect of a dealer, a registered charity under the *Income Tax Act* (Canada) that obtains advice on the securities to be traded from an eligibility adviser, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(n) in respect of an adviser, a registered charity under the *Income Tax Act* (Canada) that is advised by an eligibility adviser, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, or an adviser registered under the securities legislation of the jurisdiction of the registered charity;

(o) an individual who beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $5 million;

(p) a person or company that is entirely owned by an individual or individuals referred to in paragraph (o), who holds the beneficial ownership interest in the person or company directly or through a trust, the trustee of which is a trust company or trust corporation registered or authorized to carry on

business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction;

(q) a person or company, other than an individual or an investment fund, that has net assets of at least $25 million as shown on its most recently prepared financial statements;

(r) a person or company that distributes securities of its own issue in Canada only to persons or companies referred to in paragraphs (a) to (q);

"portfolio manager" means a person or company registered in the category of portfolio manager;

"principal jurisdiction" means

(a) for a person or company other than an individual, the jurisdiction of Canada in which the person or company's head office is located, and

(b) for an individual, the jurisdiction of Canada in which the individual's working office is located;

"principal regulator" has the same meaning as in section 4A.1 of Multilateral Instrument 11-102 *Passport System*;

"qualified custodian" means a Canadian custodian or a foreign custodian;

"registered firm" means a registered dealer, a registered adviser, or a registered investment fund manager;

"registered individual" means an individual who is registered

(a) in a category that authorizes the individual to act as a dealer or an adviser on behalf of a registered firm,

(b) as ultimate designated person, or

(c) as chief compliance officer;

"related issuer" has the same meaning as in section 1.1 of National Instrument 33-105 *Underwriting Conflicts*;

"restricted dealer" means a person or company registered in the category of restricted dealer;

"restricted portfolio manager" means a person or company registered in the category of restricted portfolio manager;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"scholarship plan dealer" means a person or company registered in the category of scholarship plan dealer;

"sponsoring firm" means the firm registered in a jurisdiction of Canada on whose behalf an individual acts as a dealer, an underwriter, an adviser, a chief compliance officer or an ultimate designated person;

"sub-adviser" means an adviser to

(a) a registered adviser, or

(b) a registered dealer acting as a portfolio manager as permitted by section 8.24 [*IIROC members with discretionary authority*];

"subsidiary" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"successor credit rating organization" has the same meaning as in National Instrument 44-101 *Short Form Prospectus Distributions;*

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

"total percentage return" means the cumulative realized and unrealized capital gains and losses of an investment, plus income from the investment, over a specified period of time, expressed as a percentage;

"trailing commission" means any payment related to a client's ownership of a security that is part of a continuing series of payments to a registered firm or registered individual by any party;

"transaction charge" means any amount charged to a client by a registered firm in respect of a purchase or sale of a security and includes any federal, provincial or territorial sales taxes paid on that amount;

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

"working office" means the office of the sponsoring firm where an individual does most of his or her business.

1.2 Interpretation of "securities" in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

(1) Subject to sections 8.2, 8.26 and 14.5.1, in British Columbia, a reference to "securities" in this Instrument includes "exchange contracts", unless the context otherwise requires.

(2) Subject to sections 8.2, 8.26 and 14.5.1, in Alberta, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this Instrument includes "derivatives", unless the context otherwise requires.

1.3 Information may be given to the principal regulator

(1) [***repealed***]

(2) For the purpose of a requirement in this Instrument to notify or to deliver or submit a document to the regulator or the securities regulatory authority, the person or company may notify or deliver or submit the document to the person or company's principal regulator.

(3) [***repealed***]

(4) Despite subsection (2)**,** for the purpose of the notice and delivery requirements in section 11.9 [*registrant acquiring a registered firm's securities or assets*], if the principal regulator of the registrant and the principal regulator of the firm identified in paragraph 11.9(1)(a) or 11.9(1)(b), if registered in any jurisdiction of Canada, are not the same, the registrant must deliver the written notice to the following:

(a) the registrant's principal regulator; and

(b) the principal regulator of the firm identified in paragraph 11.9(1)(a) or 11.9(1)(b) as applicable, if registered in any jurisdiction of Canada identified in paragraph 11.9(1)(a) or 11.9(1)(b).

(5) Subsection (2) does not apply to

(a) section 8.18 [*international dealer*], and

(b) section 8.26 [*international adviser*].

Part 2 Categories of registration for individuals

2.1 Individual categories

(1) The following are the categories of registration for an individual who is required, under securities legislation, to be registered to act on behalf of a registered firm:

(a) dealing representative;

(b) advising representative;

(c) associate advising representative;

(d) ultimate designated person;

(e) chief compliance officer.

(2) An individual registered in the category of

(a) dealing representative may act as a dealer or an underwriter in respect of a security that the individual's sponsoring firm is permitted to trade or underwrite,

(b) advising representative may act as an adviser in respect of a security that the individual's sponsoring firm is permitted to advise on,

(c) associate advising representative may act as an adviser in respect of a security that the individual's sponsoring firm is permitted to advise on if the advice has been approved under subsection 4.2(1) [*associate advising representatives – pre-approval of advice*],

(d) ultimate designated person must perform the functions set out in section 5.1 [*responsibilities of the ultimate designated person*], and

(e) chief compliance officer must perform the functions set out in section 5.2 [*responsibilities of the chief compliance officer*].

(3) Subsection (1) does not apply in Ontario.

Note: In Ontario, the same categories of registration for individuals as in subsection 2.1(1) are set out under section 25 of the *Securities Act* (Ontario).

2.2 Client mobility exemption – individuals

(1) The registration requirement does not apply to an individual if all of the following apply:

(a) the individual is registered as a dealing, advising or associate advising representative in the individual's principal jurisdiction;

(b) the individual's sponsoring firm is registered in the firm's principal jurisdiction;

(c) the individual does not act as a dealer, underwriter or adviser in the local jurisdiction other than as he or she is permitted to in his or her principal jurisdiction according to the individual's registration in that jurisdiction;

(d) the individual does not act as a dealer, underwriter or adviser in the local jurisdiction other than for 5 or fewer eligible clients;

(e) the individual complies with Part 13 *Dealing with clients – individuals and firms*;

(f) the individual deals fairly, honestly and in good faith in the course of his or her dealings with an eligible client;

(g) before first acting as a dealer or adviser for an eligible client, the individual's sponsoring firm has disclosed to the client that the individual, and if the firm is relying on section 8.30 *Client mobility exemption – firms*, the firm,

(i) is exempt from registration in the local jurisdiction, and

(ii) is not subject to requirements otherwise applicable under local securities legislation.

(2) If an individual relies on the exemption in this section, the individual's sponsoring firm must submit a completed Form 31-103F3 *Use of Mobility Exemption* to the securities regulatory authority of the local jurisdiction as soon as possible after the individual first relies on this section.

2.3 Individuals acting for investment fund managers

The investment fund manager registration requirement does not apply to an individual acting on behalf of a registered investment fund manager.

Part 3 Registration requirements – individuals

Division 1 General proficiency requirements

3.1 Definitions

In this Part

"Branch Manager Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Canadian Investment Funds Course Exam" means the examination prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Canadian Investment Manager designation" means the designation earned through the Canadian investment manager program prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

"Canadian Securities Course Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Chief Compliance Officers Qualifying Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"CFA Charter" means the charter earned through the Chartered Financial Analyst program prepared and administered by the CFA Institute and so named on the day this Instrument comes into force, and every program that preceded that program, or succeeded that program, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned program;

"Exempt Market Products Exam" means the examination prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Investment Funds in Canada Course Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Mutual Fund Dealers Compliance Exam" means the examination prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"New Entrants Course Exam" means the examination prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or

succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"PDO Exam" means

(a) the Officers', Partners' and Directors' Exam prepared and administered by the IFSE Institute and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination, or

(b) the Partners, Directors and Senior Officers Course Exam prepared and administered by CSI Global Education Inc. and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Sales Representative Proficiency Exam" means the examination prepared and administered by the RESP Dealers Association of Canada and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination;

"Series 7 Exam" means the examination prepared and administered by the Financial Industry Regulatory Authority in the United States of America and so named on the day this Instrument comes into force, and every examination that preceded that examination, or succeeded that examination, that does not have a significantly reduced scope and content when compared to the scope and content of the first-mentioned examination.

3.2 U.S. equivalency

In this Part, an individual is not required to have passed the Canadian Securities Course Exam if the individual has passed the Series 7 Exam and the New Entrants Course Exam.

3.3 Time limits on examination requirements

(1) For the purpose of this Part, an individual is deemed to have not passed an examination unless the individual passed the examination not more than 36 months before the date of his or her application for registration.

(2) Subsection (1) does not apply if the individual passed the examination more than 36 months before the date of his or her application and has met one of the following conditions:

(a) the individual was registered in the same category in any jurisdiction of Canada at any time during the 36-month period before the date of his or her application;

(b) the individual has gained 12 months of relevant securities industry experience during the 36-month period before the date of his or her application.

(3) For the purpose of paragraph (2)(a), an individual is not considered to have been registered during any period in which the individual's registration was suspended.

(4) Subsection (1) does not apply to the examination requirements in

(a) section 3.7 [s*cholarship plan dealer – dealing representative*] if the individual was registered in a jurisdiction of Canada as a dealing representative of a scholarship plan dealer on and since September 28, 2009, and

(b) section 3.9 [e*xempt market dealer – dealing representative*] if the individual was registered as a dealing representative of an exempt market dealer in Ontario or Newfoundland and Labrador on and since September 28, 2009.

Division 2 Education and experience requirements

3.4 Proficiency – initial and ongoing

(1) An individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

(2) A chief compliance officer must not perform an activity set out in section 5.2 [*responsibilities of the chief compliance officer*] unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.

3.5 Mutual fund dealer – dealing representative

A dealing representative of a mutual fund dealer must not act as a dealer in respect of the securities listed in paragraph 7.1(2)(b) unless any of the following apply:

(a) the individual has passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam;

(b) the individual has met the requirements of section 3.11 [*portfolio manager – advising representative*];

(c) the individual has earned a CFA Charter and has gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(d) the individual is exempt from section 3.11 [*portfolio manager – advising representative*] because of subsection 16.10(1) [*proficiency for dealing and advising representatives*].

3.6 Mutual fund dealer – chief compliance officer

A mutual fund dealer must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has

(i) passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam,

(ii) passed the PDO Exam, the Mutual Fund Dealers Compliance Exam or the Chief Compliance Officers Qualifying Exam, and

(iii) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(b) the individual has met the requirements of section 3.13 [*portfolio manager – chief compliance officer*];

(c) section 3.13 [*portfolio manager – chief compliance officer*] does not apply in respect of the individual because of subsection 16.9(2) [*registration of chief compliance officers*].

3.7 Scholarship plan dealer – dealing representative

A dealing representative of a scholarship plan dealer must not act as a dealer in respect of the securities listed in paragraph 7.1(2)(c) unless the individual has passed the Sales Representative Proficiency Exam.

3.8 Scholarship plan dealer – chief compliance officer

A scholarship plan dealer must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless the individual has

(a) passed the Sales Representative Proficiency Exam,

(b) passed the Branch Manager Proficiency Exam,

(c) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and

(d) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration.

3.9 Exempt market dealer – dealing representative

A dealing representative of an exempt market dealer must not perform an activity listed in paragraph 7.1(2)(d) unless any of the following apply:

(a) the individual has passed the Canadian Securities Course Exam;

(b) the individual has passed the Exempt Market Products Exam;

(c) the individual has earned a CFA Charter and has gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(d) the individual satisfies the conditions set out in section 3.11 [*portfolio manager – advising representative*];

(e) the individual is exempt from section 3.11 [*portfolio manager – advising representative*] because of subsection 16.10(1) [*proficiency for dealing and advising representatives*].

3.10 Exempt market dealer – chief compliance officer

An exempt market dealer must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has

(i) passed the Exempt Market Products Exam or the Canadian Securities Course Exam,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and

(iii) gained 12 months of relevant securities industry experience in the 36-month period before applying for registration;

(b) the individual has met the requirements of section 3.13 [*portfolio manager – chief compliance officer*];

(c) section 3.13 [*portfolio manager – chief compliance officer*] does not apply in respect of the individual because of subsection 16.9(2) [*registration of chief compliance officers*].

3.11 Portfolio manager – advising representative

An advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless any of the following apply:

(a) the individual has earned a CFA Charter and has gained 12 months of relevant investment management experience in the 36-month period before applying for registration;

(b) the individual has received the Canadian Investment Manager designation and has gained 48 months of relevant investment management experience, 12 months of which was gained in the 36-month period before applying for registration.

3.12 Portfolio manager – associate advising representative

An associate advising representative of a portfolio manager must not act as an adviser on behalf of the portfolio manager unless any of the following apply:

(a) the individual has completed Level 1 of the Chartered Financial Analyst program and has gained 24 months of relevant investment management experience;

(b) the individual has received the Canadian Investment Manager designation and has gained 24 months of relevant investment management experience.

3.13 Portfolio manager – chief compliance officer

A portfolio manager must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam and, unless the individual has earned the CFA Charter, the Canadian Securities Course Exam, and

(iii) either

A) gained 36 months of relevant securities experience while working at an investment dealer, a registered adviser or an investment fund manager, or

B) provided professional services in the securities industry for 36 months and also worked at a registered dealer, a registered adviser or an investment fund manager for 12 months;

(b) the individual has passed the Canadian Securities Course Exam and either the PDO Exam or the Chief Compliance Officers Qualifying Exam and any of the following apply:

(i) the individual has worked at an investment dealer or a registered adviser for 5 years, including for 36 months in a compliance capacity;

(ii) the individual has worked for 5 years at a Canadian financial institution in a compliance capacity relating to portfolio management and also worked at a registered dealer or a registered adviser for 12 months;

(c) the individual has passed either the PDO Exam or the Chief Compliance Officers Qualifying Exam and has met the requirements of section 3.11 [*portfolio manager – advising representative*].

3.14 Investment fund manager – chief compliance officer

An investment fund manager must not designate an individual as its chief compliance officer under subsection 11.3(1) [*designating a chief compliance officer*] unless any of the following apply:

(a) the individual has

(i) earned a CFA Charter or a professional designation as a lawyer, Chartered Accountant, Certified General Accountant or Certified Management Accountant in a jurisdiction of Canada, a notary in Québec, or the equivalent in a foreign jurisdiction,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam and, unless the individual has earned the CFA Charter, the Canadian Securities Course Exam, and

(iii) either

A) gained 36 months of relevant securities experience while working at a registered dealer, a registered adviser or an investment fund manager, or

B) provided professional services in the securities industry for 36 months and also worked in a relevant capacity at an investment fund manager for 12 months;

(b) the individual has

(i) passed the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam, or the Investment Funds in Canada Course Exam,

(ii) passed the PDO Exam or the Chief Compliance Officers Qualifying Exam, and

(iii) gained 5 years of relevant securities experience while working at a registered dealer, registered adviser or an investment fund manager, including 36 months in a compliance capacity;

(c) the individual has met the requirements of section 3.13 [*portfolio manager – chief compliance officer*];

(d) section 3.13 [*portfolio manager – chief compliance officer*] does not apply in respect of the individual because of subsection 16.9(2) [*registration of chief compliance officers*].

Division 3 Membership in a self-regulatory organization

3.15 Who must be approved by an SRO before registration

(1) A dealing representative of an investment dealer that is a member of IIROC must be an "approved person" as defined under the rules of IIROC.

(2) Except in Québec, a dealing representative of a mutual fund dealer that is a member of the MFDA must be an "approved person" as defined under the rules of the MFDA.

3.16 Exemptions from certain requirements for SRO-approved persons

(1) The following sections do not apply to a registered individual who is a dealing representative of an investment dealer that is a member of IIROC:

(a) subsection 13.2(3) [*know your client*];

(b) section 13.3 [*suitability determination*];

(c) section 13.13 [*disclosure when recommending the use of borrowed money*].

(1.1) Subsection (1) only applies to a registered individual who is a dealing representative of an investment dealer that is a member of IIROC in respect of a requirement specified in any of paragraphs (1)(a) to (c) if the registered individual complies with the corresponding IIROC provisions that are in effect.

(2) The following sections do not apply to a registered individual who is a dealing representative of a mutual fund dealer that is a member of the MFDA:

(a) section 13.3 [*suitability determination*];

(b) section 13.13 [*disclosure when recommending the use of borrowed money*].

(2.1) Subsection (2) only applies to a registered individual who is a dealing representative of a mutual fund dealer that is a member of the MFDA in respect of a requirement specified in paragraph (2)(a) or (b) if the registered individual complies with the corresponding MFDA provisions that are in effect.

(3) In Québec, the requirements listed in subsection (2) do not apply to a registered individual who is a dealing representative of a mutual fund dealer to the extent equivalent requirements to those listed in subsection (2) are applicable to the registered individual under the regulations in Québec.

Part 4 Restrictions on registered individuals

4.1 Restriction on acting for another registered firm

(1) A firm registered in any jurisdiction of Canada must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if either of the following apply:

(a) the individual acts as an officer, partner or director of another firm registered in any jurisdiction of Canada that is not an affiliate of the first-mentioned registered firm;

(b) the individual is registered as a dealing, advising or associate advising representative of another firm registered in any jurisdiction of Canada.

(2) Paragraph (1)(b) does not apply in respect of a representative whose registration as a dealing, advising or associate advising representative of more than one registered firm was granted before July 11, 2011.

4.2 Associate advising representatives – pre-approval of advice

(1) An associate advising representative of a registered adviser must not advise on securities unless, before giving the advice, the advice has been approved by an individual designated by the registered firm under subsection (2).

(2) A registered adviser must designate, for an associate advising representative, an advising representative to review the advice of the associate advising representative.

(3) No later than 7 days following the date of a designation under subsection (2), a registered adviser must provide the regulator or, in Québec, the securities regulatory authority with the names of the advising representative and the associate advising representative who are the subject of the designation.

Part 5 Ultimate designated person and chief compliance officer

5.1 Responsibilities of the ultimate designated person

The ultimate designated person of a registered firm must do all of the following:

(a) supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf;

(b) promote compliance by the firm, and individuals acting on its behalf, with securities legislation.

5.2 Responsibilities of the chief compliance officer

The chief compliance officer of a registered firm must do all of the following:

(a) establish and maintain policies and procedures for assessing compliance by the firm, and individuals acting on its behalf, with securities legislation;

(b) monitor and assess compliance by the firm, and individuals acting on its behalf, with securities legislation;

(c) report to the ultimate designated person of the firm as soon as possible if the chief compliance officer becomes aware of any circumstances indicating that the firm, or any individual acting on its behalf, may be in non-compliance with securities legislation and any of the following apply:

(i) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to a client;

(ii) the non-compliance creates, in the opinion of a reasonable person, a risk of harm to the capital markets;

(iii) the non-compliance is part of a pattern of non-compliance;

(d) submit an annual report to the firm's board of directors, or individuals acting in a similar capacity for the firm, for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.

Part 6 Suspension and revocation of registration – individuals

6.1 If individual ceases to have authority to act for firm

If a registered individual ceases to have authority to act as a registered individual on behalf of his or her sponsoring firm because of the end of, or a change in, the individual's employment, partnership, or agency relationship with the firm, the individual's registration with the firm is suspended until reinstated or revoked under securities legislation.

6.2 If IIROC approval is revoked or suspended

If IIROC revokes or suspends a registered individual's approval in respect of an investment dealer, the individual's registration as a dealing representative of the investment dealer is suspended until reinstated or revoked under securities legislation.

6.3 If MFDA approval is revoked or suspended

Except in Québec, if the MFDA revokes or suspends a registered individual's approval in respect of a mutual fund dealer, the individual's registration as a dealing representative of the mutual fund dealer is suspended until reinstated or revoked under securities legislation.

6.4 If sponsoring firm is suspended

If a registered firm's registration in a category is suspended, the registration of each registered dealing, advising or associate advising representative acting on behalf of the firm in that category is suspended until reinstated or revoked under securities legislation.

6.5 Dealing and advising activities suspended

If an individual's registration in a category is suspended, the individual must not act as a dealer, an underwriter or an adviser, as the case may be, under that category.

6.6 Revocation of a suspended registration – individual

If a registration of an individual has been suspended under this Part and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

6.7 Exception for individuals involved in a hearing or proceeding

Despite section 6.6, if a hearing or proceeding concerning a suspended individual is commenced under securities legislation or under the rules of an SRO, the individual's registration remains suspended.

6.8 Application of Part 6 in Ontario

Other than section 6.5 [*dealing and advising activities suspended*], this Part does not apply in Ontario.

Note: In Ontario, measures governing suspension in section 29 of the *Securities Act* (Ontario) are similar to those in Parts 6 and 10.

Part 7 Categories of registration for firms

7.1 Dealer categories

(1) The following are the categories of registration for a person or company that is required, under securities legislation, to be registered as a dealer:

(a) investment dealer;

(b) mutual fund dealer;

(c) scholarship plan dealer;

(d) exempt market dealer;

(e) restricted dealer.

(2) A person or company registered in the category of

(a) investment dealer may act as a dealer or an underwriter in respect of any security,

(b) mutual fund dealer may act as a dealer in respect of any security of

(i) a mutual fund, or

(ii) an investment fund that is a labour-sponsored investment fund corporation or labour-sponsored venture capital corporation under legislation of a jurisdiction of Canada,

(c) scholarship plan dealer may act as a dealer in respect of a security of a scholarship plan, an educational plan or an educational trust,

(d) exempt market dealer may

(i) act as a dealer by trading a security that is distributed under an exemption from the prospectus requirement,

(ii) act as a dealer by trading a security if all of the following apply:

(A) the trade is not a distribution;

(B) an exemption from the prospectus requirement would be available to the seller if the trade were a distribution;

(C) the class of security is not listed, quoted or traded on a marketplace, or

(iii) [***repealed***]

(iv) act as an underwriter in respect of a distribution of securities that is made under an exemption from the prospectus requirement;

(e) restricted dealer may act as a dealer or an underwriter in accordance with the terms, conditions, restrictions or requirements applied to its registration.

(3) [***repealed***]

(4) Subsection (1) does not apply in Ontario.

(5) [***repealed***]

Note: In Ontario, the same categories of registration for firms acting as dealers as in subsection 7.1(1) are set out under subsection 26(2) of the *Securities Act* (Ontario).

7.2 Adviser categories

(1) The following are the categories of registration for a person or company that is required, under securities legislation, to be registered as an adviser:

(a) portfolio manager;

(b) restricted portfolio manager.

(2) A person or company registered in the category of

(a) portfolio manager may act as an adviser in respect of any security, and

(b) restricted portfolio manager may act as an adviser in respect of any security in accordance with the terms, conditions, restrictions or requirements applied to its registration.

(3) Subsection (1) does not apply in Ontario.

Note: In Ontario, the same categories of registration for firms acting as advisers as in subsection 7.2(1) are set out under subsection 26(6) of the *Securities Act* (Ontario).

7.3 Investment fund manager category

The category of registration for a person or company that is required, under securities legislation, to be registered as an investment fund manager is "investment fund manager".

Part 8 Exemptions from the requirement to register

Division 1 Exemptions from dealer and underwriter registration

8.0.1 General condition to dealer registration requirement exemptions

The exemptions in this Division are not available to a person or company if the person or company is registered in the local jurisdiction and if their category of registration permits the person or company to act as a dealer or trade in a security for which the exemption is provided.

8.1 Interpretation of "trade" in Québec

In this Part, in Québec, "trade" refers to any of the following activities:

(a) the activities described in the definition of "dealer" in section 5 of the *Securities Act* (R.S.Q., c. V-1.1), including the following activities:

(i) the sale or disposition of a security by onerous title, whether the terms of payment are on margin, installment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);

(ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;

(iii) the receipt by a registrant of an order to buy or sell a security;

(b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

8.2 Definition of "securities" in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

Despite section 1.2, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this Division excludes "exchange contracts".

8.3 Interpretation – exemption from underwriter registration requirement

In this Division, an exemption from the dealer registration requirement is an exemption from the underwriter registration requirement.

8.4 Person or company not in the business of trading in British Columbia, Manitoba and New Brunswick

(1) In British Columbia and New Brunswick, a person or company is exempt from the dealer registration requirement if the person or company

(a) is not engaged in the business of trading in securities or exchange contracts as a principal or agent, and

(b) does not hold himself, herself or itself out as engaging in the business of trading in securities or exchange contracts as a principal or agent.

(2) In Manitoba, a person or company is exempt from the dealer registration requirement if the person or company

(a) is not engaged in the business of trading in securities as a principal or agent, and

(b) does not hold himself, herself or itself out as engaging in the business of trading in securities as a principal or agent.

8.5 Trades through or to a registered dealer

The dealer registration requirement does not apply to a person or company in respect of a trade in a security if either of the following applies:

(a) the trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade;

(b) the trade is made to a registered dealer who is purchasing as principal, if the dealer is registered in a category that permits the trade.

8.5.1 Trades through a registered dealer by registered adviser

The dealer registration requirement does not apply to a registered adviser, or an advising representative or associate advising representative acting on behalf of the registered adviser, in respect of trading activities that are incidental to its providing advice to a client, if the trade is made through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement.

8.6 Investment fund trades by adviser to managed account

(1) The dealer registration requirement does not apply to a registered adviser, or an adviser that is exempt from registration under section 8.26 [*international adviser*], in respect of a trade in a security of an investment fund if all of the following apply:

(a) the adviser or an affiliate of the adviser acts as the fund's adviser;

(a.1) the adviser or an affiliate of the adviser acts as the fund's investment fund manager;

(b) the trade is to a managed account of a client of the adviser.

(2) The exemption in subsection (1) is not available if the managed account or investment fund was created or is used primarily for the purpose of qualifying for the exemption.

(3) An adviser that relies on subsection (1) must provide written notice to the regulator or, in Québec, the securities regulatory authority that it is relying on the exemption within 10 days of its first use of the exemption.

8.7 Investment fund reinvestment

(1) Subject to subsections (2), (3), (4) and (5), the dealer registration requirement does not apply to an investment fund, or the investment fund manager of the fund, in respect of a trade in a security with a security holder of the investment fund if the trade is permitted by a plan of the investment fund and is in a security of the investment fund's own issue and if any of the following apply:

(a) a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the investment fund's securities is applied to the purchase of the security that is of the same class or series as the securities to which the dividends or distributions are attributable;

(b) the security holder makes an optional cash payment to purchase the security of the investment fund and both of the following apply:

(i) the security is of the same class or series of securities described in paragraph (a) that trade on a marketplace;

(ii) the aggregate number of securities issued under the optional cash payment does not exceed, in the financial year of the investment fund during which the trade takes place, 2 per cent of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(2) The exemption in subsection (1) is not available unless the plan that permits the trade is available to every security holder in Canada to which the dividend or distribution is available.

(3) The exemption in subsection (1) is not available if a sales charge is payable on a trade described in the subsection.

(4) At the time of the trade, if the investment fund is a reporting issuer and in continuous distribution, the investment fund must have set out in the prospectus under which the distribution is made

(a) details of any deferred or contingent sales charge or redemption fee that is payable at the time of the redemption of the security, and

(b) any right that the security holder has to elect to receive cash instead of securities on the payment of a dividend or making of a distribution by the investment fund and instructions on how the right can be exercised.

(5) At the time of the trade, if the investment fund is a reporting issuer and is not in continuous distribution, the investment fund must provide the information required by subsection (4) in its prospectus, annual information form or a material change report.

8.8 Additional investment in investment funds

The dealer registration requirement does not apply to an investment fund, or the investment fund manager of the fund, in respect of a trade in a security of the investment fund's own issue with a security holder of the investment fund if all of the following apply:

(a) the security holder initially acquired securities of the investment fund as principal for an acquisition cost of not less than $150,000 paid in cash at the time of the acquisition;

(b) the trade is in respect of a security of the same class or series as the securities initially acquired, as described in paragraph (a);

(c) the security holder, as at the date of the trade, holds securities of the investment fund and one or both of the following apply:

(i) the acquisition cost of the securities being held was not less than $150,000;

(ii) the net asset value of the securities being held is not less than $150,000.

8.9 Additional investment in investment funds if initial purchase before September 14, 2005

The dealer registration requirement does not apply in respect of a trade by an investment fund in a security of its own issue to a purchaser that initially acquired a security of the same class as principal before September 14, 2005 if all of the following apply:

(a) the security was initially acquired under any of the following provisions:

(i) in Alberta, section 86(e) and paragraph 131(1)(d) of the *Securities Act* (Alberta) as they existed prior to their repeal by sections 9(a) and 13 of the *Securities Amendment Act* (Alberta), 2003 SA c.32 and sections 66.2 and 122.2 of the *Alberta Securities Commission Rules* (General);

(ii) in British Columbia, sections 45(2) (5) and (22), and 74(2) (4) and (19) of the *Securities Act* (British Columbia);

(iii) in Manitoba, section 19(3) and paragraph 58(1)(a) of the *Securities Act* (Manitoba) and section 90 of the *Securities Regulation* MR 491/88R;

(iv) in New Brunswick, section 2.8 of Local Rule 45-501 *Prospectus and Registration Exemptions*;

(v) in Newfoundland and Labrador, paragraphs 36(1)(e) and 73(1)(d) of the *Securities Act* (Newfoundland and Labrador);

(vi) in Nova Scotia, paragraphs 41(1)(e) and 77(1)(d) of the *Securities Act* (Nova Scotia);

(vii) in Northwest Territories, sections 3(c) and (z) of Blanket Order No. 1;

(viii) in Nunavut, sections 3(c) and (z) of Blanket Order No. 1;

(ix) in Ontario, section 35(1)5 and paragraph 72(1)(d) of the *Securities Act* (Ontario) as they existed prior to their repeal by sections 5 and 11 of the *Securities Act* (Ontario) S.O. 2009, c. 18, Sch. 26 and section 2.12 of Ontario Securities Commission Rule 45-501 *Exempt Distributions* that came into force on January 12, 2004;

(x) in Prince Edward Island, paragraph 2(3)(d) of the former *Securities Act* (Prince Edward Island) and Prince Edward Island Local Rule 45-512 *Exempt Distributions - Exemption for Purchase of Mutual Fund Securities*;

(xi) in Québec, former section 51 and subsection 155.1(2) of the *Securities Act* (Québec);

(xii) in Saskatchewan, paragraphs 39(1)(e) and 81(1)(d) of *The Securities Act, 1988* (Saskatchewan);

(b) the trade is for a security of the same class or series as the initial trade;

(c) the security holder, as at the date of the trade, holds securities of the investment fund that have one or both of the following characteristics:

(i) an acquisition cost of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted;

(ii) a net asset value of not less than the minimum amount prescribed by securities legislation referred to in paragraph (a) under which the initial trade was conducted.

8.10 Private investment club

The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if all of the following apply:

(a) the fund has no more than 50 beneficial security holders;

(b) the fund does not seek and has never sought to borrow money from the public;

(c) the fund does not distribute and has never distributed its securities to the public;

(d) the fund does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees;

(e) the fund, for the purpose of financing its operations, requires security holders to make contributions in proportion to the value of the securities held by them.

8.11 Private investment fund – loan and trust pools

(1) The dealer registration requirement does not apply in respect of a trade in a security of an investment fund if all of the following apply:

(a) the fund is administered by a trust company or trust corporation that is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(b) the fund has no promoter or investment fund manager other than the trust company or trust corporation referred to in paragraph (a);

(c) the fund commingles the money of different estates and trusts for the purpose of facilitating investment.

(2) Despite subsection (1), a trust company or trust corporation registered under the laws of Prince Edward Island that is not registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada is not a trust company or trust corporation for the purpose of paragraph (1)(a).

8.12 Mortgages

(1) In this section, "syndicated mortgage" means a mortgage in which two or more persons or companies participate, directly or indirectly, as lenders in the debt obligation that is secured by the mortgage.

(2) Subject to subsection (3), the dealer registration requirement does not apply in respect of a trade in a mortgage on real property in a jurisdiction of Canada by a person or company who is registered or licensed, or exempted from registration or licensing, under mortgage brokerage or mortgage dealer legislation of that jurisdiction.

(3) In Alberta, British Columbia, Manitoba, New Brunswick, Québec and Saskatchewan, subsection (2) does not apply in respect of a trade in a syndicated mortgage.

(4) This section does not apply in Ontario.

Note: In Ontario a similar exemption from the dealer registration requirement is provided under subsection 35(4) of the *Securities Act* (Ontario).

8.13 Personal property security legislation

(1) The dealer registration requirement does not apply in respect of a trade to a person or company, other than an individual in a security evidencing indebtedness secured by or under a security agreement, secured in accordance with personal property security legislation of a jurisdiction of Canada that provides for the granting of security in personal property.

(2) This section does not apply in Ontario.

Note: In Ontario a similar exemption from the dealer registration requirement is provided under subsection 35(2) of the *Securities Act* (Ontario).

8.14 Variable insurance contract

(1) In this section

"contract", "group insurance", "insurance company", "life insurance" and "policy" have the respective meanings assigned to them in the legislation referenced opposite the name of the local jurisdiction in Appendix A of National Instrument 45-106 *Prospectus Exemptions*;

"variable insurance contract" means a contract of life insurance under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets.

(2) The dealer registration requirement does not apply in respect of a trade in a variable insurance contract by an insurance company if the variable insurance contract is

(a) a contract of group insurance,

(b) a whole life insurance contract providing for the payment at maturity of an amount not less than 75% of the premium paid up to age 75 years for a benefit payable at maturity,

(c) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(d) a variable life annuity.

8.15 Schedule III banks and cooperative associations – evidence of deposit

(1) The dealer registration requirement does not apply in respect of a trade in an evidence of deposit issued by a Schedule III bank or an association governed by the *Cooperative Credit Associations Act* (Canada).

(2) This section does not apply in Ontario or Alberta.

Note: In Ontario, subsection 8.15(1) is not required because the security described in the exemption is excluded from the definition of "security" in subsection 1(1) of the *Securities Act* (Ontario).

In Alberta, subsection 8.15(1) is not required because the exemption is provided under subsection 1(ggg)(v)(B) of the *Securities Act* (Alberta).

8.16 Plan administrator

(1) In this section

"consultant" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*;

"executive officer" has the same meaning as in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*;

"permitted assign" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*;

"plan" means a plan or program established or maintained by an issuer providing for the acquisition of securities of the issuer by employees, executive officers, directors or consultants of the issuer or of a related entity of the issuer;

"plan administrator" means a trustee, custodian, or administrator, acting on behalf of, or for the benefit of, employees, executive officers, directors or consultants of an issuer or of a related entity of an issuer;

"related entity" has the same meaning as in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*.

(2) The dealer registration requirement does not apply in respect of a trade made pursuant to a plan of the issuer in a security of an issuer, or an option to acquire a security of the issuer, made by the issuer, a control person of the issuer, a related entity of the issuer, or a plan administrator of the issuer with any of the following:

(a) the issuer;

(b) a current or former employee, executive officer, director or consultant of the issuer or a related entity of the issuer;

(c) a permitted assign of a person or company referred to in paragraph (b).

(3) The dealer registration requirement does not apply in respect of a trade in a security of an issuer, or an option to acquire a security of the issuer, made by a plan administrator of the issuer if

(a) the trade is pursuant to a plan of the issuer, and

(b) the conditions of one of the following exemptions are satisfied:

(i) except in Alberta and Ontario, section 2.14 or 2.15 of National Instrument 45-102 *Resale of Securities*,

(ii) in Ontario, section 2.7 or 2.8 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada*,

(iii) in Alberta, section 10 or 11 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta*.

8.17 Reinvestment plan

(1) Subject to subsections (3), (4) and (5), the dealer registration requirement does not apply in respect of the following trades by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trades are permitted by a plan of the issuer:

(a) a trade in a security of the issuer's own issue if a dividend or distribution out of earnings, surplus, capital or other sources payable in respect of the issuer's securities is applied to the purchase of the security;

(b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes an optional cash payment to purchase the security of the issuer that trades on a marketplace.

(2) The aggregate number of securities issued under the optional cash payment referred to in paragraph (1)(b) must not exceed, in any financial year of the issuer during which the trade takes place, 2% of the issued and outstanding securities of the class to which the plan relates as at the beginning of the financial year.

(3) A plan that permits the trades described in subsection (1) must be available to every security holder in Canada to which the dividend or distribution out of earnings, surplus, capital or other sources is available.

(4) This section is not available in respect of a trade in a security of an investment fund.

(5) Subject to section 8.4 [*transition – reinvestment plan*] of National Instrument 45-106 *Prospectus Exemptions*, if the security traded under a plan described in subsection (1) is of a different class or series than the class or series of the security to which the dividend or distribution is attributable, the issuer or the trustee, custodian or administrator must have provided to each participant that is eligible to receive a security under the plan either a description of the material attributes and characteristics of the security traded under the plan or notice of a source from which the participant can obtain the information without charge.

8.18 International dealer

(1) In this section

"foreign security" means

(a) a security issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction, or

(b) a security issued by a government of a foreign jurisdiction.

(2) Subject to subsections (3) and (4), the dealer registration requirement does not apply in respect of any of the following:

(a) an activity, other than a sale of a security, that is reasonably necessary to facilitate a distribution of securities that are offered primarily in a foreign jurisdiction;

(b) a trade in a debt security with a permitted client if the debt security

(i) is denominated in a currency other than the Canadian dollar, or

(ii) is or was originally offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution;

(c) a trade in a debt security that is a foreign security with a permitted client, other than during the security's distribution;

(d) a trade in a foreign security with a permitted client, unless the trade is made during the security's distribution under a prospectus that has been filed with a Canadian securities regulatory authority;

(e) a trade in a foreign security with an investment dealer;

(f) a trade in any security with an investment dealer that is purchasing as principal.

(3) The exemption under subsection (2) is not available to a person or company unless all of the following apply:

(a) the head office or principal place of business of the person or company is in a foreign jurisdiction;

(b) the person or company is registered under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in the local jurisdiction;

(c) the person or company engages in the business of a dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(d) the person or company is trading as principal or agent for

(i) the issuer of the securities,

(ii) a permitted client, or

(iii) a person or company that is not a resident of Canada;

(e) the person or company has submitted to the securities regulatory authority a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service*.

(4) The exemption under subsection (2) is not available to a person or company in respect of a trade with a permitted client unless one of the following applies:

(a) the permitted client is a person or company registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer;

(b) the person or company has notified the permitted client of all of the following:

(i) the person or company is not registered in the local jurisdiction to make the trade;

(ii) the foreign jurisdiction in which the head office or principal place of business of the person or company is located;

(iii) all or substantially all of the assets of the person or company may be situated outside of Canada;

(iv) there may be difficulty enforcing legal rights against the person or company because of the above;

(v) the name and address of the agent for service of process of the person or company in the local jurisdiction.

(5) A person or company that relied on the exemption in subsection (2) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(6) In Ontario, subsection (5) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

(7) The adviser registration requirement does not apply to a person or company that is exempt from the dealer registration requirement under this section if the person or company provides advice to a client and the advice is

(a) in connection with an activity or trade described under subsection (2), and

(b) not in respect of a managed account of the client.

8.19 Self-directed registered education savings plan

(1) In this section

"self-directed RESP" means an educational savings plan registered under the *Income Tax Act* (Canada)

(a) that is structured so that contributions by a subscriber to the plan are deposited directly into an account in the name of the subscriber, and

(b) under which the subscriber maintains control and direction over the plan that enables the subscriber to direct how the assets of the plan are to be held, invested or reinvested subject to compliance with the *Income Tax Act* (Canada).

(2) The dealer registration requirement does not apply in respect of a trade in a self-directed RESP to a subscriber if both of the following apply:

(a) the trade is made by any of the following:

(i) a dealing representative of a mutual fund dealer who is acting on behalf of the mutual fund dealer in respect of securities listed in paragraph 7.1(2)(b);

(ii) a Canadian financial institution;

(iii) in Ontario, a financial intermediary;

(b) the self-directed RESP restricts its investments in securities to securities in which the person or company who trades the self-directed RESP is permitted to trade.

8.20 Exchange contract – Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

(1) In Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, the dealer registration requirement does not apply to a person or company in respect of a trade in an exchange contract by the person or company if one of the following applies:

(a) the trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade;

(b) the trade is made to a registered dealer who is purchasing as principal, if the dealer is registered in a category that permits the trade.

(2) [***repealed***]

(3) [***repealed***]

8.20.1 Exchange contract trades through or to a registered dealer – Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

In Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, the dealer registration requirement does not apply to a registered adviser, or an advising representative or associate advising representative acting on behalf of

the registered adviser, in respect of trading activities related to exchange contracts that are incidental to its providing advice to a client, if the trade is made through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement.

8.21 Specified debt

(1) In this section

"permitted supranational agency" means any of the following:

(a) the African Development Bank, established by the Agreement Establishing the African Development Bank which came into force on September 10, 1964, that Canada became a member of on December 30, 1982;

(b) the Asian Development Bank, established under a resolution adopted by the United Nations Economic and Social Commission for Asia and the Pacific in 1965;

(c) the Caribbean Development Bank, established by the Agreement Establishing the Caribbean Development Bank which came into force on January 26, 1970, as amended, that Canada is a founding member of;

(d) the European Bank for Reconstruction and Development, established by the Agreement Establishing the European Bank for Reconstruction and Development and approved by the *European Bank for Reconstruction and Development Agreement Act* (Canada), that Canada is a founding member of;

(e) the Inter-American Development Bank, established by the Agreement establishing the Inter-American Development Bank which became effective December 30, 1959, as amended from time to time, that Canada is a member of;

(f) the International Bank for Reconstruction and Development, established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods and Related Agreements Act* (Canada);

(g) the International Finance Corporation, established by Articles of Agreement approved by the *Bretton Woods and Related Agreements Act* (Canada).

(2) The dealer registration requirement does not apply in respect of a trade in any of the following:

(a) a debt security issued by or guaranteed by the Government of Canada or the government of a jurisdiction of Canada;

(b) a debt security issued by or guaranteed by a government of a foreign jurisdiction if the debt security has a designated rating from a designated rating organization or its DRO affiliate;

(c) a debt security issued by or guaranteed by a municipal corporation in Canada;

(d) a debt security secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and collectible by or through the municipality in which the property is situated;

(e) a debt security issued by or guaranteed by a Canadian financial institution or a Schedule III bank, other than debt securities that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities;

(f) a debt security issued by the Comité de gestion de la taxe scolaire de l'île de Montréal;

(g) a debt security issued by or guaranteed by a permitted supranational agency if the debt securities are payable in the currency of Canada or the United States of America.

(3) Paragraphs (2)(a), (c) and (d) do not apply in Ontario.

Note: In Ontario, exemptions from the dealer registration requirement similar to those in paragraphs 8.21(a), (c) and (d) are provided under paragraph 2 of subsection 35(1) of the *Securities Act* (Ontario).

8.22 Small security holder selling and purchase arrangements

(1) In this section

"exchange" means

(a) TSX Inc.,

(b) TSX Venture Exchange Inc., or

(c) an exchange that

(i) has a policy that is substantially similar to the policy of the TSX Inc., and

(ii) is designated by the securities regulatory authority for the purpose of this section;

"policy" means,

(a) in the case of TSX Inc., sections 638 and 639 [*Odd lot selling and purchase arrangements*] of the TSX Company Manual, as amended from time to time,

(b) in the case of the TSX Venture Exchange Inc., Policy 5.7 *Small Shareholder Selling and Purchase Arrangements*, as amended from time to time, or

(c) in the case of an exchange referred to in paragraph (c) of the definition of "exchange", the rule, policy or other similar instrument of the exchange on small shareholder selling and purchase arrangements.

(2) The dealer registration requirement does not apply in respect of a trade by an issuer or its agent, in securities of the issuer that are listed on an exchange, if all of the following apply:

(a) the trade is an act in furtherance of participation by the holders of the securities in an arrangement that is in accordance with the policy of that exchange;

(b) the issuer and its agent do not provide advice to a security holder about the security holder's participation in the arrangement referred to in paragraph (a), other than a description of the arrangement's operation, procedures for participation in the arrangement, or both;

(c) the trade is made in accordance with the policy of that exchange, without resort to an exemption from, or variation of, the significant subject matter of the policy;

(d) at the time of the trade after giving effect to a purchase under the arrangement, the market value of the maximum number of securities that a security holder is permitted to hold in order to be eligible to participate in the arrangement is not more than $25,000.

(3) For the purposes of paragraph (2)(c), an exemption from, or variation of, the maximum number of securities that a security holder is permitted to hold under a policy in order to be eligible to participate in the arrangement provided for in the policy is not an exemption from, or variation of, the significant subject matter of the policy.

8.22.1 Short-term debt

(1) In this section "short-term debt instrument" means a negotiable promissory note or commercial paper maturing not more than one year from the date of issue.

(2) Except in Ontario, the dealer registration requirement does not apply to any of the following in respect of a trade in a short-term debt instrument with a permitted client:

(a) a bank listed in Schedule I, II or III to the *Bank Act* (Canada);

(b) an association to which the *Cooperative Credit Associations Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of that Act;

(c) a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized by a statute of Canada or of a jurisdiction in Canada to carry on business in Canada or in any jurisdiction in Canada, as the case may be;

(d) the Business Development Bank of Canada;

(3) The exemption under subsection (2) is not available to a person or company if the short-term debt instrument is convertible or exchangeable into, or accompanied by a right to purchase, another security other than another short-term debt instrument.

Note: In Ontario, an exemption from the dealer registration requirement similar to that in section 8.22.1 is provided under section 35.1 of the *Securities Act* (Ontario).

Division 2 Exemptions from adviser registration

8.22.2 General condition to adviser registration requirement exemptions

The exemptions in this Division are not available to a person or company if the person or company is registered in the local jurisdiction in a category of registration that permits the person or company to act as an adviser in respect of the activities for which the exemption is provided.

8.23 Dealer without discretionary authority

The adviser registration requirement does not apply to a registered dealer, or a dealing representative acting on behalf of the dealer, that provides advice to a client if the advice is

(a) in connection with a trade in a security that the dealer and the representative are permitted to make under his, her or its registration,

(b) provided by the representative, and

(c) not in respect of a managed account of the client.

8.24 IIROC members with discretionary authority

The adviser registration requirement does not apply to a registered dealer, or a dealing representative acting on behalf of the dealer, that acts as an adviser in respect of a client's managed account if the registered dealer is an investment dealer that is a member of IIROC and the advising activities are conducted in accordance with the rules of IIROC.

8.25 Advising generally

(1) For the purposes of subsections (3) and (4), "financial or other interest" includes the following:

(a) ownership, beneficial or otherwise, in the security or in another security issued by the same issuer;

(b) an option in respect of the security or another security issued by the same issuer;

(c) a commission or other compensation received, or expected to be received, from any person or company in connection with the trade in the security;

(d) a financial arrangement regarding the security with any person or company;

(e) a financial arrangement with any underwriter or other person or company who has any interest in the security.

(2) The adviser registration requirement does not apply to a person or company that acts as an adviser if the advice the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.

(3) If a person or company that is exempt under subsection (2) recommends buying, selling or holding a specified security, a class of securities or the securities of a class of issuers in which any of the following has a financial or other interest, the person or company must disclose the interest concurrently with providing the advice:

(a) the person or company;
(b) any partner, director or officer of the person or company;

(c) any other person or company that would be an insider of the first-mentioned person or company if the first-mentioned person or company were a reporting issuer.

(4) If the financial or other interest of the person or company includes an interest in an option described in paragraph (b) of the definition of "financial or other interest" in subsection (1), the disclosure required by subsection (3) must include a description of the terms of the option.

(5) This section does not apply in Ontario.

Note: In Ontario, measures similar to those in section 8.25 are in section 34 of the *Securities Act* (Ontario).

8.26 International adviser

(1) Despite section 1.2, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this section excludes "exchange contracts".

(2) In this section

"aggregate consolidated gross revenue" does not include the gross revenue of an affiliate of the adviser if the affiliate is registered in a jurisdiction of Canada;

"foreign security" means

(a) a security issued by an issuer incorporated, formed or created under the laws of a foreign jurisdiction, and

(b) a security issued by a government of a foreign jurisdiction;

(3) The adviser registration requirement does not apply to a person or company if either of the following applies:

(a) the person or company provides advice on a foreign security to a permitted client that is not registered under the securities legislation of a jurisdiction of Canada as an adviser or dealer;

(b) the person or company provides advice on a security that is not a foreign security and the advice is incidental to the advice referred to in paragraph (a).

(4) The exemption under subsection (3) is not available unless all of the following apply:

(a) the adviser's head office or principal place of business is in a foreign jurisdiction;

(b) the adviser is registered in a category of registration, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction;

(c) the adviser engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(d) as at the end of its most recently completed financial year, not more than 10% of the aggregate consolidated gross revenue of the adviser, its affiliates and its affiliated partnerships was derived

from the portfolio management activities of the adviser, its affiliates and its affiliated partnerships in Canada;

(e) before advising a client, the adviser notifies the client of all of the following:

(i) the adviser is not registered in the local jurisdiction to provide the advice described under subsection (3);

(ii) the foreign jurisdiction in which the adviser's head office or principal place of business is located;

(iii) all or substantially all of the adviser's assets may be situated outside of Canada;

(iv) there may be difficulty enforcing legal rights against the adviser because of the above;

(v) the name and address of the adviser's agent for service of process in the local jurisdiction;

(f) the adviser has submitted to the securities regulatory authority a completed Form 31-103F2 *Submission to jurisdiction and appointment of agent for service*.

(5) A person or company that relied on the exemption in subsection (3) during the 12-month period preceding December 1 of a year must notify the regulator, or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(6) In Ontario, subsection (5) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

8.26.1 International sub-adviser

(1) The adviser registration requirement does not apply to a sub-adviser if all of the following apply:

(a) the obligations and duties of the sub-adviser are set out in a written agreement with the registered adviser or registered dealer;

(b) the registered adviser or registered dealer has entered into a written agreement with its clients on whose behalf investment advice is or portfolio management services are to be provided, agreeing to be responsible for any loss that arises out of the failure of the sub-adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) the sub-adviser's head office or principal place of business is in a foreign jurisdiction;

(b) the sub-adviser is registered in a category of registration, or operates under an exemption from registration, under the securities legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser would permit it to carry on in the local jurisdiction;

(c) the sub-adviser engages in the business of an adviser in the foreign jurisdiction in which its head office or principal place of business is located.

Division 3 Exemptions from investment fund manager registration

8.26.2 General condition to investment fund manager registration requirement exemptions

The exemptions in this Division are not available to a person or company if the person or company is registered in the local jurisdiction as an investment fund manager.

8.27 Private investment club

The investment fund manager registration requirement does not apply to a person or company in respect of its acting as an investment fund manager for an investment fund if all of the following apply:

(a) the fund has no more than 50 beneficial security holders;

(b) the fund does not seek and has never sought to borrow money from the public;

(c) the fund does not distribute and has never distributed its securities to the public;

(d) the fund does not pay or give any remuneration for investment management or administration advice in respect of trades in securities, except normal brokerage fees;

(e) the fund, for the purpose of financing its operations, requires security holders to make contributions in proportion to the value of the securities held by them.

8.28 Capital accumulation plan

(1) In this section

"capital accumulation plan" means a tax assisted investment or savings plan, including a defined contribution registered pension plan, a group registered retirement savings plan, a group registered education savings plan, or a deferred profit-sharing plan, that permits a plan member to make investment decisions among two or more investment options offered within the plan, and in Québec and Manitoba, includes a simplified pension plan;

"plan member" means a person that has assets in a capital accumulation plan;

"plan sponsor" means an employer, trustee, trade union or association or a combination of them that establishes a capital accumulation plan, and includes a plan service provider to the extent that the plan sponsor has delegated its responsibilities to the plan service provider; and

"plan service provider" means a person that provides services to a plan sponsor to design, establish, or operate a capital accumulation plan.

(2) The investment fund manager registration requirement does not apply to a plan sponsor or their plan service provider in respect of activities related to a capital accumulation plan.

8.29 Private investment fund – loan and trust pools

(1) The investment fund manager registration requirement does not apply to a trust company or trust corporation that administers an investment fund if all of the following apply:

(a) the trust company or trust corporation is registered or authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(b) the fund has no promoter or investment fund manager other than the trust company or trust corporation;

(c) the fund commingles the money of different estates and trusts for the purpose of facilitating investment.

(2) The exemption in subsection (1) is not available to a trust company or trust corporation registered under the laws of Prince Edward Island unless it is also registered under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in another jurisdiction of Canada.

(3) This section does not apply in Ontario.

Note: In Ontario, section 35.1 of the *Securities Act* (Ontario) provides a general exemption from the registration requirement for trust companies, trust corporations and other specified financial institutions.

Division 4 Mobility exemption – firms

8.30 Client mobility exemption – firms

The dealer registration requirement and the adviser registration requirement do not apply to a person or company if all of the following apply:

(a) the person or company is registered as a dealer or adviser in its principal jurisdiction;

(b) the person or company does not act as a dealer, underwriter or adviser in the local jurisdiction other than as it is permitted to in its principal jurisdiction according to its registration;

(c) the person or company does not act as a dealer, underwriter or adviser in the local jurisdiction other than in respect of 10 or fewer eligible clients;

(d) the person or company complies with Parts 13 *Dealing with clients – individuals and firms* and 14 *Handling client accounts – firms*;

(e) the person or company deals fairly, honestly and in good faith in the course of its dealings with an eligible client.

Part 9 Membership in a self-regulatory organization

9.1 IIROC membership for investment dealers

An investment dealer must not act as a dealer unless the investment dealer is a "dealer member", as defined under the rules of IIROC.

9.2 MFDA membership for mutual fund dealers

Except in Québec, a mutual fund dealer must not act as a dealer unless the mutual fund dealer is a "member", as defined under the rules of the MFDA.

9.3 Exemptions from certain requirements for IIROC members

(1) Unless it is also registered as an investment fund manager, an investment dealer that is a member of IIROC is exempt from the following requirements:

(a) section 12.1 [*capital requirements*];

(b) section 12.2 [*subordination agreement*];

(c) section 12.3 [*insurance – dealer*];

(d) section 12.6 [*global bonding or insurance*];

(e) section 12.7 [*notifying the regulator of a change, claim or cancellation*];

(f) section 12.10 [*annual financial statements*];

(g) section 12.11 [*interim financial information*];

(h) section 12.12 [*delivering financial information – dealer*];

(i) subsection 13.2(3) [*know your client*];

(j) section 13.3 [*suitability determination*];

(j.1) section 13.3.1 [*waivers*];

(k) section 13.12 [*restriction on borrowing from, or lending to, clients*];

(l) section 13.13 [*disclosure when recommending the use of borrowed money*];

(l.1) section 13.15 [*handling complaints*];

(m) subsections 14.2(2) to (6) [*relationship disclosure information*];

(m.1) section 14.2.1 [*pre-trade disclosure of charges*];

(m.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(m.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(n) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(n.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(n.2) section 14.6.2 [*custodial provisions relating to short sales*];

(o) [*repealed*];

(p) [*repealed*];

(p.1) section 14.11.1 [*determining market value*];

(q) section 14.12 [*content and delivery of trade confirmation*];

(r) section 14.14 [*account statements*];

(s) section 14.14.1 [*additional statements*];

(t) section 14.14.2 [*security position cost information*];

(u) section 14.17 [*report on charges and other compensation*];

(v) section 14.18 [*investment performance report*];

(w) section 14.19 [*content of investment performance report*];

(x) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(1.1) Subsection (1) only applies to a registered firm in respect of a requirement specified in any of paragraphs (1)(a) to (x) if the registered firm complies with the corresponding IIROC provisions that are in effect.

(2) If an investment dealer is a member of IIROC and is registered as an investment fund manager, the firm is exempt from the following requirements:

(a) section 12.3 [*insurance – dealer*];

(b) section 12.6 [*global bonding or insurance*];

(c) section 12.12 [*delivering financial information – dealer*];

(d) subsection 13.2(3) [*know your client*];

(e) section 13.3 [*suitability determination*];

(e.1) section 13.3.1 [*waivers*];

(f) section 13.12 [*restriction on borrowing from, or lending to, clients*];

(g) section 13.13 [*disclosure when recommending the use of borrowed money*];

(h) section 13.15 [*handling complaints*];

(i) subsections 14.2(2) to (6) [*relationship disclosure information*];

(i.1) section 14.2.1 [*pre-trade disclosure of charges*];

(i.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(i.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(j) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(j.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(j.2) section 14.6.2 [*custodial provisions relating to short sales*];

(k) [*repealed*];

(l) [*repealed*];

(l.1) section 14.11.1 [*determining market value*];

(m) section 14.12 [*content and delivery of trade confirmation*];

(n) section 14.17 [*report on charges and other compensation*];

(o) section 14.18 [*investment performance report*];

(p) section 14.19 [*content of investment performance report*];

(q) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(2.1) Subsection (2) only applies to a registered firm in respect of a requirement specified in any of paragraphs (2)(a) to (q) if the registered firm complies with the corresponding IIROC provisions that are in effect.

(3) [***repealed***]

(4) [***repealed***]

(5) [***repealed***]

(6) [***repealed***]

9.4 Exemptions from certain requirements for MFDA members

(1) Unless it is also registered as an exempt market dealer, a scholarship plan dealer or an investment fund manager, a mutual fund dealer that is a member of the MFDA is exempt from the following requirements:

(a) section 12.1 [*capital requirements*];

(b) section 12.2 [*subordination agreement*];

(c) section 12.3 [*insurance – dealer*];

(d) section 12.6 [*global bonding or insurance*];

(e) section 12.7 [*notifying the regulator of a change, claim or cancellation*];

(f) section 12.10 [*annual financial statements*];

(g) section 12.11 [*interim financial information*];

(h) section 12.12 [*delivering financial information – dealer*];

(i) section 13.3 [*suitability determination*];

(i.1) section 13.3.1 [*waivers*];

(j) section 13.12 [r*estriction on borrowing from, or lending to, clients*];

(k) section 13.13 [*disclosure when recommending the use of borrowed money*];

(l) section 13.15 [*handling complaints*];

(m) subsections 14.2(2), (3) and (5.1) [*relationship disclosure information*];

(m.1) section 14.2.1 [*pre-trade disclosure of charges*];

(m.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(m.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(n) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(n.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(n.2) section 14.6.2 [*custodial provisions relating to short sales*];

(o) [*repealed*];

(p) [*repealed*];

(p.1) section 14.11.1 [*determining market value*];

(q) section 14.12 [*content and delivery of trade confirmation*];

(r) section 14.14 [*account statements*];

(s) section 14.14.1 [*additional statements*];

(t) section 14.14.2 [*security position cost information*];

(u) section 14.17 [*report on charges and other compensation*];

(v) section 14.18 [*investment performance report*];

(w) section 14.19 [*content of investment performance report*];

(x) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(1.1) Subsection (1) only applies to a registered firm in respect of a requirement specified in any of paragraphs (1)(a) to (x) if the registered firm complies with the corresponding MFDA provisions that are in effect.

(1.2) Paragraphs (a) to (g), paragraphs (i) to (m) and paragraphs (p.1) to (x) of subsection (1) do not apply in Québec, to the extent equivalent requirements to those listed in these subparagraphs are applicable to the mutual fund dealer under the regulations in Québec.

(1.3) In Québec, paragraphs (g.2), (g.3), (h), (h.1) and (h.2) of subsection (2) only applies to a registered firm in respect of a requirement specified in any of these paragraphs if the registered firm complies with the corresponding MFDA provisions that are in effect.

(2) If a registered firm is a mutual fund dealer that is a member of the MFDA and is registered as an exempt market dealer, scholarship plan dealer or investment fund manager, the firm is exempt from the following requirements:

(a) section 12.3 [*insurance – dealer*];

(b) section 12.6 [*global bonding or insurance*];

(c) section 13.3 [*suitability determination*];

(c.1) section 13.3.1 [*waivers*];

(d) section 13.12 [r*estriction on borrowing from, or lending to, clients*];

(e) section 13.13 [*disclosure when recommending the use of borrowed money*];

(f) section 13.15 [*handling complaints*];

(g) subsections 14.2(2), (3) and (5.1) [*relationship disclosure information*];

(g.1) section 14.2.1 [*pre-trade disclosure of charges*];

(g.2) section 14.5.2 [*restriction on self-custody and qualified custodian requirement*];

(g.3) section 14.5.3 [*cash and securities held by a qualified custodian*];

(h) section 14.6 [*client and investment fund assets held by a registered firm in trust*];

(h.1) section 14.6.1 [*custodial provisions relating to certain margin or security interests*];

(h.2) section 14.6.2 [*custodial provisions relating to short sales*];

(i) [*repealed*];

(j) [*repealed*];

(j.1) section 14.11.1 [*determining market value*];

(k) section 14.12 [*content and delivery of trade confirmation*];

(l) section 14.17 [*report on charges and other compensation*];

(m) section 14.18 [*investment performance report*];

(n) section 14.19 [*content of investment performance report*];

(o) section 14.20 [*delivery of report on charges and other compensation and investment performance report*].

(2.1) Subsection (2) only applies to a registered firm in respect of a requirement specified in any of paragraphs (2)(a) to (o) if the registered firm complies with the corresponding MFDA provisions that are in effect.

Part 10 Suspension and revocation of registration – firms

Division 1 When a firm's registration is suspended

10.1 Failure to pay fees

(1) In this section, "annual fees" means

(a) in Alberta, the fees required under section 5 of ASC Rule 13-501 *Fees*,

(b) in British Columbia, the annual fees required under section 22 of the Securities Regulation, B.C. Reg. 196/97,

(c) in Manitoba, the fees required under paragraph 1.(2)(a) of the *Manitoba Fee Regulation*, M.R 491\88R,

(d) in New Brunswick, the fees required under section 2.2 (c) of Local Rule 11-501 *Fees*,

(e) in Newfoundland and Labrador, the fees required under section 143 of the *Securities Act*,

(f) in Nova Scotia, the fees required under Part XIV of the Regulations,

(g) in Northwest Territories, the fees required under sections 1(c) and 1(e) of the Securities Fee regulations, R-066-2008;

(h) in Nunavut, the fees required under section 1(a) of the Schedule to R-003-2003 to the Securities Fee regulation, R.R.N.W.T. 1990, c.20,

(i) in Prince Edward Island, the fees required under section 175 of the *Securities Act* R.S.P.E.I., Cap. S-3.1,

(j) in Québec, the fees required under section 271.5 of the Québec Securities Regulation,

(k) in Saskatchewan, the annual registration fees required under section 176 of The Securities Regulations (Saskatchewan), and

(l) in Yukon, the fees required under O.I.C. 2009\66, pursuant to section 168 of the *Securities Act*.

(2) If a registered firm has not paid the annual fees by the 30th day after the date the annual fees were due, the registration of the firm is suspended until reinstated or revoked under securities legislation.

10.2 If IIROC membership is revoked or suspended

If IIROC revokes or suspends a registered firm's membership, the firm's registration in the category of investment dealer is suspended until reinstated or revoked under securities legislation.

10.3 If MFDA membership is revoked or suspended

Except in Québec, if the MFDA revokes or suspends a registered firm's membership, the firm's registration in the category of mutual fund dealer is suspended until reinstated or revoked under securities legislation.

10.4 Activities not permitted while a firm's registration is suspended

If a registered firm's registration in a category is suspended, the firm must not act as a dealer, an underwriter, an adviser, or an investment fund manager, as the case may be, under that category.

Division 2 Revoking a firm's registration

10.5 Revocation of a suspended registration – firm

If a registration has been suspended under this Part and it has not been reinstated, the registration is revoked on the 2nd anniversary of the suspension.

10.6 Exception for firms involved in a hearing or proceeding

Despite section 10.5, if a hearing or proceeding concerning a suspended registrant is commenced under securities legislation or under the rules of an SRO, the registrant's registration remains suspended.

10.7 Application of Part 10 in Ontario

Other than section 10.4 [*activities not permitted while a firm's registration is suspended*], this Part does not apply in Ontario.

Note: In Ontario, measures governing suspension in section 29 of the *Securities Act* (Ontario) are similar to those in Parts 6 and 10.

Part 11 Internal controls and systems

Division 1 Compliance

11.1 Compliance system and training

(1) A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to

(a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and

(b) manage the risks associated with its business in accordance with prudent business practices.

(2) A registered firm must provide training to its registered individuals on compliance with securities legislation including, without limitation, the obligations under sections 13.2, 13.2.1, 13.3, 13.4 and 13.4.1.

11.2 Designating an ultimate designated person

(1) A registered firm must designate an individual who is registered under securities legislation in the category of ultimate designated person to perform the functions described in section 5.1 [*responsibilities of the ultimate designated person*].

(2) A registered firm must designate an individual under subsection (1) who is one of the following:

(a) the chief executive officer of the registered firm or, if the firm does not have a chief executive officer, an individual acting in a capacity similar to a chief executive officer;

(b) the sole proprietor of the registered firm;

(c) the officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only within the division and the firm has significant other business activities.

(3) If an individual who is registered as a registered firm's ultimate designated person ceases to meet any of the conditions listed in subsection (2), the registered firm must designate another individual to act as its ultimate designated person.

11.3 Designating a chief compliance officer

(1) A registered firm must designate an individual who is registered under securities legislation in the category of chief compliance officer to perform the functions described in section 5.2 [*responsibilities of the chief compliance officer*].

(2) A registered firm must not designate an individual to act as the firm's chief compliance officer unless the individual has satisfied the applicable conditions in Part 3 *Registration requirements – individuals* and the individual is one of the following:

(a) an officer or partner of the registered firm;

(b) the sole proprietor of the registered firm.

(3) If an individual who is registered as a registered firm's chief compliance officer ceases to meet any of the conditions listed in subsection (2), the registered firm must designate another individual to act as its chief compliance officer.

11.4 Providing access to the board of directors

A registered firm must permit its ultimate designated person and its chief compliance officer to directly access the firm's board of directors, or individuals acting in a similar capacity for the firm, at such times as the ultimate designated person or the chief compliance officer may consider necessary or advisable in view of his or her responsibilities.

Division 2 Books and records

11.5 General requirements for records

(1) A registered firm must maintain records to

(a) accurately record its business activities, financial affairs, and client transactions, and

(b) demonstrate the extent of the firm's compliance with applicable requirements of securities legislation.

(2) The records required under subsection (1) include, but are not limited to, records that do the following:

(a) permit timely creation and audit of financial statements and other financial information required to be filed or delivered to the securities regulatory authority;

(b) permit determination of the registered firm's capital position;

(c) demonstrate compliance with the registered firm's capital and insurance requirements;

(d) demonstrate compliance with internal control procedures;

(e) demonstrate compliance with the firm's policies and procedures;

(f) permit the identification and segregation of client cash, securities, and other property;

(g) identify all transactions conducted on behalf of the registered firm and each of its clients, including the parties to the transaction and the terms of the purchase or sale;

(h) provide an audit trail for

(i) client instructions and orders, and

(ii) each trade transmitted or executed for a client or by the registered firm on its own behalf;

(i) permit the generation of account activity reports for clients;

(j) provide securities pricing as may be required by securities legislation;

(k) document the opening of client accounts, including any agreements with clients;

(l) demonstrate compliance with sections 13.2 [*know your client*], 13.2.1 [*know your product*] and 13.3 [*suitability determination*];

(m) demonstrate compliance with complaint-handling requirements;

(n) document correspondence with clients;

(o) document compliance, training and supervision actions taken by the firm;

(p) demonstrate compliance with Part 13, Division 2 [c*onflicts of interest*];

(q) document

(i) the firm's sales practices, compensation arrangements and incentive practices, and

(ii) other compensation arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit;

(r) demonstrate compliance with section 13.18 [*misleading communications*]~~.~~;

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

11.6 Form, accessibility and retention of records

(1) A registered firm must keep a record that it is required to keep under securities legislation

(a) for 7 years from the date the record is created,

(b) in a safe location and in a durable form, and

(c) in a manner that permits it to be provided to the regulator or, in Québec, the securities regulatory authority in a reasonable period of time.

(2) A record required to be provided to the regulator or, in Québec, the securities regulatory authority must be provided in a format that is capable of being read by the regulator or the securities regulatory authority.

(3) Paragraph (1)(c) does not apply in Ontario.

Note: In Ontario, how quickly a registered firm is required to provide information to the regulator is addressed in subsection 19(3) of the *Securities Act* (Ontario).

Division 3 Certain business transactions

11.7 Tied settling of securities transactions

A registered firm must not require a person or company to settle that person's or company's transaction with the registered firm through that person's or company's account at a Canadian financial institution as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying a product or service, unless this method of settlement would be, to a reasonable person, necessary to provide the specific product or service that the person or company has requested.

11.8 Tied selling

A dealer, adviser or investment fund manager must not require another person or company

(a) to buy, sell or hold a security as a condition, or on terms that would appear to a reasonable person to be a condition, of supplying or continuing to supply a product or service, or

(b) to buy, sell or use a product or service as a condition, or on terms that would appear to a reasonable person to be a condition, of buying or selling a security.

11.9 Registrant acquiring a registered firm's securities or assets

(1) A registrant must give the regulator or, in Québec, the securities regulatory authority written notice in accordance with subsection (2) if it proposes to acquire any of the following:

(a) for the first time, direct or indirect ownership, beneficial or otherwise, of 10% or more of the voting securities or other securities convertible into voting securities of

(i) a firm registered in any jurisdiction of Canada or any foreign jurisdiction, or

(ii) a person or company of which a firm registered in any jurisdiction of Canada or any foreign jurisdiction is a subsidiary;

(b) all or a substantial part of the assets of a firm registered in any jurisdiction of Canada or any foreign jurisdiction.

(2) The notice required under subsection (1) must be delivered to the regulator or, in Québec, the securities regulatory authority at least 30 days before the proposed acquisition and must include all relevant facts regarding the acquisition sufficient to enable the regulator or the securities regulatory authority to determine if the acquisition is

(a) likely to give rise to a conflict of interest,

(b) likely to hinder the registered firm in complying with securities legislation,

(c) inconsistent with an adequate level of investor protection, or

(d) otherwise prejudicial to the public interest.

(3) [***repealed***]

(4) Except in Ontario and British Columbia, if, within 30 days of the receipt of a notice under subsection (1), the regulator or, in Québec, the securities regulatory authority notifies the registrant making the acquisition that the regulator or, in Québec, the securities regulatory authority objects to the acquisition, the acquisition must not occur until the regulator or the securities regulatory authority approves it.

(5) In Ontario, if, within 30 days of the receipt of a notice under subparagraph (1)(a)(i) or paragraph (1)(b), the regulator notifies the registrant making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(6) Following receipt of a notice of objection under subsection (4) or (5), the person or company who submitted the notice under subsection (1) may request an opportunity to be heard on the matter by the regulator or, in Québec, the securities regulatory authority objecting to the acquisition.

11.10 Registered firm whose securities are acquired

(1) A registered firm must give the regulator or, in Québec, the securities regulatory authority written notice in accordance with subsection (2) if it knows or has reason to believe that any person or company, alone or in combination with any other person or company, is about to acquire, or has acquired, for the first time, direct or indirect ownership, beneficial or otherwise, of 10% or more of the voting securities or other securities convertible into voting securities of any of the following:

(a) the registered firm;

(b) a person or company of which the registered firm is a subsidiary.

(2) The notice required under subsection (1) must,

(a) be delivered to the regulator or, in Québec, the securities regulatory authority as soon as possible,

(b) include the name of each person or company involved in the acquisition, and

(c) include all facts that to the best of the registered firm's knowledge after reasonable inquiry regarding the acquisition are sufficient to enable the regulator or the securities regulatory authority to determine if the acquisition is

(i) likely to give rise to a conflict of interest,

(ii) likely to hinder the registered firm in complying with securities legislation,

(iii) inconsistent with an adequate level of investor protection, or

(iv) otherwise prejudicial to the public interest.

(3) [***repealed***]

(4) This section does not apply if notice of the acquisition was provided under section 11.9 [*registrant acquiring a registered firm's securities or assets*].

(5) Except in British Columbia and Ontario, if, within 30 days of the receipt of a notice under subsection (1), the regulator or the securities regulatory authority notifies the person or company making the acquisition that the regulator or, in Québec, the securities regulatory authority objects to the acquisition, the acquisition must not occur until the regulator or the securities regulatory authority approves it.

(6) In Ontario, if, within 30 days of the receipt of a notice under paragraph (1)(a), the regulator notifies the person or company making the acquisition that the regulator objects to the acquisition, the acquisition must not occur until the regulator approves it.

(7) Following receipt of a notice of objection under subsection (5) or (6), the person or company proposing to make the acquisition may request an opportunity to be heard on the matter by the regulator or, in Québec, the securities regulatory authority objecting to the acquisition.

Part 12 Financial condition

Division 1 Working capital

12.1 Capital requirements

(1) If, at any time, the excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, is less than zero, the registered firm must notify the regulator or, in Québec, the securities regulatory authority as soon as possible.

(2) The excess working capital of a registered firm, as calculated in accordance with Form 31-103F1 *Calculation of Excess Working Capital*, must not be less than zero for 2 consecutive days.

(3) For the purpose of completing Form 31-103F1 *Calculation of Excess Working Capital*, the minimum capital is

(a) $25,000, for a registered adviser that is not also a registered dealer or a registered investment fund manager,

(b) $50,000, for a registered dealer that is not also a registered investment fund manager, and

(c) $100,000, for a registered investment fund manager.

(4) Paragraph (3)(c) does not apply to a registered investment fund manager that is exempt from the dealer registration requirement under section 8.6 [*investment fund trades by adviser to managed account*] in respect of all investment funds for which it acts as adviser.

(5) This section does not apply to an investment dealer that is a member of IIROC and is registered as an investment fund manager if all of the following apply:

(a) the firm has a minimum capital of not less than $100,000 as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*;

(b) the firm notifies the regulator or, in Québec, the securities regulatory authority as soon as possible if, at any time, the firm's risk adjusted capital, as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report* is less than zero;

(c) the risk adjusted capital of the firm, as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*, is not less than zero for 2 consecutive days.

(6) This section does not apply to a mutual fund dealer that is a member of the MFDA if it is also registered as an exempt market dealer, a scholarship plan dealer or an investment fund manager and if all of the following apply:

(a) the firm has a minimum capital, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*, of not less than

(i) $50,000, if the firm is registered as an exempt market dealer or scholarship plan dealer,

(ii) $100,000, if the firm is registered as an investment fund manager;

(b) the firm notifies the regulator or, in Québec, the securities regulatory authority as soon as possible if, at any time, the firm's risk adjusted capital, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report* is less than zero;

(c) the risk adjusted capital of the firm, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*, is not less than zero for 2 consecutive days.

12.2 Subordination agreement

(1) If a registered firm has entered into a subordination agreement in the form set out in Appendix B, it may exclude the amount of non-current related party debt subordinated under that agreement from the calculation of its excess working capital on Form 31-103F1 *Calculation of Excess Working Capital*.

(2) The registered firm must deliver an executed copy of the subordination agreement referred to subsection (1) to the regulator or, in Québec, the securities regulatory authority on the earliest of the following dates:

(a) 10 days after the date on which the subordination agreement is executed;

(b) the date on which the amount of the subordinated debt is excluded from the registered firm's non-current related party debt as calculated on Form 31-103F1 *Calculation of Excess Working Capital.*

(3) The registered firm must notify the regulator or, in Québec, the securities regulatory authority 10 days before it

(a) repays the loan or any part of the loan, or

(b) terminates the agreement.

Division 2 Insurance

12.3 Insurance – dealer

(1) A registered dealer must maintain bonding or insurance

(a) that contains the clauses set out in Appendix A [*bonding and insurance clauses*], and

(b) that provides for a double aggregate limit or a full reinstatement of coverage.

(2) A registered dealer must maintain bonding or insurance in respect of each clause set out in Appendix A in the highest of the following amounts for each clause:

(a) $50,000 per employee, agent and dealing representative or $200,000, whichever is less;

(b) one per cent of the total client assets that the dealer holds or has access to, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(c) one per cent of the dealer's total assets, as calculated using the dealer's most recent financial records, or $25,000,000, whichever is less;

(d) the amount determined to be appropriate by a resolution of the dealer's board of directors, or individuals acting in a similar capacity for the firm.

(3) In Québec, this section does not apply to a scholarship plan dealer or a mutual fund dealer registered only in Québec.

12.4 Insurance – adviser

(1) A registered adviser must maintain bonding or insurance

(a) that contains the clauses set out in Appendix A [*bonding and insurance clauses*], and

(b) that provides for a double aggregate limit or a full reinstatement of coverage.

(2) A registered adviser that does not hold or have access to client assets must maintain bonding or insurance in respect of each clause set out in Appendix A in the amount of $50,000 for each clause.

(3) A registered adviser that holds or has access to client assets must maintain bonding or insurance in respect of each clause set out in Appendix A in the highest of the following amounts for each clause:

(a) one per cent of assets under management that the adviser holds or has access to, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the adviser's total assets, as calculated using the adviser's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the adviser's board of directors or individuals acting in a similar capacity for the firm.

12.5 Insurance – investment fund manager

(1) A registered investment fund manager must maintain bonding or insurance

(a) that contains the clauses set out in Appendix A [*bonding and insurance clauses*], and

(b) that provides for a double aggregate limit or a full reinstatement of coverage.

(2) A registered investment fund manager must maintain bonding or insurance in respect of each clause set out in Appendix A in the highest of the following amounts for each clause:

(a) one per cent of assets under management, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(b) one per cent of the investment fund manager's total assets, as calculated using the investment fund manager's most recent financial records, or $25,000,000, whichever is less;

(c) $200,000;

(d) the amount determined to be appropriate by a resolution of the investment fund manager's board of directors or individuals acting in a similar capacity for the firm.

12.6 Global bonding or insurance

A registered firm must not maintain bonding or insurance under this Division that benefits, or names as an insured, another person or company unless the bond provides, without regard to the claims, experience or any other factor referable to that other person or company, the following:

(a) the registered firm has the right to claim directly against the insurer in respect of losses, and any payment or satisfaction of those losses must be made directly to the registered firm;

(b) the individual or aggregate limits under the policy must only be affected by claims made by or on behalf of

(i) the registered firm, or

(ii) a subsidiary of the registered firm whose financial results are consolidated with those of the registered firm.

12.7 Notifying the regulator or the securities regulatory authority of a change, claim or cancellation

A registered firm must, as soon as possible, notify the regulator or, in Québec, the securities regulatory authority in writing of any change in, claim made under, or cancellation of any insurance policy required under this Division.

Division 3 Audits

12.8 Direction by the regulator or the securities regulatory authority to conduct an audit or review

A registered firm must direct its auditor in writing to conduct any audit or review required by the regulator or, in Québec, the securities regulatory authority during its registration and must deliver a copy of the direction to the regulator or the securities regulatory authority

(a) with its application for registration, and

(b) no later than the 10th day after the registered firm changes its auditor.

12.9 Co-operating with the auditor

A registrant must not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by an auditor of the registered firm in the course of an audit.

Division 4 Financial reporting

12.10 Annual financial statements

(1) Annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division for financial years beginning on or after January 1, 2011 must include the following:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

(b) a statement of financial position, signed by at least one director of the registered firm, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

(c) notes to the financial statements.

(2) The annual financial statements delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be audited.

12.11 Interim financial information

(1) Interim financial information delivered to the regulator or, in Québec, the securities regulatory authority under this Division for interim periods relating to financial years beginning on or after January 1, 2011 may be limited to the following:

(a) a statement of comprehensive income for the 3-month period ending on the last day of the interim period and for the same period of the immediately preceding financial year, if any;

(b) a statement of financial position, signed by at least one director of the registered firm, as at the end of the interim period and as at the end of the same interim period of the immediately preceding financial year, if any.

(2) The interim financial information delivered to the regulator or, in Québec, the securities regulatory authority under this Division must be prepared using the same accounting principles that the registered firm uses to prepare its annual financial statements.

12.12 Delivering financial information – dealer

(1) A registered dealer must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the dealer's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.

(2) A registered dealer must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year:

(a) its interim financial information for the interim period;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the dealer's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

(2.1) If a registered firm is a mutual fund dealer that is a member of the MFDA and is registered as an exempt market dealer or scholarship plan dealer, the firm is exempt from paragraphs (1)(b) and (2)(b) if all of the following apply:

(a) the firm has a minimum capital of not less than $50,000 as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*;

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any;

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

(3) Subsection (2) does not apply to an exempt market dealer unless it is also registered in another category, other than the portfolio manager or restricted portfolio manager category.

(4) Despite paragraph (1)(b), in Québec, a firm registered only in that jurisdiction and only in the category of mutual fund dealer may deliver to the securities regulatory authority, no later than the 90th day after the end of its financial year, the *Monthly Report on Net Free Capital* provided in Appendix I of the *Regulation respecting the trust accounts and financial resources of securities firms*, as that Appendix read on September 27, 2009, that shows the calculation of the firm's net free capital as at the end of its financial year and as at the end of the immediately preceding financial year, if any.

(5) Despite paragraph (2)(b), in Québec, a firm registered only in that jurisdiction and only in the category of mutual fund dealer may deliver to the securities regulatory authority, no later than the 30th day after the end of the first, second and third interim period of its financial year, the *Monthly Report on Net Free Capital* provided in Appendix I of the *Regulation respecting the trust accounts and financial resources of securities firms*, as that Appendix read on September 27, 2009, that shows the calculation of the firm's net free capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any.

12.13 Delivering financial information – adviser

A registered adviser must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the adviser's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any.

12.14 Delivering financial information – investment fund manager

(1) A registered investment fund manager must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 90th day after the end of its financial year:

(a) its annual financial statements for the financial year;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any;

(c) a completed Form 31-103F4 *Net Asset Value Adjustments* if any net asset value adjustment has been made in respect of an investment fund managed by the investment fund manager during the financial year.

(2) A registered investment fund manager must deliver the following to the regulator or, in Québec, the securities regulatory authority no later than the 30th day after the end of the first, second and third interim period of its financial year:

(a) its interim financial information for the interim period;

(b) a completed Form 31-103F1 *Calculation of Excess Working Capital*, showing the calculation of the investment fund manager's excess working capital as at the end of the interim period and as at the end of the immediately preceding interim period, if any;

(c) a completed Form 31-103F4 *Net Asset Value Adjustments* if any net asset value adjustment has been made in respect of an investment fund managed by the investment fund manager during the interim period.

(3) [***repealed***]

(4) If a registered firm is an investment dealer that is a member of IIROC and is registered as an investment fund manager, the firm is exempt from paragraphs (1)(b) and (2)(b) if

(a) the firm has a minimum capital of not less than $100,000, as calculated in accordance with IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*;

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any, and

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed IIROC Form 1 *Joint Regulatory Financial Questionnaire and Report*, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

(5) If a registered firm is a mutual fund dealer that is a member of the MFDA and is registered as an investment fund manager, the firm is exempt from paragraphs (1)(b) and (2)(b) if

(a) the firm has a minimum capital of not less than $100,000, as calculated in accordance with MFDA Form 1 *MFDA Financial Questionnaire and Report*,

(b) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 90th day after the end of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the financial year and as at the end of the immediately preceding financial year, if any, and

(c) the firm delivers to the regulator or, in Québec, the securities regulatory authority a completed MFDA Form 1 *MFDA Financial Questionnaire and Report*, no later than the 30th day after the end of the first, second and third interim period of its financial year, that shows the calculation of the firm's risk adjusted capital as at the end of the interim period and as at the end of the immediately preceding month, if any.

12.15 [**lapsed**]

Part 13 Dealing with clients – individuals and firms

Division 1 *Know your client, know your product and suitability determination*

13.1 Investment fund managers exempt from this Division

This Division does not apply to an investment fund manager in respect of its activities as an investment fund manager.

13.2 Know your client

(1) For the purpose of paragraph (2)(b) in Ontario, Nova Scotia and New Brunswick, "insider" has the meaning ascribed to that term in the *Securities Act* except that "reporting issuer", as it appears in the definition of "insider", is to be read as "reporting issuer or any other issuer whose securities are publicly traded".

(2) A registrant must take reasonable steps to

(a) establish the identity of a client and, if the registrant has cause for concern, make reasonable inquiries as to the reputation of the client,

(b) establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded,

(c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 [*suitability determination*] or, if applicable, the suitability requirement imposed by an SRO:

(i) the client's personal circumstances;

(ii) the client's financial circumstances;

(iii) the client's investment needs and objectives;

(iv) the client's investment knowledge;

(v) the client's risk profile;

(vi) the client's investment time horizon,~~and~~

(d) establish the creditworthiness of the client if the registered firm is financing the client's acquisition of a security~~.~~, and

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

(i) possible financial exploitation of the client;

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

(iii) the name and contact information of any of the following:

(A) a legal guardian of the client,

(B) an executor of an estate under which the client is a beneficiary,

(C) a trustee of a trust under which the client is a beneficiary,

(D) any other personal or legal representative of the client;

(iv) the client's current contact information.

(3) For the purpose of establishing the identity of a client that is a corporation, partnership or trust, the registrant must establish the following:

(a) the nature of the client's business;

(b) the identity of any individual 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.

(3.1) Within a reasonable time after receiving the information, a registrant must take reasonable steps to have a client confirm the accuracy of the information collected under subsection (2).

(4) A registrant must take reasonable steps to keep current the information required under this section, including updating the information within a reasonable time after the registrant becomes aware of a significant change in the client's information required under this section.

(4.1) A registrant must review the information collected under paragraph (2)(c)

(a) for managed accounts, no less frequently than once every 12 months,

(b) if the registrant is an exempt market dealer, within 12 months before making a trade for, or recommending a trade to, the client, and

(c) in any other case, no less frequently than once every 36 months.

(5) This section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

(6) Paragraph (2)(b) does not apply to a registrant in respect of a client for which the registrant only trades securities referred to in paragraphs 7.1(2)(b) and (2)(c).

(7) Paragraph (2)(c) and subsection (4.1) do not apply to a registered dealer in respect of a client if the registered dealer purchases or sells securities for the client only as directed by a registered adviser acting for the client.

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

13.2.1 Know your product

(1) A registered firm must not make securities available to clients unless the firm has taken reasonable steps to:

(a) assess the relevant aspects of the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs,

(b) approve the securities to be made available to clients, and

(c) monitor the securities for significant changes.

(2) A registered individual must not purchase or sell securities for, or recommend securities to, a client unless the registered individual takes steps to understand the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs.

(2.1) For purposes of subsection (2), the steps required to understand the security are those that are reasonable to enable the registered individual to meet their obligations under section 13.3 [*suitability determination*].

(3) A registered individual must not purchase securities for, or recommend securities to, a client unless the securities have been approved by the firm to be made available to clients.

(4) This section does not apply to a registered dealer in respect of a security if it purchases or sells the security for a client only as directed by a registered adviser acting for the client.

13.3 Suitability determination

(1) Before a registrant opens an account for a client, purchases, sells, deposits, exchanges or transfers securities for a client's account, takes any other investment action for a client, makes a recommendation or exercises discretion to take any such action, the registrant must determine, on a reasonable basis, that the action satisfies the following criteria:

(a) the action is suitable for the client, based on the following factors:

(i) the client's information collected in accordance with section 13.2 [*know your client*];

(ii) the registrant's assessment or understanding of the security consistent with section 13.2.1 [*know your product*];

(iii) the impact of the action on the client's account, including the concentration of securities within the account and the liquidity of those securities;

(iv) the potential and actual impact of costs on the client's return on investment;

(v) a reasonable range of alternative actions available to the registrant through the registered firm, at the time the determination is made;

(b) the action puts the client's interest first.

(2) A registrant must review a client's account and the securities in the client's account to determine whether the criteria in subsection (1) are met, and take reasonable steps, within a reasonable time, after any of the following events:

(a) a registered individual is designated as responsible for the client's account;

(b) the registrant becomes aware of a change in a security in the client's account that could result in the security or account not satisfying subsection (1);

(c) the registrant becomes aware of a change in the client's information collected in accordance with subsection 13.2(2) that could result in a security or the client's account not satisfying subsection (1);

(d) the registrant reviews the client's information in accordance with subsection 13.2(4.1).

(2.1) Despite subsection (1), if a registrant receives an instruction from a client to take an action that, if taken, does not satisfy subsection (1), the registrant may carry out the client's instruction if the registrant has

(a) informed the client of the basis for the determination that the action will not satisfy subsection (1),

(b) recommended to the client an alternative action that satisfies subsection (1), and

(c) received recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in paragraph (a).

(3) This section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

(4) This section does not apply to a registered dealer in respect of a client if it purchases or sells securities for the client only as directed by a registered adviser acting for the client.

13.3.1 Waivers

(1) Paragraph 13.2(2)(c), subsection 13.2(4.1), and section 13.3 do not apply to a registrant in respect of a permitted client if

(a) the client is not an individual, and

(b) the client has requested, in writing, that the registrant not make suitability determinations for the client's account.

(2) Paragraph 13.2(2)(c), subsection 13.2(4.1), and section 13.3 do not apply to a registrant in respect of a permitted client if

(a) the client is an individual,

(b) the client has requested, in writing, that the registrant not make suitability determinations for the client's account, and

(c) the client's account is not a managed account.

Division 2 Conflicts of interest

13.4 Identifying, addressing and disclosing material conflicts of interest – registered firm

(1) A registered firm must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable,

(a) between the firm and the client, and

(b) between each individual acting on the firm's behalf and the client.

(2) A registered firm must address all material conflicts of interest between a client and itself, including each individual acting on its behalf, in the best interest of the client.

(3) A registered firm must avoid any material conflict of interest between a client and the firm, including each individual acting on its behalf, if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.

(4) A registered firm must disclose in writing all material conflicts of interest identified under subsection (1) to a client whose interests are affected by the conflicts of interest if a reasonable client would expect to be informed of those conflicts of interest.

(5) Without limiting subsection (4), the information required to be delivered to a client under that subsection must include a description of each of the following:

(a) the nature and extent of the conflict of interest;

(b) the potential impact on and risk that the conflict of interest could pose to the client;

(c) how the conflict of interest has been, or will be, addressed.

(6) The disclosure required under subsection (4) must be presented in a manner that, to a reasonable person, is prominent, specific and written in plain language.

(7) A registered firm must disclose a conflict of interest to a client under subsection (4)

(a) before opening an account for the client if the conflict has been identified at that time, or

(b) in a timely manner, upon identification of a conflict that must be disclosed under subsection (4) that has not previously been disclosed to the client.

(8) For greater certainty, a registrant does not satisfy subsection (2) or subsection 13.4.1(3) solely by providing disclosure to the client.

13.4.1 Identifying, reporting and addressing material conflicts of interest – registered individual

(1) A registered individual must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the registered individual and the client.

(2) If a registered individual identifies a material conflict of interest under subsection (1), the registered individual must promptly report that conflict of interest to the registered individual's sponsoring firm.

(3) A registered individual must address all material conflicts of interest between the client and the individual in the best interest of the client.

(4) A registered individual must avoid any material conflict of interest between a client and the registered individual if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.

(5) A registered individual must not engage in any trading or advising activity in connection with a material conflict of interest identified by the registered individual under subsection (1) unless

(a) the conflict has been addressed in the best interest of the client, and

(b) the registered individual's sponsoring firm has given the registered individual its consent to proceed with the activity.

13.4.2 Investment fund managers

Sections 13.4 and 13.4.1 do not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

13.5 Restrictions on certain managed account transactions

(1) In this section, "responsible person" means, for a registered adviser,

(a) the adviser,

(b) a partner, director or officer of the adviser, and

(c) each of the following who has access to, or participates in formulating, an investment decision made on behalf of a client of the adviser or advice to be given to a client of the adviser:

(i) an employee or agent of the adviser;

(ii) an affiliate of the adviser;

(iii) partner, director, officer, employee or agent of an affiliate of the adviser.

(2) A registered adviser must not knowingly cause an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to do any of the following:

(a) purchase a security of an issuer in which a responsible person, or an associate of a responsible person is a partner, officer or director unless

(i) this fact is disclosed to the client, and

(ii) the written consent of the client to the purchase is obtained before the purchase;

(b) purchase or sell a security from or to the investment portfolio of any of the following:

(i) a responsible person;

(ii) an associate of a responsible person;

(iii) an investment fund for which a responsible person acts as an adviser;

(c) provide a guarantee or loan to a responsible person or an associate of a responsible person.

13.6 Disclosure when recommending related or connected securities

A registered firm must not make a recommendation in any medium of communication to buy, sell or hold a security issued by the registered firm, a security of a related issuer or, during the security's distribution, a security of a connected issuer of the registered firm, unless any of the following apply:

(a) the firm discloses, in the same medium of communication, the nature and extent of the relationship or connection between the firm and the issuer;

(b) the recommendation is in respect of a security of a mutual fund, a scholarship plan, an educational plan or an educational trust that is an affiliate of, or is managed by an affiliate of, the registered firm and the names of the registered firm and the fund, plan or trust, as the case may be, are sufficiently similar to indicate that they are affiliated.

Division 3 Referral arrangements

13.7 Definitions – referral arrangements

In this Division,

"client" includes a prospective client;

"referral arrangement" means any arrangement in which a registrant agrees to provide or receive a referral fee to or from another person or company;

"referral fee" means any benefit provided for the referral of a client to or from a registrant.

13.8 Permitted referral arrangements

A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not participate in a referral arrangement with another person or company unless

(a) before a client is referred by or to the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firm and the person or company,

(b) the registered firm records all referral fees, and

(c) the registered firm ensures that the information prescribed by subsection 13.10(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

13.9 Verifying the qualifications of the person or company receiving the referral

A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not refer a client to another person or company unless the firm first takes reasonable steps to satisfy itself that the person or

company has the appropriate qualifications to provide the services, and if applicable, is registered to provide those services.

13.10 Disclosing referral arrangements to clients

(1) The written disclosure of the referral arrangement required by paragraph 13.8(c) [*permitted referral arrangements*] must include the following:

(a) the name of each party to the agreement referred to in paragraph 13.8(a);

(b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration of each registrant that is a party to the agreement with a description of the activities that the registrant is authorized to engage in under that category and, giving consideration to the nature of the referral, the activities that the registrant is not permitted to engage in;

(f) if a referral is made to a registrant, a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral;

(g) any other information that a reasonable client would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the registrant must ensure that written disclosure of that change is provided to each client affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

13.11 [***lapsed***]

Division 4 Borrowing and lending

13.12 Restriction on borrowing from, or lending to, clients

(1) A registrant must not lend money, extend credit or provide margin to a client unless any of the following apply:

(a) in the case of a loan, the registrant is an investment fund manager, and the money is loaned on a short-term basis to an investment fund it manages, if the loan is for the purpose of funding redemptions of the investment fund's securities or paying expenses incurred by the investment fund in the normal course of its business;

(b) in the case of a registrant that is a registered firm, the client is

(i) a registered individual sponsored by the firm,

(ii) a permitted individual, as defined in National Instrument 33-109 *Registration Information*, of the firm, or

(iii) a director, officer, or employee of the firm;

(c) in the case of a registrant that is a registered individual, both of the following apply:

(i) the client and the registered individual are related to each other for the purposes of the *Income Tax Ac*t (Canada);

(ii) the registered individual has obtained the written approval of the registered individual's sponsoring firm to lend the money, extend the credit or provide the margin.

(2) A registered individual must not borrow money, securities or other assets or accept a guarantee in relation to borrowed money, securities or any other assets, from a client, unless either or both of the following apply:

(a) the client is a financial institution whose business includes lending money to the public, and the loan to the registered individual is in the normal course of the financial institution's business;

(b) both of the following apply:

(i) the client and the registered individual are related to each other for the purposes of the *Income Tax Act* (Canada);

(ii) the registered individual has obtained the written approval of the individual's sponsoring firm to borrow the money, securities or other assets or accept the guarantee.

13.13 Disclosure when recommending the use of borrowed money

(1) If a registrant recommends that a client should use borrowed money to finance any part of a purchase of a security, the registrant must, before the purchase, provide the client with a written statement that is substantially similar to the following:

"Using borrowed money to finance the purchase of securities involves greater risk than a purchase using cash resources only. If you borrow money to purchase securities, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the securities purchased declines."

(2) Subsection (1) does not apply if one of the following applies:

(a) the registrant has provided the client with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed purchase;

(b) [***repealed***]

(c) the client is a permitted client.

Division 5 Complaints

13.14 Application of this Division

(1) This Division does not apply to an investment fund manager in respect of its activities as an investment fund manager.

(2) In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec).

13.15 Handling complaints

A registered firm must document and, in a manner that a reasonable investor would consider fair and effective, respond to each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

13.16 Dispute resolution service

(1) In this section,

"complaint" means a complaint that

(a) relates to a trading or advising activity of a registered firm or a representative of the firm, and

(b) is received by the firm within 6 years of the day when the client first knew or reasonably ought to have known of an act or omission that is a cause of or contributed to the complaint;

"OBSI" means the Ombudsman for Banking Services and Investments.

(2) If a registered firm receives a complaint from a client, the firm must, as soon as possible, provide the client with a written acknowledgement of the complaint that includes the following:

(a) a description of the firm's obligations under this section;

(b) the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client under subsection (4);

(c) the name of the independent dispute resolution or mediation service that will be made available to the client under subsection (4) and contact information for the service.

(3) If a registered firm decides to reject a complaint or to make an offer to resolve a complaint, the firm must, as soon as possible, provide the client with written notice of the decision and include the information referred to in subsection (2).

(4) A registered firm must as soon as possible ensure that an independent dispute resolution or mediation service is made available to a client at the firm's expense with respect to a complaint if either of the following apply:

(a) after 90 days of the firm's receipt of the complaint, the firm has not given the client written notice of a decision under subsection (3), and the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service;

(b) within 180 days of the client's receipt of written notice of the firm's decision under subsection (3), the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service.

(5) Subsection (4) does not apply unless the client agrees that any amount the client will claim for the purpose of the independent dispute resolution or mediation service's consideration of the complaint will be no greater than $350,000.

(6) For the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4), a registered firm must take reasonable steps to ensure that OBSI will be the service that is made available to the client.

(7) Subsection (6) does not apply in Québec.

(8) This section does not apply in respect of a complaint made by a permitted client that is not an individual.

Division 6 – Registered sub-advisers

13.17 Exemption from certain requirements for registered sub-advisers

(1) A registered sub-adviser is exempt from the following in respect of its activities as a sub-adviser:

(a) division 2 [*conflicts of interest*] of Part 13, except section 13.5 [*restrictions on certain managed account transactions*] and section 13.6 [*disclosure when recommending related or connected securities*];

(b) division 3 [*referral arrangements*] of Part 13;

(c) division 5 [*complaints*] of Part 13;

(d) section 14.3 [*disclosure to clients about the fair allocation of investment opportunities*];

(e) section 14.5 [*notice to clients by non-resident registrants*];

(f) section 14.14 [*account statements*];

(g) section 14.14.1 [*additional statements*];

(h) section 14.14.2 [*security position cost information*];

(i) section 14.17 [*report on charges and other compensation*];

(j) section 14.18 [*investment performance report*].

(2) The exemption under subsection (1) is not available unless all of the following apply:

(a) the obligations and duties of the registered sub-adviser are set out in a written agreement with the sub-adviser's registered adviser or registered dealer;

(b) the registered adviser or registered dealer has entered into a written agreement with its clients on whose behalf investment advice is or portfolio management services are to be provided agreeing to be responsible for any loss that arises out of the failure of the registered sub-adviser

(i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the registrant and each client of the registrant for whose benefit the advice is or portfolio management services are to be provided, or

(ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

Division 7 *Misleading communications*

13.18 Misleading communications

(1) Registered individuals must not hold themselves out, and a registered firm must not hold itself or its registered individuals out, in a manner that could reasonably be expected to deceive or mislead any person or company as to any of the following matters:

(a) the proficiency, experience, qualifications or category of registration of the registrant;

(b) the nature of the person's relationship, or potential relationship, with the registrant;

(c) the products or services provided, or to be provided, by the registrant.

(2) For greater certainty, and without limiting subsection (1), a registered individual who interacts with clients must not use any of the following:

(a) if based partly or entirely on that registered individual's sales activity or revenue generation, a title, designation, award, or recognition;

(b) a corporate officer title, unless their sponsoring firm has appointed that registered individual to that corporate office pursuant to applicable corporate law;

(c) if the individual's sponsoring firm has not approved the use by that registered individual of a title or designation, that title or designation.

Division 8 *Temporary holds*

13.19 Conditions for temporary hold

(1) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold in relation to the financial exploitation of a vulnerable client unless the firm reasonably believes:

(a) the client is a vulnerable client, and

(b) financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.

(2) A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold in relation to the lack of mental capacity of a client unless the firm reasonably believes, with respect to an instruction given by the client, the client does not have the mental capacity to make financial decisions.

(3) If a registered firm, or a registered individual whose registration is sponsored by the registered firm, places a temporary hold in accordance with subsection (1) or (2), the firm must do the following:

(a) document the facts that caused the firm or individual to place and continue the temporary hold;

(b) as soon as possible following the date the firm or individual initially placed the temporary hold, provide notice of the temporary hold and the reasons for the temporary hold to the client;

(c) as soon as possible following the date the firm or individual initially placed the temporary hold and until the hold is terminated, further review the facts that caused the firm or individual to place the temporary hold;

(d) within 30 days of placing the temporary hold, and unless the hold has been previously terminated, within every subsequent 30-day period, take either of the following actions:

(i) terminate the temporary hold;

(ii) provide the client with notice of the firm's decision to not terminate the hold and the reasons for that decision;

(e) ultimately terminate the temporary hold and decide to proceed or not proceed with the purchase or sale of a security or withdrawal or transfer of cash or securities.

Part 14 Handling client accounts – firms

Division 1 Investment fund managers

14.1 Application of this Part to investment fund managers

Other than sections 14.1.1, 14.5.1, 14.5.2, 14.5.3, 14.6, 14.6.1 and 14.6.2, subsection 14.12(5) and section 14.15, this Part does not apply to an investment fund manager in respect of its activities as an investment fund manager.

14.1.1 Duty to provide information – investment fund managers

A registered investment fund manager of an investment fund must, within a reasonable period of time, provide a registered dealer or a registered adviser that has a client that owns securities of the investment fund with the information that is required by the dealer or adviser in order for the dealer or adviser to comply with paragraph 14.12(1)(c), subsections 14.14(4) and (5), 14.14.1(2) and 14.14.2(1) and paragraph 14.17(1)(h).

Division 2 Disclosure to clients

14.2 Relationship disclosure information

(0.1) In this section, "proprietary product" means a security of an issuer if one or more of the following apply:

(a) the issuer of the security is a connected issuer of the registered firm;

(b) the issuer of the security is a related issuer of the registered firm;

(c) the registered firm or an affiliate of the registered firm is the investment fund manager or portfolio manager of the issuer of the security.

(1) A registered firm must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant.

(2) Without limiting subsection (1), the information delivered to a client under that subsection must include the following:

(a) a description of the nature or type of the client's account;

(a.1) in the case of a registered firm that holds the client's assets, or directs or arranges which custodian will hold the client's assets, disclosure of the location where, and a general description of the manner in which, the client's assets are held, and a description of the risks and benefits to the client arising from the assets being held at that location and in that manner;

(a.2) in the case of a registered firm that has access to the client's assets

(i) disclosure of the location where, and a general description of the manner in which, the client's assets are held, and a description of the risks and benefits to the client arising from the assets being held in that location and in that manner, and

(ii) a description of the manner in which the client's assets are accessible by the registered firm, and a description of the risks and benefits to the client arising from having access to the assets in that manner;

(b) a general description of the products and services the registered firm will offer to the client, including

(i) a description of the restrictions on the client's ability to liquidate or resell a security, and

(ii) a statement of the investment fund management expense fees or other ongoing fees the client may incur in connection with a security or service the registered firm provides;

(b.1) a general description of any limits on the products and services the registered firm will offer to the client, including

(i) whether the firm will primarily or exclusively offer proprietary products to the client, and

(ii) whether there will be other limits on the availability of products or services;

(c) a general description of the types of risks that a client should consider when making an investment decision;

(d) a description of the risks to a client of using borrowed money to finance a purchase of a security;

(e) a description of the conflicts of interest that the registered firm is required to disclose to a client under securities legislation;

(f) disclosure of the operating charges the client might be required to pay related to the client's account;

(g) a general description of the types of transaction charges the client might be required to pay;

(h) a general description of any benefits received, or expected to be received, by the registrant, from a person or company other than the registrant's client, in connection with the client's purchase or ownership of a security through the registrant;

(i) a description of the content and frequency of reporting for each account or portfolio of a client;

(j) disclosure of the firm's obligations if a client has a complaint contemplated under section 13.16 [*dispute resolution service*] and the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client at the firm's expense;

(k) a statement that the registered firm must determine that any investment action it takes, recommends or decides on, for the client is suitable for the client and puts the client's interest first;

(l) the information the registered firm has collected about the client under section 13.2 [*know your client*];

(l.1) a description of the circumstances under which a registrant might disclose information about the client or the client's account to a trusted contact person in accordance with paragraph 13.2(2)(e);

(m) a general explanation of how investment performance benchmarks might be used to assess the performance of a client's investments and any options for benchmark information that might be made available to clients by the registered firm;

(n) if the registered firm is a scholarship plan dealer, an explanation of any terms of the scholarship plan offered to the client by the registered firm that, if those terms are not met by the client or the client's designated beneficiary under the plan, might cause the client or the designated beneficiary to suffer a loss of contributions, earnings or government contributions in the plan;

(o) a general explanation of the potential impact on a client's investment returns from each of the fees described in subparagraph (b)(ii) and the charges described in paragraphs (f) and (g), including the effect of compounding over time.;

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

(3) A registered firm must deliver the information in subsection (1), if applicable, and subsection (2) to the client in writing, except that the information in paragraph (2)(b) may be provided orally or in writing, before the firm first

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(4) If there is a significant change in respect of the information delivered to a client under subsections (1) or (2), the registered firm must take reasonable steps to notify the client of the change in a timely manner and, if possible, before the firm next

(a) purchases or sells a security for the client; or

(b) advises the client to purchase, sell or hold a security.

(5) [***repealed***]

(5.1) A registered firm must not impose any new operating charge in respect of an account of a client, or increase the amount of any operating charge in respect of an account of a client, unless written notice of the new or increased operating charge is provided to the client at least 60 days before the date on which the imposition or increase becomes effective.

(6) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

(7) Except for subsections (5.1), (6) and (8), this section does not apply to a registered dealer in respect of a client for whom the dealer purchases or sells securities only as directed by a registered adviser acting for the client.

(8) A registered dealer referred to in subsection (7) must deliver the information required under paragraphs (2)(a) and (e) to (j) to the client in writing, and the information in paragraph (2)(b) orally or in writing, before the dealer first purchases or sells a security for the client.

14.2.1 Pre-trade disclosure of charges

(1) Before a registered firm accepts an instruction from a client to purchase or sell a security in an account other than a managed account, the firm must disclose to the client

(a) the charges the client will be required to pay in respect of the purchase or sale, or a reasonable estimate if the actual amount of the charges is not known to the firm at the time of disclosure,

(b) in the case of a purchase to which deferred charges apply, that the client might be required to pay a deferred sales charge on the subsequent sale of the security and the fee schedule that will apply,

(c) whether the firm will receive trailing commissions in respect of the security, and

(d) whether there are any investment fund management expense fees or other ongoing fees that the client may incur in connection with the security.

(2) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

(3) This section does not apply to a dealer in respect of a client for whom the dealer purchases or sells securities only as directed by a registered adviser acting for the client

14.3 Disclosure to clients about the fair allocation of investment opportunities

A registered adviser must deliver to a client a summary of the policies required under section 11.1 [*compliance system*] that provide reasonable assurance that the firm and each individual acting on its behalf complies with section 14.10 [*allocating investment opportunities fairly*] and that summary must be delivered

(a) when the adviser opens an account for the client, and

(b) if there is a significant change to the summary last delivered to the client, in a timely manner and, if possible, before the firm next

(i) purchases or sells a security for the client, or

(ii) advises the client to purchase, sell or hold a security.

14.4 When the firm has a relationship with a financial institution

(1) If a registered firm opens a client account to trade in securities, in an office or branch of a Canadian financial institution or a Schedule III bank, the registered firm must give the client a written notice stating that it is a separate legal entity from the Canadian financial institution or Schedule III bank and, unless otherwise advised by the registrant, securities purchased from or through the registrant

(a) are not insured by a government deposit insurer,

(b) are not guaranteed by the Canadian financial institution or Schedule III bank, and

(c) may fluctuate in value.

(2) A registered firm that is subject to subsection (1) must receive a written confirmation from the client that the client has read and understood the notice before the registered firm

(a) purchases or sells a security for the client, or

(b) advises the client to purchase, sell or hold a security.

(3) This section does not apply to a registered firm if the client is a permitted client.

14.5 Notice to clients by non-resident registrants

(1) A registered firm whose head office is not located in the local jurisdiction must provide a client in the local jurisdiction with a statement in writing disclosing the following:

(a) the firm is not resident in the local jurisdiction;

(b) the jurisdiction in Canada or the foreign jurisdiction in which the head office or the principal place of business of the firm is located;

(c) all or substantially all of the assets of the firm may be situated outside the local jurisdiction;

(d) there may be difficulty enforcing legal rights against the firm because of the above;

(e) the name and address of the agent for service of process of the firm in the local jurisdiction.

(2) This section does not apply to a registered firm whose head office is in Canada if the firm is registered in the local jurisdiction.

Division 3 Client assets and investment fund assets

14.5.1 Definition of "securities" in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan

Despite section 1.2, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a reference to "securities" in this Division excludes "exchange contracts".

14.5.2 Restriction on self-custody and qualified custodian requirement

(1) A registered firm must not be a custodian or sub-custodian for a client of the firm or for an investment fund in respect of the client's or investment fund's cash or securities unless the registered firm

(a) is a Canadian custodian under paragraph (a), (b) or (d) of the definition of "Canadian custodian", and

(b) has established and maintains a system of controls and supervision that a reasonable person would conclude is sufficient to manage the risks to the client or investment fund associated with the custody of the client's or investment fund's cash or securities.

(2) A registered firm must ensure that any custodian for a client of the firm or for an investment fund managed by the firm in respect of the client's or investment fund's cash or securities is a Canadian custodian if the firm

(a) directs or arranges which custodian will hold the cash or securities of the client or investment fund, or

(b) holds or has access to the cash or securities of the client or investment fund.

(3) Despite the requirement to use a Canadian custodian in subsection (2), a foreign custodian may be a custodian of the cash or securities of the client or investment fund if a reasonable person would conclude, considering all of the relevant circumstances, including, for greater certainty, the nature of the regulation and the sufficiency of the equity of the foreign custodian, that using the foreign custodian is more beneficial to the client or investment fund than using a Canadian custodian.

(4) Despite the requirement to use a Canadian custodian in subsection (2), a Canadian financial institution may be a custodian of the cash of the client or investment fund.

(5) For the purposes of subsections (2) and (3), the registered firm must ensure that the qualified custodian is functionally independent of the registered firm unless

(a) the qualified custodian is a Canadian custodian under paragraph (a), (b) or (d) of the definition of "Canadian custodian", and

(b) the registered firm ensures that the qualified custodian has established and maintains a system of controls and supervision that a reasonable person would conclude is sufficient to manage the risks to the client or investment fund associated with the custody of the client's or investment fund's cash or securities.

(6) For the purpose of subsection (4), the registered firm must ensure that the Canadian financial institution is functionally independent of the registered firm.

(7) This section does not apply to a registered firm in respect of any of the following:

(a) an investment fund that is subject to National Instrument 81-102 *Investment Funds*;

(b) an investment fund that is subject to National Instrument 41-101 *General Prospectus Requirements*;

(c) a security that is recorded on the books of the security's issuer, or the transfer agent of the security's issuer, only in the name of the client or investment fund;

(d) cash or securities of a permitted client, if the permitted client

(i) is not an individual or an investment fund, and

(ii) has acknowledged in writing that the permitted client is aware that the requirements in this section that would otherwise apply to the registered firm do not apply;

(e) customer collateral subject to custodial requirements under National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*;

(f) a security that evidences a debt obligation secured by a mortgage registered or published against the title of real estate if

(i) the mortgage is registered or published in the name of the client or investment fund as mortgagee, or

(ii) in the case of a syndicated mortgage, the mortgage is registered or published in the name of either of the following as mortgagee:

(A) a person or company that is registered or licensed under mortgage brokerage, mortgage administrators or mortgage dealer legislation of a jurisdiction of Canada if that mortgage is held in trust for the client or investment fund, as applicable;

(B) each investor that is a mortgagee in respect of that mortgage.

14.5.3 Cash and Securities held by a qualified custodian

A registered firm that is subject to subsection 14.5.2(2), (3) or (4) must take reasonable steps to ensure that cash and securities of a client or an investment fund,

(a) except as provided in paragraphs (b) and (c), are held by the qualified custodian or, in respect of cash, the Canadian financial institution using an account number or other designation in the records of the qualified custodian or the Canadian financial institution, as applicable, sufficient to show that the beneficial ownership of the cash or securities of the client or investment fund is vested in that client or investment fund,

(b) in the case of cash held in an account in the name of the registered firm, is held separate and apart from the registered firm's own property and held by the qualified custodian, or the Canadian financial institution, in a designated trust account in trust for clients or investment funds, or

(c) in the case of cash or securities held for the purpose of bulk trading, are held in the name of the registered firm in trust for its clients or investment funds if the cash or securities are transferred to the client's or investment fund's account held by that client's or investment fund's qualified custodian or, in respect of cash, Canadian financial institution as soon as possible following a trade.

14.6 Client and investment fund assets held by a registered firm in trust

(1) If a registered firm holds client assets or investment fund assets other than cash or securities, or if a registered firm holds cash or securities of a client or an investment fund as permitted by section 14.5.2, the registered firm must hold the assets

(a) separate and apart from its own property,

(b) in trust for the client or investment fund, and

(c) in the case of cash, in a designated trust account with a Canadian custodian or Canadian financial institution.

(2) Despite paragraph (1)(c), a foreign custodian may be a custodian for the cash of the client or investment fund if a reasonable person would conclude, considering all of the relevant circumstances, including, for greater certainty, the nature of the regulation and the sufficiency of the equity of the foreign custodian, that using the

foreign custodian is more beneficial to the client or investment fund than using a Canadian custodian or a Canadian financial institution.

14.6.1 Custodial provisions relating to certain margin or security interests

(1) In this section,

"cleared specified derivative", "clearing corporation option", "futures exchange", "option on futures", "specified derivative" and "standardized future" have the same meaning as in section 1.1 of National Instrument 81-102 *Investment Funds*;

"regulated clearing agency" has the same meaning as in subsection 1(1) of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.

(2) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with a member of a regulated clearing agency or a dealer as margin for transactions outside of Canada involving clearing corporation options, options on futures, standardized futures or cleared specified derivatives if

(a) the member or dealer is a member of a regulated clearing agency, futures exchange or stock exchange, and, as a result in any case, is subject to a regulatory audit,

(b) the member or dealer has a net worth, determined from its most recent audited financial statements, in excess of $50 million, and

(c) a reasonable person would conclude that using the member or dealer is more beneficial to the client or investment fund than using a Canadian custodian.

(3) Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited with the client's or investment fund's counterparty over which the client or investment fund has granted a security interest in connection with a particular specified derivatives transaction.

(4) The registered firm must take reasonable steps to ensure that any agreement by which cash or securities of a client or investment fund are deposited in accordance with subsection (2) or (3) requires the person or company holding the cash or securities to ensure that its records show that the client or investment fund is the beneficial owner of the cash or securities.

14.6.2 Custodial provisions relating to short sales

Subsection 14.5.2(2) does not apply to a registered firm in respect of cash or securities of a client or investment fund deposited as security in connection with a short sale of securities with a dealer outside of Canada if

(a) the dealer is a member of a stock exchange and is subject to a regulatory audit,

(b) the dealer has a net worth, determined from its most recent audited financial statements, in excess of $50 million, and

(c) a reasonable person would conclude that using the dealer is more beneficial to the client or investment fund than using a Canadian custodian.

14.7 [*repealed*]

14.8 [*repealed*]

14.9 [*repealed*]

Division 4 Client accounts

14.10 Allocating investment opportunities fairly

A registered adviser must ensure fairness in allocating investment opportunities among its clients.

14.11 Selling or assigning client accounts

If a registered firm proposes to sell or assign a client's account in whole or in part to another registrant, the registered firm must, prior to the sale or assignment, give a written explanation of the proposal to the client and inform the client of the client's right to close the client's account.

Division 5 Reporting to clients

14.11.1 Determining market value

(1) For the purposes of this Division, the market value of a security

(a) that is issued by an investment fund which is not listed on an exchange must be determined by reference to the net asset value provided by the investment fund manager of the fund on the relevant date,

(b) in any other case, is the amount that the registered firm reasonably believes to be the market value of the security

(i) after referring to a price quotation on a marketplace, if one is published for the security, using the last bid price in the case of a long security and the last ask price in the case of a short security, as shown on a consolidated pricing list or exchange quotation sheet as of the close of business on the relevant date or the last trading day before the relevant date, and after making any adjustments considered by the registered firm to be necessary to accurately reflect the market value,

(ii) if no reliable price for the security is quoted on a marketplace, after referring to a published market report or inter-dealer quotation sheet, on the relevant date or the last trading day before the relevant date, and after making any adjustments considered by the registered firm to be necessary to accurately reflect the market value,

(iii) if the market value for the security cannot be reasonably determined in accordance with subparagraph (i) or (ii), after applying the policy of the registered firm for determining market value, which must include procedures to assess the reliability of valuation inputs and assumptions and provide for

(A) the use of inputs that are observable, and

(B) the use of unobservable inputs and assumptions, if observable inputs are not reasonably available.

(2) If a registered firm determines the market value of a security in accordance with subparagraph (1)(b)(iii), when it refers to the market value in a statement under section 14.14 [*account statements*], 14.14.1 [*additional statements*], 14.14.2 [*security position cost information*], 14.15 [*security holder statements*] or 14.16 [*scholarship plan dealer statements*], the registered firm must include the following notification or a notification that is substantially similar:

"*There is no active market for this security so we have estimated its market value.*"

(3) If a registered firm reasonably believes that it cannot determine the market value of a security in accordance with subsection (1), the market value of the security must be reported in a statement delivered under section 14.14 [*account statements*], 14.14.1 [*additional statements*], 14.14.2 [*security position cost information*], 14.15 [*security holder statements*] or 14.16 [*scholarship plan dealer statements*] as not determinable, and the market value of the security must be excluded from the total market value referred to in paragraphs 14.14(5)(e), 14.14.1(2)(e) and 14.14.2(5)(c).

14.12 Content and delivery of trade confirmation

(1) A registered dealer that has acted on behalf of a client in connection with a purchase or sale of a security must promptly deliver to the client or, if the client consents in writing, to a registered adviser acting for the client, a written confirmation of the transaction, setting out the following:

(a) the quantity and description of the security purchased or sold;

(b) the price per security paid or received by the client;

(b.1) in the case of a purchase of a debt security, the security's annual yield;

(c) the amount of each transaction charge, deferred sales charge or other charge in respect of the transaction, and the total amount of all charges in respect of the transaction;

(c.1) in the case of a purchase or sale of a debt security, either of the following:

(i) the total amount of any mark-up or mark-down, commission or other service charges the registered dealer applied to the transaction;

(ii) the total amount of any commission charged to the client by the registered dealer and, if the dealer applied a mark-up or mark-down or any service charge other than a commission, the following notification or a notification that is substantially similar:

"*Dealer firm remuneration has been added to the price of this security (in the case of a purchase) or deducted from the price of this security (in the case of a sale). This amount was in addition to any commission this trade confirmation shows was charged to you.*";

(d) whether the registered dealer acted as principal or agent;

(e) the date and the name of the marketplace, if any, on which the transaction took place, or if applicable, a statement that the transaction took place on more than one marketplace or over more than one day;

(f) the name of the dealing representative, if any, involved in the transaction;

(g) the settlement date of the transaction;

(h) if applicable, that the security is a security issued by the registered dealer, a security issued by a related issuer of the registered dealer or, if the transaction occurred during the security's distribution, a security issued by a connected issuer of the registered dealer.

(2) If a transaction under subsection (1) involved more than one transaction or if the transaction took place on more than one marketplace the information referred to in subsection (1) may be set out in the aggregate if the confirmation also contains a statement that additional details concerning the transaction will be provided to the client upon request and without additional charge.

(3) Paragraph (1)(h) does not apply if all of the following apply:

(a) the security is a security of a mutual fund that is established and managed by the registered dealer or by an affiliate of the registered dealer, in its capacity as investment fund manager of the mutual fund;

(b) the names of the dealer and the mutual fund are sufficiently similar to indicate that they are affiliated or related.

(4) For the purpose of paragraph (1)(f), a dealing representative may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the dealing representative will be provided to the client on request of the client.

(5) A registered investment fund manager that has executed a redemption order received directly from a security holder must promptly deliver to the security holder a written confirmation of the redemption, setting out the following:

(a) the quantity and description of the security redeemed;

(b) the price per security received by the client;

(c) the commission, sales charge, service charge and any other amount charged in respect of the redemption;

(d) the settlement date of the redemption.

(6) Subsection 14.12 (5) does not apply to trades in a security of an investment fund made in reliance on section 8.6 [*investment fund trades by adviser to managed account*].

(7) In Newfoundland and Labrador, Ontario and Saskatchewan, a registered dealer that complies with the requirements of this section in respect of a purchase or sale of a security is not subject to any of subsections 37(1), (2) or (3) of the *Securities Act* (Newfoundland and Labrador), subsection 36(1) of the *Securities Act* (Ontario) and subsection 42(1) of *The Securities Act, 1988* (Saskatchewan).

14.13 Confirmations for certain automatic plans

The requirement under section 14.12 [*content and delivery of trade confirmation*] to deliver a confirmation promptly does not apply to a registered dealer in respect of a transaction if all of the following apply:

(a) the client gave the dealer prior written notice that the transaction is made pursuant to the client's participation in an automatic payment plan, including a dividend reinvestment plan, or an automatic withdrawal plan in which a transaction is made at least monthly;

(b) the registered dealer delivered a confirmation as required under section 14.12 [c*ontent and delivery of trade confirmation*] for the first transaction made under the plan after receiving the notice referred to in paragraph (a);

(c) the transaction is in a security of a mutual fund, scholarship plan, educational plan or educational trust.

(d) [***repealed***]

14.14 Account statements

(1) A registered dealer must deliver to a client a statement that includes the information referred to in subsections (4) and (5)

(a) at least once every 3 months, or

(b) if the client has requested to receive statements on a monthly basis, for each one-month period.

(2) A registered dealer must deliver to a client a statement that includes the information referred to in subsections (4) and (5) after the end of any month in which a transaction was effected in securities held by the dealer in the client's account, other than a transaction made under an automatic withdrawal plan or an automatic payment plan, including a dividend reinvestment plan.

(2.1) Paragraph 1(b) and subsection (2) do not apply to a mutual fund dealer in connection with its activities as a dealer in respect of the securities listed in paragraph 7.1(2)(b) [*dealer categories*].

(3) A registered adviser must deliver to a client a statement that includes the information referred to in subsections (4) and (5) at least once every 3 months, except that if the client has requested to receive statements on a monthly basis, the adviser must deliver a statement to the client for each one-month period.

(3.1) [***repealed***]

(4) If a registered dealer or registered adviser made a transaction for a client during the period covered by a statement delivered under subsection (1), (2) or (3), the statement must include the following:

(a) the date of the transaction;

(b) whether the transaction was a purchase, sale or transfer;

(c) the name of the security;

(d) the number of securities purchased, sold or transferred;

(e) the price per security if the transaction was a purchase or sale;

(f) the total value of the transaction if it was a purchase or sale.

(5) If a registered dealer or registered adviser holds securities owned by a client in an account of the client, a statement delivered under subsection (1), (2) or (3) must indicate that the securities are held for the client by the registered firm and must include the following information about the client's account determined as at the end of the period for which the statement is made:

(a) the name and quantity of each security in the account;

(b) the market value of each security in the account and, if applicable, the notification in subsection 14.11.1(2) [*determining market value*];

(c) the total market value of each security position in the account;

(d) any cash balance in the account;

(e) the total market value of all cash and securities in the account;

(f) whether the account is eligible for coverage under an investor protection fund approved or recognized by the securities regulatory authority and, if it is, the name of the investor protection fund;

(g) which securities in the account might be subject to a deferred sales charge if they are sold.

(6) [***repealed***]

(7) For the purposes of this section, a security is considered to be held by a registered firm for a client if

(a) the firm is the registered owner of the security as nominee on behalf of the client, or

(b) the firm has physical possession of a certificate evidencing ownership of the security.

14.14.1 Additional statements

(1) A registered dealer or registered adviser must deliver a statement that includes the information referred to in subsection (2) to a client if any of the following apply in respect of a security owned by the client that is held or controlled by a party other than the dealer or adviser:

(a) the dealer or adviser has trading authority over the security or the client's account in which the security is held or was transacted;

(b) the dealer or adviser receives continuing payments related to the client's ownership of the security from the issuer of the security, the investment fund manager of the issuer or any other party;

(c) the security is issued by a scholarship plan, a mutual fund or an investment fund that is a labour-sponsored investment fund corporation, or labour-sponsored venture capital corporation, under legislation of a jurisdiction of Canada and the dealer or adviser is the dealer or adviser of record for the client on the records of the issuer of the security or the records of the issuer's investment fund manager.

(2) A statement delivered under subsection (1) must include the following in respect of the securities or the account referred to in subsection (1), determined as at the end of the period for which the statement is made:

(a) the name and quantity of each security;

(b) the market value of each security and, if applicable, the notification in subsection 14.11.1(2) [*determining market value*];

(c) the total market value of each security position;

(d) any cash balance in the account;

(e) the total market value of all of the cash and securities;

(f) disclosure in respect of the party that holds or controls each security and a description of the way it is held;

(g) whether the securities are, or the account is, eligible for coverage under an investor protection fund approved or recognized by the securities regulatory authority;

(h) which of the securities might be subject to a deferred sales charge if they are sold.

(2.1) Paragraph (2)(g) does not apply if the party referred to in paragraph (2)(f) is required under section 14.14, or under an IIROC provision or MFDA provision, to deliver a statement to the client in respect of the securities or the account referred to in subsection (1) of this section.

(3) If subsection (1) applies to a registered dealer or a registered adviser, the dealer or adviser must deliver a statement that includes the information in subsection (2) to a client at least once every 3 months, except that if a client has requested to receive statements on a monthly basis, the adviser must deliver a statement to the client every month.

(4) If subsection (1) applies to a registered dealer or a registered adviser that is also required to deliver a statement to a client under subsection 14.14(1) or (3), a statement delivered under subsection (1) must be delivered to the client in one of the following ways:

(a) combined with a statement delivered to the client under subsection 14.14(1) or (3) for the period ending on the same date;

(b) as a separate document accompanying a statement delivered to the client under subsection 14.14(1) or (3) for the period ending on the same date;

(c) as a separate document delivered within 10 days after the statement delivered to the client under subsection 14.14(1) or (3) for the period ending on the same date.

(5) For the purposes of this section, a security is considered to be held for a client by a party other than the registered firm if any of the following apply:

(a) the other party is the registered owner of the security as nominee on behalf of the client;

(b) ownership of the security is recorded on the books of its issuer in the client's name;

(c) the other party has physical possession of a certificate evidencing ownership of the security;

(d) the client has physical possession of a certificate evidencing ownership of the security.

(6) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

14.14.2 Security position cost information

(1) If a registered dealer or registered adviser is required to deliver a statement to a client that includes information required under subsection 14.14(5) [*account statements*] or 14.14.1(2) [*additional statements*], the dealer or adviser must deliver the information referred to in subsection (2) to a client at least once every 3 months.

(2) The information delivered under subsection (1) must disclose the following:

(a) for each security position, in the statement, opened on or after July 15, 2015, presented on an

average cost per unit or share basis or an aggregate basis,

(i) the cost of the security position, determined as at the end of the period for which the information referred to in subsection 14.14(5) or 14.14.1(2) is provided, or

(ii) if the security position was transferred from another registered firm, the information referred to in subparagraph (i) or the market value of the security position as at the date of the transfer of the security position;

(b) for each security position, in the statement, opened before July 15, 2015, presented on an average cost per unit or share basis or an aggregate basis,

(i) the cost of the security position, determined as at the end of the period for which the information referred to in subsection 14.14(5) or 14.14.1(2) is provided, or

(ii) the market value of the security position on

(A) December 31, 2015, or

(B) a date that is earlier than December 31, 2015 if the registered firm reasonably believes accurate, recorded historical position cost information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date;

(c) the total cost of all of the security positions in the statement, determined in accordance with paragraphs (a) and (b);

(d) for each security position for which the registered firm reasonably believes it cannot determine the cost in accordance with paragraphs (a) and (b), disclosure of that fact in the statement.

(2.1) If a registered firm reports one or more security positions of a client using the market value determined as at the date referred to in subparagraph (2)(a)(ii) or (2)(b)(ii), the firm must disclose in the statement that it is providing the market value of the security position as at the relevant date, instead of the cost of the security position.

(3) The cost of security positions required to be disclosed under subsection (2) must be either the book cost or the original cost and must be accompanied by the definition of "book cost" in section 1.1 [*definitions of terms used throughout this Instrument*] or the definition of "original cost" in section 1.1, as applicable.

(4) The information delivered under subsection (1) must be delivered to the client in one of the following ways:

(a) combined with a statement delivered to the client that includes the information required under subsection 14.14(5) or 14.14.1(2) for the period ending on the same date;

(b) in a separate document accompanying a statement delivered to the client that includes information required under subsection 14.14(5) or 14.14.1(2) for the period ending on the same date;

(c) in a separate document delivered within 10 days after a statement delivered to the client that includes information required under subsection 14.14(5) or 14.14.1(2) for the period ending on the same date.

(5) If the information under subsection (1) is delivered to the client in a separate document in accordance with paragraph (4)(c), the separate document must also include the following:

(a) the market value of each security in the statement and, if applicable, the notification in subsection 14.11.1(2) [*determining market value*];

(b) the total market value of each security position in the statement;

(c) the total market value of all cash and securities in the statement.

(6) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

14.15 Security holder statements

If there is no dealer or adviser of record for a security holder on the records of a registered investment fund manager, the investment fund manager must deliver to the security holder at least once every 12 months a statement that includes the following:

(a) the information required under subsection 14.14(4) [*account statements*] for each transaction that the registered investment fund manager made for the security holder during the period;

(b) the information required under subsection 14.14.1(2) [*additional statements*] for the securities of the security holder that are on the records of the registered investment fund manager;

(c) the information required under section 14.14.2 [*security position cost information*].

14.16 Scholarship plan dealer statements

Sections 14.14 [*account statements*], 14.14.1 [*additional statements*] and 14.14.2 [*security position cost information*] do not apply to a scholarship plan dealer if both of the following apply:

(a) the scholarship plan dealer is not registered in another dealer or adviser category;

(b) the scholarship plan dealer delivers to a client a statement at least once every 12 months that provides the information required under subsections 14.14(4) and 14.14.1(2).

14.17 Report on charges and other compensation

(1) For each 12-month period, a registered firm must deliver to a client a report on charges and other compensation containing the following information, except that the first report delivered after a client has opened an account may cover a period of less than 12 months:

(a) the registered firm's current operating charges which might be applicable to the client's account;

(b) the total amount of each type of operating charge related to the client's account paid by the client during the period covered by the report, and the total amount of those charges;

(c) the total amount of each type of transaction charge related to the purchase or sale of securities paid by the client during the period covered by the report, and the total amount of those charges;

(d) the total amount of the operating charges reported under paragraph (b) and the transaction charges reported under paragraph (c);

(e) if the registered firm purchased or sold debt securities for the client during the period covered by the report, either of the following:

(i) the total amount of any mark-ups, mark-downs, commissions or other service charges the firm applied on the purchases or sales of debt securities;

(ii) the total amount of any commissions charged to the client by the firm on the purchases or sales of debt securities and, if the firm applied mark-ups, mark-downs or any service charges other than commissions on the purchases or sales of debt securities, the following notification or a notification that is substantially similar:

"*For debt securities purchased or sold for you during the period covered by this report, dealer firm remuneration was added to the price you paid (in the case of a purchase) or deducted from the price you received (in the case of a sale). This amount was in addition to any commissions you were charged.*";

(f) if the registered firm is a scholarship plan dealer, the unpaid amount of any enrolment fee or other charge that is payable by the client;

(g) the total amount of each type of payment, other than a trailing commission, that is made to the registered firm or any of its registered individuals by a securities issuer or another registrant in relation

to registerable services to the client during the period covered by the report, accompanied by an explanation of each type of payment;

(h) if the registered firm received trailing commissions related to securities owned by the client during the period covered by the report, the following notification or a notification that is substantially similar:

"*We received $[amount] in trailing commissions in respect of securities you owned during the 12-month period covered by this report.*

Investment funds pay investment fund managers a fee for managing their funds. The managers pay us ongoing trailing commissions for the services and advice we provide you. The amount of the trailing commission depends on the sales charge option you chose when you purchased the fund. You are not directly charged the trailing commission or the management fee. But, these fees affect you because they reduce the amount of the fund's return to you. Information about management fees and other charges to your investment funds is included in the prospectus or fund facts document for each fund."

(2) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14(5) [*account statements*] must be delivered in a separate report on charges and other compensation for each of the client's accounts.

(3) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14.1(1) [*additional statements*] must be delivered in a report on charges and other compensation for the client's account through which the securities were transacted.

(4) Subsections (2) and (3) do not apply if the registered firm provides a report on charges and other compensation that consolidates, into a single report, the required information for more than one of a client's accounts and any securities of the client required to be reported under subsection 14.14(5) or 14.14.1(1) and if the following apply:

(a) the client has consented in writing to the form of disclosure referred to in this subsection;

(b) the consolidated report specifies the accounts and securities with respect to which information is required to be reported under subsection 14.14.1(1) [*additional statements*].

(5) This section does not apply to a registered firm in respect of a permitted client that is not an individual.

14.18 Investment performance report

(1) A registered firm must deliver an investment performance report to a client every 12 months, except that the first report delivered after a registered firm first makes a trade for a client may be sent within 24 months after that trade.

(2) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14(5) [*account statements*] must be delivered in a separate report for each of the client's accounts.

(3) For the purposes of this section, the information in respect of securities of a client required to be reported under subsection 14.14.1(1) [*additional statements*] must be delivered in the report for each of the client's accounts through which the securities were transacted.

(4) Subsections (2) and (3) do not apply if the registered firm provides a report that consolidates, into a single report, the required information for more than one of a client's accounts and any securities of the client required to be reported under subsection 14.14(5) or 14.14.1(1) and if the following apply:

(a) the client has consented in writing to the form of disclosure referred to in this subsection;

(b) the consolidated report specifies the accounts and securities with respect to which information is required to be reported under subsection 14.14.1(1) [*additional statements*].

(5) This section does not apply to

(a) a client's account that has existed for less than a 12-month period;

(b) a registered dealer in respect of a client's account in which the dealer executes trades only as directed by a registered adviser acting for the client; and

(c) a registered firm in respect of a permitted client that is not an individual.

(6) Despite subsection (1), a registered firm is not required to deliver a report to a client for a 12-month period referred to in that subsection if the firm reasonably believes

(a) there are no securities of the client with respect to which information is required to be reported under subsection 14.14(5) [*account statements*] or subsection 14.14.1(1) [*additional statements*], or

(b) no market value can be determined for any securities of the client in respect to which information is required to be reported under subsection 14.14(5) or 14.14.1(1).

14.19 Content of investment performance report

(1) An investment performance report required to be delivered under section 14.18 by a registered firm must include all of the following in respect of the securities referred to in a statement in respect of which subsection 14.14(1), (2) or (3) [*account statements*] or 14.14.1(1) [*additional statements*] apply:

(a) the market value of all cash and securities in the client's account as at the beginning of the 12-month period covered by the investment performance report;

(b) the market value of all cash and securities in the client's account as at the end of the 12-month period covered by the investment performance report;

(c) the market value of all deposits and transfers of cash and securities into the client's account, and the market value of all withdrawals and transfers of cash and securities out of the account, in the 12-month period covered by the investment performance report;

(d) the market values determined under subsection (1.1);

(e) **[*repealed*]**

(f) the annual change in the market value of the client's account for the 12-month period covered by the investment performance report, determined using the following formula

$$A - B - C + D$$

where

A = the market value of all cash and securities in the account as at the end of the 12-month period covered by the investment performance report;

B = the market value of all cash and securities in the account at the beginning of that 12-month period;

C = the market value of all deposits and transfers of cash and securities into the account in that 12-month period; and

D = the market value of all withdrawals and transfers of cash and securities out of the account in that 12-month period;

(g) subject to subsection (1.2), the cumulative change in the market value of the account since the account was opened, determined using the following formula

$$A - E + F$$

where

A = the market value of all cash and securities in the account as at the end of the 12-month period covered by the investment performance report;

E = the market value of all deposits and transfers of cash and securities into the account since account opening; and

F = the market value of all withdrawals and transfers of cash and securities out of the account since account opening;

(h) **[*repealed*]**

(i) the amount of the annualized total percentage return for the client's account calculated net of charges, using a money-weighted rate of return calculation method generally accepted in the securities industry;

(j) the definition of "total percentage return" in section 1.1 and a notification indicating the following:

(i) that the total percentage return in the investment performance report was calculated net of charges;

(ii) the calculation method used;

(iii) a general explanation in plain language of what the calculation method takes into account.

(1.1) For the purposes of paragraph (1)(d), the investment performance report must include the following, as applicable:

(a) if the client's account was opened on or after July 15, 2015, the market value of all deposits and transfers of cash and securities into the client's account, and the market value of all withdrawals and transfers of cash and securities out of the account, since opening the account;

(b) if the client's account was opened before July 15, 2015, and the firm has not delivered an investment performance report for the 12-month period ending December 31, 2016,

(i) the market value of all cash and securities in the client's account as at

(A) July 15, 2015, or

(B) a date that is earlier than July 15, 2015 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date, and

(ii) the market value of all deposits and transfers of cash and securities into the account, and the market value of all withdrawals and transfers of cash and securities out of the account, since the date referred to in clause (i)(A) or (B), as applicable;

(c) if the client's account was opened before July 15, 2015, and the firm delivered an investment performance report for the 12-month period ending December 31, 2016,

(i) the market value of all cash and securities in the client's account as at

(A) January 1, 2016, or

(B) a date that is earlier than January 1, 2016 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date, and

(ii) the market value of all deposits and transfers of cash and securities into the account, and the market value of all withdrawals and transfers of cash and securities out of the account, since the date referred to in clause (i)(A)or (B), as applicable.

(1.2) Paragraph (1)(g) does not apply if the client's account was opened before July 15, 2015 and the registered firm includes in the investment performance report the cumulative change in the market value of the account determined using the following formula, instead of the formula in paragraph (g):

$$A - G - H + I$$

where

A = the market value of all cash and securities in the account as at the end of the 12-month period covered by the investment performance report;

G = the market value of all cash and securities in the account determined as follows:

(a) if the firm has not delivered an investment performance report for the 12-month period ending December 31, 2016, the market value of all cash and securities in the client's account as at

(i) July 15, 2015, or

(ii) a date that is earlier than July 15, 2015 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date,

(b) if the firm has delivered an investment performance report for the 12-month period ending December 31, 2016, the market value of all cash and securities in the client's account as at

(i) January 1, 2016, or

(ii) a date that is earlier than January 1, 2016 if the registered firm reasonably believes accurate, recorded historical market value information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date;

H = the market value of all deposits and transfers of cash and securities into the account since the date used for the purposes of the definition of "G"; and

I = the market value of all withdrawals and transfers of cash and securities out of the account since the date used for the purposes of the definition of "G".

(2) The information delivered for the purposes of paragraph (1)(i) must be provided for each of the following periods:

(a) the 12-month period covered by the investment performance report;

(b) the 3-year period preceding the end of the 12-month period covered by the report;

(c) the 5-year period preceding the end of the 12-month period covered by the report;

(d) the 10-year period preceding the end of the 12-month period covered by the report;

(e) subject to subsection (3.1), the period since the client's account was opened if the account has been open for more than one year before the date of the report or, if the account was opened before July 15, 2015, the period since

(i) July 15, 2015, or

(ii) a date that is earlier than July 15, 2015 if the registered firm reasonably believes accurate, recorded annualized total percentage return information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date.

(3) Despite subsection (2), if any portion of a period referred to in paragraph (2)(b), (c) or (d) was before July 15, 2015, the registered firm is not required to report the annualized total percentage return for that period.

(3.1) Paragraph (2)(e) does not apply to a registered firm that delivered an investment performance report for the 12-month period ending December 31, 2016 if the firm provides, in the report, the annualized total percentage return information referred to in that paragraph for the period since

(a) January 1, 2016, or

(b) a date that is earlier than January 1, 2016 if the registered firm reasonably believes accurate, recorded annualized total percentage return information is available for the client's account, and it would not be misleading to the client to provide that information as at the earlier date.

(4) Despite subsection (1), the information a scholarship plan dealer is required to deliver under section 14.18 [*investment performance report*] in respect of each scholarship plan in which a client has invested through the scholarship plan dealer is the following:

(a) the total amount that the client has invested in the plan as at the date of the investment performance report;

(b) the total amount that would be returned to the client if, as at the date of the investment performance report, the client ceased to make prescribed payments into the plan;

(c) a reasonable projection of future payments that the plan might pay to the client's designated beneficiary under the plan, or to the client, at the maturity of the client's investment in the plan;

(d) a summary of any terms of the plan that, if not met by the client or the client's designated beneficiary under the plan, might cause the client or the designated beneficiary to suffer a loss of contributions, earnings or government contributions in the plan.

(5) The information delivered under section 14.18 [*investment performance report*] must be presented using text, tables and charts, and must be accompanied by notes in the investment performance report explaining

(a) the content of the report and how a client can use the information to assess the performance of the client's investments; and

(b) the changing value of the client's investments as reflected in the information in the report.

(6) If a registered firm delivers information required under this section in a report to a client for a period of less than one year, the firm must not calculate the disclosed information on an annualized basis.

(7) If the registered firm reasonably believes the market value cannot be determined for a security position, the market value must be assigned a value of zero in the calculation of the information delivered under subsection 14.18(1) and the fact that its market value could not be determined must be disclosed to the client.

14.20 Delivery of report on charges and other compensation and investment performance report

(1) A report under section 14.17 [*report on charges and other compensation*] and a report under section 14.18 [*investment performance report*] must include information for the same 12-month period and the reports must be delivered together in one of the following ways:

(a) combined with a statement delivered to the client that includes information required under subsection 14.14(1), (2) or (3) [*account statements*], subsection 14.14.1(2) [*additional statements*] or section 14.16 [*scholarship plan dealer statements*];

(b) accompanying a statement delivered to the client that includes information required under subsection 14.14(1), (2) or (3) [*account statements*], subsection 14.14.1(2) [*additional statements*] or section 14.16 [*scholarship plan dealer statements*];

(c) within 10 days after a statement delivered to the client that includes information required under subsection 14.14(1),(2) or (3) [*account statements*], subsection 14.14.1(2) [*additional statements*] or section 14.16 [*scholarship plan dealer statements*].

(2) Subsection (1) does not apply in respect of the first report under section 14.17 [*report on charges and other compensation*] and the first report under section 14.18 [*investment performance report*] for a client.

Part 15 Granting an exemption

15.1 Who can grant an exemption

(1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Part 16 Transition

16.1 [***lapsed***]

16.2 [***lapsed***]

16.3 [***lapsed***]

16.4 [***lapsed***]

16.5 [***lapsed***]

16.6 [***lapsed***]

16.7 [***lapsed***]

16.8 [***lapsed***]

16.9 Registration of chief compliance officers

(1) [***lapsed***]

(2) If an individual applies to be registered as the chief compliance officer of a registered firm within 3 months after this Instrument comes into force and the individual was identified on the National Registration Database as the firm's compliance officer in a jurisdiction of Canada on the date this Instrument came into force, the following sections do not apply in respect of the individual so long as he or she remains registered as the firm's chief compliance officer:

(a) section 3.6 [*mutual fund dealer – chief compliance officer*], if the registered firm is a mutual fund dealer;

(b) section 3.8 [*scholarship plan dealer – chief compliance officer*], if the registered firm is a scholarship plan dealer;

(c) section 3.10 [*exempt market dealer – chief compliance officer*], if the registered firm is an exempt market dealer;

(d) section 3.13 [*portfolio manager – chief compliance officer*], if the registered firm is a portfolio manager.

(3) [*lapsed*]

(4) [*lapsed*]

16.10 Proficiency for dealing and advising representatives

If an individual is registered in a jurisdiction of Canada as a dealing or advising representative in a category referred to in a section of Division 2 [*education and experience requirements*] of Part 3 on the day this Instrument comes into force, that section does not apply to the individual so long as the individual remains registered in the category.

16.11 [***lapsed***]

16.12 Continuation of existing discretionary relief

A person or company that was entitled to rely on an exemption, waiver or approval granted to it by a regulator or securities regulatory authority relating to a requirement under securities legislation or securities directions existing immediately before this Instrument came into force is exempt from any substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, waiver or approval.

16.13 [***lapsed***]

16.14 [***lapsed***]

16.15 [***lapsed***]

16.16 [***lapsed***]

16.17 [***lapsed***]

16.18 [***lapsed***]

16.19 [***lapsed***]

16.20 [***lapsed***]

Part 17 When this Instrument comes into force

17.1 Effective date

(1) Except in Ontario, this Instrument comes into force on September 28, 2009.

(2) In Ontario, this Instrument comes into force on the later of the following:

(a) September 28, 2009;

(b) the day on which sections 4, 5 and subsections 20(1) to (11) of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.

FORM 31-103F1 CALCULATION OF EXCESS WORKING CAPITAL

_____

Firm Name

Capital Calculation

(as at _____ with comparative figures as at _____)

	Component	**Current period**	**Prior period**
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		
5.	Add 100% of non-current related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and the firm has delivered a copy of the agreement to the regulator or, in Québec, the securities regulatory authority. See section 12.2 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*		
6.	Adjusted current liabilities Line 4 plus line 5 =		

7.	Adjusted working capital Line 3 minus line 6 =		
8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the bonding or insurance policy required under Part 12 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or, in Québec, for a firm registered only in that jurisdiction and solely in the category of mutual fund dealer, less the deductible under the liability insurance required under section 193 of the Québec Securities Regulation		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	**Excess working capital**		

Notes:

Form 31-103F1 *Calculation of Excess Working Capital* must be prepared using the accounting principles that you use to prepare your financial statements in accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*. Section 12.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* provides further guidance in respect of these accounting principles.

Line 5. Related-party debt – Refer to the CICA Handbook for the definition of "related party" for publicly accountable enterprises. The firm is required to deliver a copy of the executed subordination agreement to the regulator or, in Québec, the securities regulatory authority on the earlier of a) 10 days after the date the agreement is executed or b) the date an amount subordinated by the agreement is excluded from its calculation of excess working capital on Form 31-103F1 *Calculation of Excess Working Capital*. **The firm must notify the regulator or, in Québec, the securities regulatory authority, 10 days before it repays the loan (in whole or in part), or terminates the subordination agreement.** See section 12.2 of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations*.

Line 8. Minimum Capital – The amount on this line must be not less than (a) $25,000 for an adviser and (b) $50,000 for a dealer. For an investment fund manager, the amount must be not less than $100,000 unless subsection 12.1(4) of National Instrument 31-103 *Registration Requirements Exemptions and Ongoing Registrant Obligations* applies.

Line 9. Market Risk – The amount on this line must be calculated according to the instructions set out in Schedule 1 to Form 31-103F1 *Calculation of Excess Working Capital*. A schedule supporting the calculation of any amounts included in Line 9 as market risk should be provided to the regulator or, in Québec, the securities regulatory authority in conjunction with the submission of Form 31-103F1 *Calculation of Excess Working Capital*.

Line 11. Guarantees – If the registered firm is guaranteeing the liability of another party, the total amount of the guarantee must be included in the capital calculation. If the amount of a guarantee is included in the firm's statement of financial position as a current liability and is reflected in line 4, do not include the amount of the guarantee on line 11.

Line 12. Unresolved differences – Any unresolved differences that could result in a loss from either firm or client assets must be included in the capital calculation. The examples below provide guidance as to how to calculate unresolved differences:

(i) If there is an unresolved difference relating to client securities, the amount to be reported on Line 12 will be equal to the fair value of the client securities that are short, plus the applicable margin rate for those securities.

(ii) If there is an unresolved difference relating to the registrant's investments, the amount to be reported on Line 12 will be equal to the fair value of the investments (securities) that are short.

(iii) If there is an unresolved difference relating to cash, the amount to be reported on Line 12 will be equal to the amount of the shortfall in cash.

Please refer to section 12.1 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* for further guidance on how to prepare and file Form 31-103F1 *Calculation of Excess Working Capital*.

Management Certification

Registered Firm Name: _____

We have examined the attached capital calculation and certify that the firm is in compliance with the capital requirements as at

_____.

Name and Title	**Signature**	**Date**
_____	_____	_____
_____		
_____	_____	_____
_____		

Schedule 1 of Form 31-103F1 Calculation of Excess Working Capital

(calculating line 9 [market risk])

For purposes of completing this form:

(1) "Fair value" means the value of a security determined in accordance with Canadian GAAP applicable to publicly accountable enterprises.

(2) For each security whose value is included in line 1, Current Assets, multiply the fair value of the security by the margin rate for that security set out below. Add up the resulting amounts for all of the securities you hold. The total is the "market risk" to be entered on line 9.

(a) Bonds, Debentures, Treasury Bills and Notes

(i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or of any other national foreign government (provided those foreign government securities have a current credit rating described in subparagraph (i.1)) maturing (or called for redemption):

within 1 year:	1% of fair value multiplied by the fraction determined by dividing the number of days to maturing by 365
over 1 year to 3 years:	1 % of fair value
over 3 years to 7 years:	2% of fair value
over 7 years to 11 years:	4% of fair value
over 11 years:	4% of fair value

(i.1) A credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is the same as one of the following corresponding rating categories or that is the same as a category that replaces one of the following corresponding rating categories:

Designated Rating Organization	Long Term Debt	Short Term Debt
DBRS Limited	AAA	R-1(high)
Fitch Ratings, Inc.	AAA	F1+
Moody's Canada Inc.	Aaa	Prime-1
S&P Global Ratings Canada	AAA	A-1+

(ii) Bonds, debentures, treasury bills and other securities of or guaranteed by any jurisdiction of Canada and obligations of the International Bank for Reconstruction and Development, maturing (or called for redemption):

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	3 % of fair value
over 3 years to 7 years:	4% of fair value
over 7 years to 11 years:	5% of fair value
over 11 years:	5% of fair value

(iii) Bonds, debentures or notes (not in default) of or guaranteed by any municipal corporation in Canada or the United Kingdom maturing:

within 1 year:	3% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year to 3 years:	5 % of fair value
over 3 years to 7 years:	5% of fair value
over 7 years to 11 years:	5% of fair value

over 11 years:	5% of fair value

(iv) Other non-commercial bonds and debentures, (not in default): 10% of fair value

(v) Commercial and corporate bonds, debentures and notes (not in default) and non-negotiable and non-transferable trust company and mortgage loan company obligations registered in the registered firm's name maturing:

within 1 year:	3% of fair value
over 1 year to 3 years:	6 % of fair value
over 3 years to 7 years:	7% of fair value
over 7 years to 11 years:	10% of fair value
over 11 years:	10% of fair value

(b) Bank Paper

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank (and of Canadian chartered bank acceptances) maturing:

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year:	apply rates for commercial and corporate bonds, debentures and notes

(c) Acceptable foreign bank paper

Deposit certificates, promissory notes or debentures issued by a foreign bank, readily negotiable and transferable and maturing:

within 1 year:	2% of fair value multiplied by the fraction determined by dividing the number of days to maturity by 365
over 1 year:	apply rates for commercial and corporate bonds, debentures and notes

"Acceptable Foreign Bank Paper" consists of deposit certificates or promissory notes issued by a bank other than a Canadian chartered bank with a net worth (i.e., capital plus reserves) of not less than $200,000,000.

(d) Mutual Funds

Securities of mutual funds qualified by prospectus for sale in any jurisdiction of Canada:

(i) 5% of the net asset value per security as determined in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*, where the fund is a money market mutual fund as defined in National Instrument 81-102 *Investment Funds*; or

(ii) the margin rate determined on the same basis as for listed stocks multiplied by the net asset value per security of the fund as determined in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure*.

Securities of mutual funds qualified by prospectus for sale in the United States of America: 5% of the net asset value per security if the fund is registered as an investment company under the *Investment Company Act of 1940*, as amended from time to time, and complies with Rule 2a-7 thereof.

(e) Stocks

In this paragraph, "securities" includes rights and warrants and does not include bonds and debentures.

(i) On securities including investment fund securities, rights and warrants, listed on any exchange in Canada or the United States of America:

Long Positions – Margin Required

Securities selling at $2.00 or more – 50% of fair value

Securities selling at $1.75 to $1.99 – 60% of fair value

Securities selling at $1.50 to $1.74 – 80% of fair value

Securities selling under $1.50 – 100% of fair value

Short Positions – Credit Required

Securities selling at $2.00 or more – 150% of fair value

Securities selling at $1.50 to $1.99 – $3.00 per share

Securities selling at $0.25 to $1.49 – 200% of fair value

Securities selling at less than $0.25 – fair value plus $0.25 per share

(ii) For positions in securities that are constituent securities on a major broadly-based index of one of the following exchanges, 50% of the fair value:

(a) Australian Stock Exchange Limited

(b) Bolsa de Madrid

(c) Borsa Italiana

(d) Copenhagen Stock Exchange

(e) Euronext Amsterdam

(f) Euronext Brussels

(g) Euronext Paris S.A.

(h) Frankfurt Stock Exchange

(i) London Stock Exchange

(j) New Zealand Exchange Limited

(k) Stockholm Stock Exchange

(l) SIX Swiss Exchange

(m) The Stock Exchange of Hong Kong Limited

(n) Tokyo Stock Exchange

(f) Mortgages

(i) For a firm registered in any jurisdiction of Canada except Ontario:

(a) Insured mortgages (not in default): 6% of fair value

(b) Mortgages which are not insured (not in default): 12% of fair value.

(ii) For a firm registered in Ontario:

(a) Mortgages insured under the *National Housing Act* (Canada) (not in default): 6% of fair value

(b) Conventional first mortgages (not in default): 12% of fair value.

If you are registered in Ontario regardless of whether you are also registered in another jurisdiction of Canada, you will need to apply the margin rates set forth in (ii) above.

(g) For all other securities – 100% of fair value.

FORM 31-103F2 SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

(sections 8.18 [international dealer] and 8.26 [international adviser])

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm.

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's chief compliance officer.

   Name:

   E-mail address:

   Phone:

   Fax:

6. Section of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* the International Firm is relying on:

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on section 8.18 [*international dealer*] or section 8.26 [*international adviser*], the International Firm must submit to the securities regulatory authority

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated; and

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____

(Signature of the International Firm or authorized signatory)

_____
(Name and Title of authorized signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of (Insert name of International Firm) under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of Agent for Service or authorized signatory)

_____
(Name and Title of authorized signatory)

FORM 31-103F3 USE OF MOBILITY EXEMPTION

(section 2.2 [client mobility exemption – individuals])

This is to notify the securities regulatory authority that the individual named in paragraph 1 is relying on the exemption in section 2.2 [*client mobility exemption – individuals*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

1. Individual information

Name of individual: _____

NRD number of individual: _____

The individual is relying on the client mobility exemption in each of the following jurisdictions of Canada:

_____

_____

2. Firm information

Name of the individual's sponsoring firm:_____

NRD number of firm:_____

Dated: _____

_____
(Signature of an authorized signatory of the individual's sponsoring firm)

_____
(Name and title of authorized signatory)

FORM 31-103F4 NET ASSET VALUE ADJUSTMENTS

(Section 12.14 [*delivering financial information – investment fund manager*])

This is to notify the regulator or, in Québec, the securities regulatory authority, of a net asset value (NAV) adjustment made in respect of an investment fund managed by the investment fund manager in accordance with paragraph 12.14(1)(c) or paragraph 12.14(2)(c). All of the information requested should be provided on a fund by fund basis. Please attach a schedule if necessary.

1. Name of the investment fund manager:

2. Name of each of the investment funds for which a NAV adjustment occurred:

3. Date(s) the NAV error occurred:

4. Date the NAV error was discovered:

5. Date of the NAV adjustment:

6. Original total NAV on the date the NAV error first occurred:

7. Original NAV per unit on each date(s) the NAV error occurred:

8. Revised NAV per unit on each date(s) the NAV error occurred:

9. NAV error as percentage (%) of the original NAV on each date(s) the NAV error occurred:

10. Total dollar amount of the NAV adjustment:

11. Effect (if any) of the NAV adjustment per unit or share:

12. Total amount reimbursed to security holders, or any corrections made to purchase and redemption transactions affecting the security holders of each investment fund affected, if any:

13. Date of the NAV reimbursement or correction to security holder transactions, if any:

14. Total amount reimbursed to investment fund, if any:

15. Date of the reimbursement to investment fund, if any:

16. Description of the cause of the NAV error:

17. Was the NAV error discovered by the investment fund manager?

    Yes ☐ No ☐

18. If No, who discovered the NAV error?

19. Was the NAV adjustment a result of a material error under the investment fund manager's policies and procedures? :

    Yes ☐ No ☐

20. Have the investment fund manager's policies and procedures been changed following the NAV adjustment?

    Yes ☐ No ☐

21. If Yes, describe the changes:

22. If No, explain why not:

23. Has the NAV adjustment been communicated to security holders of each of the investment funds affected?

    Yes ☐ No ☐

24. If Yes, describe the communications:

Notes:

Line 2. NAV adjustment – Refers to the correction made to make the investment fund's NAV accurate.

Line 3. NAV error – Refers to the error discovered on the Original NAV. Please refer to Section 12.14 of *Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations* for guidance on NAV error and causes of NAV errors.

Line 3. Date(s) the NAV error occurred – Means the date of the NAV error first occurred and the subsequent dates of the NAV error.

Line 8. Revised NAV per unit – Refers to the NAV per unit calculated after taking into account the NAV error.

Line 9. NAV error as a percentage (%) of the original NAV – Refers to the following calculation:

(Revised NAV / Original NAV) – 1 x 100

APPENDIX A – BONDING AND INSURANCE CLAUSES

(section 12.3 [insurance – dealer], section 12.4 [insurance – adviser] and section 12.5 [insurance – investment fund manager])

Clause	Name of Clause	Details
A	Fidelity	This clause insures against any loss through dishonest or fraudulent act of employees.
B	On Premises	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, or other fraudulent means, mysterious disappearance, damage or destruction while within any of the insured's offices, the offices of any banking institution or clearing house or within any recognized place of safe-deposit.
C	In Transit	This clause insures against any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company.
D	Forgery or Alterations	This clause insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.
E	Securities	This clause insures against any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments.

APPENDIX B – SUBORDINATION AGREEMENT

(Line 5 of Form 31-103F1 Calculation of excess working capital)

SUBORDINATION AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 20___

BETWEEN:

[insert name]

(the "**Lender**")

AND

[insert name]

(the "**Registered Firm**", which term shall include all successors and assigns of the Registered Firm)

(collectively, the "**Parties**")

This Agreement is entered into by the Parties under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") in connection with a loan made on the ____day of _____, 20__ by the Lender to the Registered Firm in the amount of $ _____(the "**Loan**") for the purpose of allowing the Registered Firm to carry on its business.

For good and valuable consideration, the Parties agree as follows:

1. Subordination

The repayment of the loan and all amounts owed thereunder are subordinate to the claims of the other creditors of the Registered Firm.

2. Dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registered Firm

In the event of the dissolution, winding-up, liquidation, insolvency or bankruptcy of the Registered Firm:

(a) the creditors of the Registered Firm shall be paid their existing claims in full in priority to the claims of the Lender;

(b) the Lender shall not be entitled to make any claim upon any property belonging or having belonged to the Registered Firm, including asserting the right to receive any payment in respect to the Loan, before the existing claims of the other creditors of the Registered Firm have been settled.

3. Terms and conditions of the Loan

During the term of this Agreement:

(a) interest can be paid at the agreed upon rate and time, provided that the payment of such interest does not result in a capital deficiency under NI 31-103;

(b) any loan or advance or posting of security for a loan or advance by the Registered Firm to the Lender, shall be deemed to be a payment on account of the Loan.

4. Notice to the Securities Regulatory Authority

The Registered Firm must notify the Securities Regulatory Authority 10 days before the full or partial repayment of the loan. Further documentation may be requested by the Securities Regulatory Authority after receiving the notice from the Registered Firm.

5. Termination of this Agreement

This Agreement may only be terminated by the Lender once the notice required pursuant to Section 4 of this Agreement is received by the Securities Regulatory Authority.

The Parties have executed and delivered this Agreement as of the date set out above.

[Registered Firm]

_____
Authorized signatory

_____
Authorized signatory

[Lender]

_____
Authorized signatory

_____
Authorized signatory

APPENDIX C

[*lapsed*]

APPENDIX D

[*lapsed*]

APPENDIX E

[*lapsed*]

APPENDIX F

[*lapsed*]

APPENDIX G – EXEMPTIONS FROM CERTAIN REQUIREMENTS FOR IIROC MEMBERS

(Section 9.3 [*exemptions from certain requirements for IIROC members*])

NI 31-103 Provision	**IIROC Provision**
section 12.1 [*capital requirements*]	1. Dealer Member Rule 17.1; and 2. Form 1
section 12.2 [*subordination agreement*]	1. Dealer Member Rule 5.2; and 2. Dealer Member Rule 5.2A
section 12.3 [*insurance – dealer*]	1. Dealer Member Rule 17.5 2. Dealer Member Rule 400.2 [*Financial Institution Bond*]; 3. Dealer Member Rule 400.4 [*Amounts Required*]; and 4. Dealer Member Rule 400.5 [*Provisos with respect to Dealer Member Rules 400.2, 400.3 and 400.4*]
section 12.6 [*global bonding or insurance*]	1. Dealer Member Rule 400.7 [*Global Financial Institution Bonds*]
section 12.7 [*notifying the regulator of a change, claim or cancellation*]	1. Dealer Member Rule 17.6; 2. Dealer Member Rule 400.3 [*Notice of Termination*]; and 3. Dealer Member Rule 400.3B [*Termination or Cancellation*]
section 12.10 [*annual financial statements*]	1. Dealer Member Rule 16.2 [*Dealer Member Filing Requirements*]; and 2. Form 1
section 12.11 [*interim financial information*]	1. Dealer Member Rule 16.2 [*Dealer Member Filing Requirements*]; and 2. Form 1
section 12.12 [*delivering financial information – dealer*]	1. Dealer Member Rule 16.2 [*Dealer Member Filing Requirements*]
subsection 13.2(3) [*know your client*]	1. Dealer Member Rule 1300.1(a)-(n) [*Identity and Creditworthiness*]; 2. Dealer Member Rule 1300.2; 3. Dealer Member Rule 2500, Part II [*Opening New Accounts*]; 4. Dealer Member Rule 2700, Part II [*New Account Documentation and Approval*]; and 5. Form 2 *New Client Application Form*
section 13.3 [*suitability determination*]	1. Dealer Member Rule 1300.1(o) [*Business Conduct*]; 2. Dealer Member Rule 1300.1(p) [*Suitability determination required when accepting order*]; 3. Dealer Member Rule 1300.1(q) [*Suitability determination required when recommendation provided*]; 4. Dealer Member Rule 1300.1(r) [*Suitability determination required for account positions held when certain events occur*]; 5. Dealer Member Rule 1300.1(s) [*Suitability of investments in client accounts*]; 6. Dealer Member Rule 1300.1(t) – (v) [*Exemptions from the suitability assessment requirements*]; 7. Dealer Member Rule 1300.1(w) [*Corporation approval*]; 8. Dealer Member Rule 2700, Part I [*Customer Suitability*]; and 9. Dealer Member Rule 3200 [*Minimum requirements for Dealer Members seeking approval under Rule 1300.1(t) to offer an order-execution only service*]
section 13.3.1 [*waivers*]	1. Dealer Member Rule 1300.1(o) [*Business Conduct*];

NI 31-103 Provision	IIROC Provision
	2. Dealer Member Rule 1300.1(p) [*Suitability determination required when accepting order*]; 3. Dealer Member Rule 1300.1(q) [*Suitability determination required when recommendation provided*]; 4. Dealer Member Rule 1300.1(r) [*Suitability determination required for account positions held when certain events occur*]; 5. Dealer Member Rule 1300.1(s) [*Suitability of investments in client accounts*]; 6. Dealer Member Rule 1300.1(t) – (v) [*Exemptions from the suitability assessment requirements*]; 7. Dealer Member Rule 1300.1(w) [*Corporation approval*]; 8. Dealer Member Rule 2700, Part I [*Customer Suitability*]; and 9. Dealer Member Rule 3200 [*Minimum requirements for Dealer Members seeking approval under Rule 1300.1(t) to offer an order-execution only service*]
section 13.12 [*restriction on borrowing from, or lending to, clients*]	1. Dealer Member Rule 17.11; and 2. Dealer Member Rule 100 [*Margin Requirements*]
section 13.13 [*disclosure when recommending the use of borrowed money*]	1. Dealer Member Rule 29.26
section 13.15 [*handling complaints*]	1. Dealer Member Rule 2500, Part VIII [*Client Complaints*]; and 2. Dealer Member Rule 2500B [*Client Complaint Handling*]
subsection 14.2(2) [*relationship disclosure information*]	1. Dealer Member Rule 3500.5 [*Content of relationship disclosure*]
subsection 14.2(3) [*relationship disclosure information*]	1. Dealer Member Rule 3500.4 [*Format of relationship disclosure*]
subsection 14.2(4) [*relationship disclosure information*]	1. Dealer Member Rule 3500.1 [*Objective of relationship disclosure requirements*]
subsection 14.2(5.1) [*relationship disclosure information*]	1. Dealer Member Rule 29.8
subsection 14.2(6) [*relationship disclosure information*]	1. Dealer Member Rule 3500.1 [*Objective of relationship disclosure requirements*]
section 14.2.1 [*pre-trade disclosure of charges*]	1. Dealer Member Rule 29.9
section 14.5.2 [*restriction on self-custody and qualified custodian requirement*]	1. Dealer Member Rule 17.2A [*Establishment and maintenance of adequate internal controls in accordance with Dealer Member Rule 2600*]; 2. Dealer Member Rules 17.3, 17.3A, 17.3B and 2000 [*Segregation Requirements*]; 3. Dealer Member Rule 2600 – Internal Control Policy Statement 4 [*Segregation of Clients' Securities*]; 4. Dealer Member Rule 2600 - Internal Control Policy Statement 5 [*Safekeeping of Clients' Securities*]; 5. Dealer Member Rule 2600 - Internal Control Policy Statement 6 [*Safeguarding of Securities and Cash*]; and 6. Definition of "acceptable securities locations", General Notes and Definitions to Form 1
section 14.5.3 [*cash and securities held by a qualified custodian*]	1. Dealer Member Rule 200 [*Minimum Records*]
section 14.6 [*client and investment fund assets held by a registered firm in trust*]	1. Dealer Member Rule 17.3

NI 31-103 Provision	IIROC Provision
section 14.6.1 [*custodial provisions relating to certain margin or security interests*]	1. Dealer Member Rules 17.2, 17.2A, 17.3, 17.3A, 17.3B, 17.11 and 2000 [*Segregation Requirements*]; 2. Dealer Member Rule 100 [*Margin Requirements*]; 3. Dealer Member Rule 2200 [*Cash and Securities Loan Transactions*]; 4. Dealer Member Rule 2600 – Internal Control Policy Statement 4 [*Segregation of Clients' Securities*]; 5. Dealer Member Rule 2600 - Internal Control Policy Statement 5 [*Safekeeping of Clients' Securities*]; 6. Dealer Member Rule 2600 - Internal Control Policy Statement 6 [*Safeguarding of Securities and Cash*]; and 7. Definitions of "acceptable counterparties", "acceptable institutions", "acceptable securities locations", "regulated entities", General Notes and Definitions to Form 1
section 14.6.2 [*custodial provisions relating to short sales*]	1. Dealer Member Rule 100 [*Margin Requirements*]; 2. Dealer Member Rule 2200 [*Cash and Securities Loan Transactions*]; 3. Dealer Member Rule 2600 – Internal Control Policy Statement 6 [*Safeguarding of Securities and Cash*]; and 4. Definitions of "acceptable counterparties", "acceptable institutions", "acceptable securities locations", "regulated entities", General Notes and Definitions to Form 1
section 14.11.1 [*determining market value*]	1. Dealer Member Rule 200.1(c); and 2. Definition (g) of the General Notes and Definitions to Form 1
section 14.12 [*content and delivery of trade confirmation*]	1. Dealer Member Rule 200.2(l) [*Trade confirmations*]
section 14.14 [*account statements*]	1. Dealer Member Rule 200.2(d) [*Client account statements*]; and 2. "Guide to Interpretation of Rule 200.2", Item (d)
section 14.14.1 [*additional statements*]	1. Dealer Member Rule 200.2(e) [*Report on client positions held outside of the Dealer Member*]; 2. Dealer Member Rule 200.4 [*Timing of sending documents to clients*]; and 3. "Guide to Interpretation of Rule 200.2", Item (e)
section 14.14.2 [*security position cost information*]	1. Dealer Member Rule 200.1(a); 2. Dealer Member Rule 200.1(b); 3. Dealer Member Rule 200.1(e); 4. Dealer Member Rule 200.2(d)(ii)(F) and (H); and 5. Dealer Member Rule 200.2(e)(ii)(C) and (E)
section 14.17 [*report on charges and other compensation*]	1. Dealer Member Rule 200.2(g) [*Fee/ charge report*]; and 2. "Guide to Interpretation of Rule 200.2", Item (g)
section 14.18 [*investment performance report*]	1. Dealer Member Rule 200.2(f) [*Performance report*]; and 2. "Guide to Interpretation of Rule 200.2", Item (f)
section 14.19 [*content of investment performance report*]	1. Dealer Member Rule 200.2(f) [*Performance report*]; and 2. "Guide to Interpretation of Rule 200.2", Item (f)
section 14.20 [*delivery of report on charges and other compensation and investment performance report*]	1. Dealer Member Rule 200.4 [*Timing of the sending of documents to clients*]

APPENDIX H – EXEMPTIONS FROM CERTAIN REQUIREMENTS FOR MFDA MEMBERS

(Section 9.4 [*exemptions from certain requirements for MFDA members*])

NI 31-103 Provision	**MFDA Provision**
section 12.1 [*capital requirements*]	1. Rule 3.1.1 [*Minimum Levels*]; 2. Rule 3.1.2 [*Notice*]; 3. Rule 3.2.2 [*Member Capital*]; 4. Form 1; and 5. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 2: Capital Adequacy*]
section 12.2 [*subordination agreement*]	1. Form 1, Statement F [*Statement of Changes in Subordinated Loans*]; and 2. Membership Application Package – Schedule I (Subordinated Loan Agreement)
section 12.3 [*insurance – dealer*]	1. Rule 4.1 [*Financial Institution Bond*]; 2. Rule 4.4 [*Amounts Required*]; 3. Rule 4.5 [*Provisos*]; 4. Rule 4.6 [*Qualified Carriers*]; and 5. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 3: Insurance*]
section 12.6 [*global bonding or insurance*]	1. Rule 4.7 [*Global Financial Institution Bonds*]
section 12.7 [*notifying the regulator of a change, claim or cancellation*]	1. Rule 4.2 [*Notice of Termination*]; and 2. Rule 4.3 [*Termination or Cancellation*]
section 12.10 [*annual financial statements*]	1. Rule 3.5.1 [*Monthly and Annual*]; 2. Rule 3.5.2 [*Combined Financial Statements*]; and 3. Form 1
section 12.11 [*interim financial information*]	1. Rule 3.5.1 [*Monthly and Annual*]; 2. Rule 3.5.2 [*Combined Financial Statements*]; and 3. Form 1
section 12.12 [*delivering financial information – dealer*]	1. Rule 3.5.1 [*Monthly and Annual*]
section 13.3 [*suitability determination*]	1. Rule 2.2.1 [*"Know-Your-Client"*]; and 2. Policy No. 2 [*Minimum Standards for Account Supervision*]
section 13.3.1 [*waivers*]	1. Rule 2.2.1 [*"Know-Your-Client"*]; and 2. Policy No. 2 [*Minimum Standards for Account Supervision*]
section 13.12 [*restriction on borrowing from, or lending to, clients*]	1. Rule 3.2.1 [*Client Lending and Margin*]; and 2. Rule 3.2.3 [*Advancing Mutual Fund Redemption Proceeds*]
section 13.13 [*disclosure when recommending the use of borrowed money*]	1. Rule 2.6 [*Borrowing for Securities Purchases*]
section 13.15 [*handling complaints*]	1. Rule 2.11 [*Complaints*]; 2. Policy No. 3 [*Complaint Handling, Supervisory Investigations and Internal Discipline*]; and 3. Policy No. 6 [*Information Reporting Requirements*]

NI 31-103 Provision	**MFDA Provision**
subsections 14.2(2), (3) and (5.1) [*relationship disclosure information*]	1. Rule 2.2.5 [*Relationship Disclosure*]; and 2. Rule 2.4.3 [*Operating Charges*]
section 14.2.1 [*pre-trade disclosure of charges*]	1. Rule 2.4.4 [*Transaction Fees or Charges*]
section 14.5.2 [*restriction on self-custody and qualified custodian requirement*]	1. Rule 3.3.1 [*General*]; 2. Rule 3.3.2 [*Cash*]; 3. Rule 3.3.3 [*Securities*]; and 4. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 4: Cash and Securities, and Policy Statement 5: Segregation of Clients' Securities*]
section 14.5.3 [*cash and securities held by a qualified custodian*]	1. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 4: Cash and Securities, and Policy Statement 5: Segregation of Clients' Securities*]
section 14.6 [*client and investment fund assets held by a registered firm in trust*]	1. Rule 3.3.1 [*General*]; 2. Rule 3.3.2 [*Cash*]; 3. Rule 3.3.3 [*Securities*]; and 4. Policy No. 4 [*Internal Control Policy Statements – Policy Statement 4: Cash and Securities, and Policy Statement 5: Segregation of Clients' Securities*]
section 14.6.1 [*custodial provisions relating to certain margin or security interests*]	1. Rule 3.2.1 [*Client Lending and Margin*]
section 14.6.2 [*custodial provisions relating to short sales*]	1. Rule 3.2.1 [*Client Lending and Margin*]
section 14.11.1 [*determining market value*]	1. Rule 5.3(1)(f) [*definition of "market value"*]; and 2. Definitions to Form 1 [*definition of "market value of a security"*]
section 14.12 [*content and delivery of trade confirmation*]	1. Rule 5.4.1 [*Delivery of Confirmations*]; 2. Rule 5.4.2 [*Automatic Plans*]; and 3. Rule 5.4.3 [*Content*]
section 14.14 [*account statements*]	1. Rule 5.3.1 [*Delivery of Account Statement*]; and 2. Rule 5.3.2 [*Content of Account Statement*]
section 14.14.1 [*additional statements*]	1. Rule 5.3.1 [*Delivery of Account Statement*]; and 2. Rule 5.3.2 [*Content of Account Statement*]
section 14.14.2 [*security position cost information*]	1. Rule 5.3(1)(a) [*definition of "book cost"*]; 2. Rule 5.3(1)(c) [*definition of "cost"*]; and 3. Rule 5.3.2(c) [*Content of Account Statement – Market Value and Cost Reporting*]
section 14.17 [*report on charges and other compensation*]	1. Rule 5.3.3 [*Report on Charges and Other Compensation*]
section 14.18 [*investment performance report*]	1. Rule 5.3.4 [*Performance Report*]; and 2. Policy No. 7 *Performance Reporting*
section 14.19 [*content of investment performance report*]	1. Rule 5.3.4 [*Performance Report*]; and 2. Policy No. 7 *Performance Reporting*

NI 31-103 Provision	MFDA Provision
section 14.20 [*delivery of report on charges and other compensation and investment performance report*]	1. Rule 5.3.5 [*Delivery of Report on Charges and Other Compensation and Performance Report*]

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

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

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

Definitions related to vulnerable clients

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

3. Section 13.2 is changed by adding the following:

"Identifying a trusted contact person of a client

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

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

Division 8 Temporary holds

13.19 Conditions for temporary hold

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

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

Appendix G - Part 13 - Assisting Vulnerable Clients

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

1. Definitions

Financial exploitation

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

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

Mental capacity

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

- memory loss, such as forgetting previously given instructions or repeating questions,
- increased difficulty completing forms or understanding disclosure documents,
- increased difficulty understanding important aspects of investment accounts,
- confusion or unfamiliarity with previously understood basic financial terms and concepts,
- reduced ability to solve everyday math problems,

- exhibiting unfamiliarity with surroundings or social settings or missing appointments,
- difficulty communicating,
- changes in personality, or
- increased passivity, anxiety, aggression or other changes in mood, or an uncharacteristically unkempt appearance.

Vulnerable client

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

2. Trusted contact person

Purpose of the trusted contact person

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

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

Obtaining trusted contact person information and consent

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

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

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

Registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP; however, they must still take reasonable steps to obtain the information. Examples of reasonable steps include explaining to the client the purpose of a TCP, providing the client with the disclosure required by paragraph 14.2(2)(l.1), asking the client to provide the name and contact information of a TCP, and obtaining the client's written consent to allow the registrant to contact the TCP in the circumstances set out in paragraph 13.2(2)(e). If a client refuses to provide the name and contact information for a TCP, the registrant may make further inquiries about the reasons for the refusal. Registrants are reminded that they are required to maintain records which demonstrate compliance with section 13.2 [*know your client*], document correspondence with clients, and document compliance and supervision actions taken under paragraphs 11.5(2)(l), (n) and (o).

Contacting the trusted contact person and other parties

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

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

If consent has been obtained, a registrant might contact a TCP if they notice signs of financial exploitation or if the client exhibits signs of diminished mental capacity which they believe may affect the client's ability to make financial decisions. An overview of signs of financial exploitation and diminished mental capacity are discussed in section 1 of this appendix. If the TCP is suspected of being involved in the financial exploitation of the client, the TCP should not be contacted and consideration should be given as to whether there are other more appropriate resources from which to seek assistance. A registrant might also contact the TCP to confirm the client's contact information if the registrant is

unsuccessful in contacting the client after repeated attempts and where failure to contact the client would be unusual. A registrant may also ask the TCP to confirm the name and contact information of a legal guardian, executor, trustee or any other personal or legal representative such as an attorney under a POA.

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

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

Policies and procedures

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

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

3. Temporary Holds

General principles

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

When placing temporary holds in accordance with section 13.19, registered firms and their registered individuals must act in a manner that is consistent with their obligation to deal fairly, honestly and in good faith with their clients. Registered firms and their registered

individuals must not use a temporary hold for inappropriate reasons, for example, to delay a disbursement for fear of losing a client.

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

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

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

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

A client may provide an instruction to take an action which would not, in the registered firm's or registered individual's view, meet the criteria for suitability determination and which may otherwise be considered a poor financial decision, but these facts alone do not necessarily mean that the client is being financially exploited or lacks mental capacity.

Conditions for temporary hold

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

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

- set out detailed warning signs of financial exploitation or lack of mental capacity;
- clearly delineate firm and individual responsibilities for addressing concerns of financial exploitation and lack of mental capacity, such as:

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

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

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

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

While there is no requirement that firms contact a TCP prior to or when a temporary hold is placed, they may wish to contact a TCP at this point if they have not already done so. The firm may want to contact the TCP for a number of reasons as outlined in the guidance in section 2 of this appendix. However, before contacting the TCP, they should assess whether there is a risk that the TCP is perpetrating the exploitation. If the firm suspects that the TCP is involved in the financial exploitation, a notification to the TCP may have detrimental effects on the client.

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

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

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

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

6. These changes become effective on •.

ANNEX D

LOCAL MATTERS

There are no local matters in Alberta to consider at this time.

KENMARE ASSOCIATES

March 11, 2020

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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
https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20200305_31-103_protection-older-vulnerable-clients.pdf

Kenmar Associates is an Ontario-based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com .Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

Kenmar appreciate the opportunity to provide comments on the CSA proposals. These proposals are in the Public interest .*See Elder Financial Abuse 'A Crime Of The 21st Century'* https://www.thestreet.com/annuityman/news/elder-financial-abuse-a-crime-of-the-21st-century

Our comments

Definition of Vulnerable Client

We have an issue with the CSA definition of vulnerable client viz
"vulnerable client" means a client of a registered firm or a registered individual, who may have an illness, impairment, disability or aging process limitation that places the client at risk of financial exploitation "

This is an unduly narrow version of vulnerability. We much prefer the UK FCA definition: "In our Approach to Consumers we define a vulnerable consumer as 'someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care' (as

presented in our Occasional Paper 8 on Consumer Vulnerability)." https://www.fca.org.uk/publication/guidance-consultation/gc19-03.pdf It is broader and captures what we actually observe most frequently in the investment marketplace.

Vulnerable client categories include clients with :Hearing or visual impairments; Low or erratic income ,Low savings, Low knowledge or confidence in managing financial matters; Low English/French language skills; Learning impairments; Bereavement; Poor literacy or numeracy skills, marital breakdown; Poor or non-existent digital skills and recent immigrants to Canada .

Kenmar support this initiative because it creates incentives to encourage Firms and their Representatives to report potential financial exploitation as early as possible, when their intervention may be able to prevent harm or limit the damage to victims of financial exploitation. NASAA's 2019 Enforcement Report for the first time documented the effectiveness of TCP/Holds. In 2018, the latest available data, states that have enacted legislation based on the NASAA model received more than 400 reports from broker-dealers and investment advisers. These 400-plus reports shed light on victims of securities fraud, elder exploitation, and other seniors who need some form of assistance. https://www.nasaa.org/53844/state-report-and-hold-laws-show-positive-impact-in-fight-against-senior-financial-exploitation/

Trusted Contact Person

The Trusted Contact Person (TCP) is a useful resource for Firm's in administering a client's account, protecting assets and responding to possible financial exploitation. The TCP can also help locate a client that the Firm has been unable to reach.

Kenmar fully support the use of a Trusted Contact Person .We believe, if properly implemented, it can catch some abusive behaviour by persons external to the Firm. We agree with the proposed provisions that require a 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. For the system to work effectively, Firms will have to provide Reps proper training to identify vulnerable clients and a strict protocol on what to do when an abusive incident is detected. Clearly documented policies and procedures will be required.

We recommend that the NAAF have a defined entry block where the client can decide if he/she wants to name a TCP. This would provide objective evidence that a Firm has given its clients an opportunity to name a TCP and the information would be an integral part of the client KYC profile.

As we understand the proposal, the TCP is a complement to, and not a substitute for, a Power of Attorney (POA). The TCP does not have decision making power with respect to, or authority to effect changes to, the client's account by virtue of being the TCP. We assume that a client may name more than one TCP per account and that each unique account may have a different TCP listed.

For Discount brokers, we believe the TCP / Holds approach can be useful to the extent that these Firms have systems designed to monitor unusual/suspicious transactions activity. We appreciate that there is no suitability criteria for DIY investors. Kenmar encourage Discount brokers to seriously consider developing such systems as well as inserting some protective caution alarms for certain products (e.g. CFD's) or services (e.g. use of margin) and expanding their senior investor education/ fraud prevention materials.

The proposal requires that a TCP be the age of majority or older. A trusted contact should be someone with sufficient knowledge and standing in the client's life to know what is happening on a personal level. A trusted contact person should be a trusted and neutral person and preferably different than the POA appointee and the dealing Representative. The CSA may wish to elaborate on this in Guidance and in investor educational materials.

We assume that anyone can provide a TCP to a Firm whether or not they are in their retirement years and/or are exhibiting signs of a decline of mental capacity.

When a decision is made to contact a TCP, we recommend that Firms should consider whether other relevant parties such as regulators, law enforcement or the provincial Public Guardian or trustee in the relevant jurisdiction should be contacted. We assume that a Firm has the right not to contact a TCP if that person is suspected of exploiting the client.

We recommend that the CSA should provide an educational Guide for investors regarding the beneficial use of a TCP. See for example -Canadian Fund Watch: **Consider Naming a Trusted Contact Person for your Account(s)** http://www.canadianfundwatch.com/2019/11/consider-naming-trusted-contact-person.html

Temporary Holds

The proposed Rule allows, but does not require, a Firm to place a temporary hold on certain transactions if the Firm reasonably believes that financial exploitation has occurred, is occurring, has been attempted, or will be attempted.

The decision by a Firm to place a temporary hold should only be made by authorized and qualified supervisory and compliance staff. We recommend that Representatives who believe that a temporary hold should be placed on a transaction should follow their Firm's documented policies and procedures regarding the placement of temporary holds. These policies should provide criteria as to when a hold can be released (Q: Is a client's objection to a temporary hold sufficient grounds for lifting a temporary hold?) and if fees, interest charges and other expenses can continue to be charged during the hold period. We recommend a defined time period for the notification of holds –say, no more than two business days after the date that the Firm first placed the temporary hold –the notification can be either in person, orally by phone or in writing (which may be by email), of the temporary hold and the reason for the hold to all appropriate parties.

The CSA proposal that temporary hold requirements can be placed if there is a reasonable belief that, with respect to an instruction given by the client, the client does not have the capability or capacity to make financial decisions is integral to acting in the best interests of clients. We agree that holds should not be limited to cases of financial exploitation of vulnerable clients. This is entirely consistent with contemporary Wealth management principles promoted by Firms and CFR strategic intent. Any individual that is in a vulnerable state needs to be protected from mishandling or dissipating their own assets.

It is quite possible that CFR, if supervised and enforced, could be effective in curtailing mis-selling by registrants to vulnerable clients. As a fail-safe mechanism, we continue to advocate for the CSA to provide OBSI with a binding decision mandate. Low-ball settlements can be a life-altering experience for seniors.

Kenmar agree that the proposed temporary hold requirements should 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. It has been our experience that such transactions can be just as harmful to clients as withdrawals. Harm can also occur when cash or securities are transferred to another account within the Firm such as to a Joint Account. Based on the definition of *Temporary Hold*, we take this to mean that other non-suspicious transactions can continue to take place in the account e.g. transfer to a RRIF account, payment of a fee etc.

We agree with the CSA to not propose a time limit on temporary holds considering the complex nature of issues relating to vulnerable investors, and the length of time it takes to engage with third parties such as law enforcement and the relevant Public guardian and trustee. The proposal to require Firms to provide the client with written notice of the decision to not terminate the temporary hold, and reasons for that decision, every 30 calendar days makes a lot of sense from an investor protection perspective. Firms will need a tracking system to ensure the rule is adhered to and the contact information is kept up to date. It makes sense for the Firm to have policies and procedures that define when to escalate to external authorities such as the Public Guardian.

In response to the question *"Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed?"* we can only say "It is a start". It is our firm conviction that the harm done to vulnerable clients by registrants is at least equal to the harm done by outside parties interfering with investment accounts.

Some examples include selling a DSC mutual fund which could lead to redemption charges, or a Rep prematurely selling certain securities, which will lead to penalties assessed against the account that cannot be recovered. Exploitation of senior and vulnerable investors can result in the sale of long-held blue-chip stocks with a low tax basis, significantly increasing tax liabilities. Exploitative transactions can also

directly endanger a retired investor's quality of life. One far-too- common example that involves both exploitative sales and purchases is that of a recommendation to an elderly client to liquidate safe, income-producing investments (which may be funding their retirement or medical care) in order to invest in a "hot " IPO or a risky Off-book investment .

There are many recommendations to protect vulnerable investors that we have made to regulators that, if implemented, would materially improve vulnerable client protection. Example: A requirement of at least an annual review of KYC for vulnerable clients and retirees.

The bigger picture -protection of Vulnerable Clients from registrants

While we appreciate the efforts by the CSA to safeguard vulnerable clients from external forces, we take this opportunity to remind the CSA that the vulnerable clients of Firms are also subject to financial assault by dealing representatives and are material. For example, it took 20 years, but the CSA finally are taking steps to protect senior investors from the harmful effects of DSC mutual funds. These victims were vulnerable due to undue trust in the system, misleading "advisor" titles, a lack of financial literacy and short time horizons. Tens of millions of dollars have been incurred by investors via early redemption penalty fees. See MFDA DSC Sweep report http://mfda.ca/wp-content/legacy/bulletins/pdf/Bulletin0670-C.pdf We sincerely hope that the CSA will respond faster in future but at least, if current OSC proposals survive industry attack, DSC funds won't be able to be sold to clients over 6o years old ,even in maverick Ontario.

From our perspective. the biggest risks to vulnerable clients are unsuitable investments, unsuitable leveraging, Off-book transactions, financial fraud committed by Representatives and diminished cognitive capability that affects their financial decision-making. Other notable risk factors are complex products/strategies, deficient financial literacy, and social isolation. The consultation paper does not provide hard data regarding the incident rate of external client exploitation at investment dealers due to illness, impairment, disability or aging but we do have some data from OBSI on the disproportionate percentage of complaints they receive from seniors (38%) and we have empirical data on the harm Firms have inflicted on investors, including seniors.

Take Discount brokers for example. The Investment Industry Regulatory Organization of Canada's (IIROC) final *Guidance on Order Execution Only Services and Activities* aims to set out the sorts of products and services that discount brokers can provide to clients under the existing rules. The CSA may wish to review this guideline for its effectiveness in protecting vulnerable clients. We note that no securities regulator intervened when investors, including many seniors, were exploited for years by Discount brokers charging for services and advice they could not and did not provide. It has taken bold Class action initiatives to finally get Regulators to protect vulnerable Discount broker clients. One estimate of the annual losses incurred by investors runs to $250,000,000 who needlessly owned mutual funds with 1% trailing commissions.

Much more has to be done to reduce the risk of harm to vulnerable clients by Firms and their representatives.

The main vulnerable client areas for Firm focus should be:

- Detection and prevention of Off-book transactions
- Detection and prevention of personal financial dealings
- Improved recruitment practises and conduct standards for those personnel facing vulnerable clients
- Education and training of dealer staff facing vulnerable investors
- An KYC process that is senior-specific
- Constrain the use of misleading titles e.g. "Seniors Specialist"
- Immediate termination of any employee who uses a pre-signed form or adulterates documents previously signed by a client
- A professional standardized approach to risk need, tolerance and capability assessment ("risk profiling")
- Increased emphasis on investor compensation in sanction decisions
- Documented Rules for validating and accepting POA's
- Closer attention to Red flags that arise during the creation or modification of a POA, such as an apparent lack of connection between the client and the person being granted the POA or inconsistencies between KYC and the POA.
- Conduct fraud prevention seminars in libraries, community centers and retirement residences.

We encourage Firms to address issues not in the current proposals- change of address requests, a vital component to account protection and fraud detection; and change of beneficiary which could alter financial distributions upon death.

As for regulators, we believe the following actions would be very effective in protecting vulnerable clients:

- Redefine *vulnerable client* per FCA standard
- Make searching Firm and individual registration and disciplinary history more investor-friendly and fulsome
- Do not permit dealing Reps to act as POA's , executors or beneficiary of a non-family member client
- Increase Rep proficiency standards re de-accumulation accounts such as RRIF's
- Require a minimum KYC update period of one year for vulnerable clients
- Hold Dealers responsible in cases of Off-book transactions
- Introduce tougher rules for dealer complaint handling
- Give OBSI a binding decision mandate
- Provide objective Suitability criteria for fee-based accounts
- Add a requirement to document recommendations whenever a DSC fund is recommended to a vulnerable client
- Update constraints on " Free lunch seminars" targeted at seniors and retirees
- Adjust sanctions based on whether or not harmed clients were compensated
- Establish a Code for the treatment of vulnerable investors

- Consider establishing a Senior's Helpline based on the FINRA Model (see their report https://www.finra.org/investors/insights/finras-senior-helpline)
- Increase cooperation with insurance regulators to reduce regulatory arbitrage
- Dramatically increase fines and sanctions for those who exploit vulnerable clients

In April 2017, FINRA announced that the National Adjudicatory Council (NAC) revised FINRA's Sanction Guidelines to include a new principal consideration titled "Consideration for Vulnerable Customers." The NAC is FINRA's appellate tribunal for disciplinary cases and is a 15-member committee composed of industry and non-industry members. The new principal consideration reaffirms that financial exploitation of senior and other vulnerable customers should result in strong sanctions. While FINRA's decisions have acknowledged that exercising undue influence is an aggravating circumstance on a case-by- case basis, the new principal consideration makes clear that the Sanction Guidelines contemplate coverage for vulnerable individuals or individuals with diminished capacity. We encourage the CSA and SRO's to take similar stands.

Summation

Kenmar believe these proposals, if implemented by Firms, can help deter harm to vulnerable clients**.** We assume a Firm may disclose information related to the suspected financial exploitation of a vulnerable client to an associated financial institution but not to other financial institutions .

We strongly recommend that the **C**SA require some basic incident record keeping by Firms as regards the use of TCP advisories and statistics on temporary holds. Such information would be invaluable in establishing public and regulatory policy and allow objective assessment of the CSA proposal effectiveness.

Firms should provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of a vulnerable client to agencies charged with administering provincial adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation.

While we totally support the TCP/Temp Hold initiative, the CSA must realize it is dealing with an industry with a less than a stellar reputation. See *The Edelman trust barometer Canada 2020* The Edelman trust barometer Canada 2020 places Financial services towards the bottom end of the trust scale with just 56% saying they trust the industry, down 8 percentage points from 2019. This puts the industry between telecoms (52%) and consumer packaged goods (57%) but well behind technology (68%) and professional services (67%). Education ranks the highest (70%). https://www.edelman.ca/sites/g/files/aatuss376/files/2020-02/2020%20Edelman%20Trust%20Barometer%20Canada%20-%20FINAL.pdf

In October 2019, IIROC published Guidance advising firms to review their retail client account agreements and to change or remove clauses that absolve them of

liability, or that are inconsistent with regulatory obligations. During reviews of agreements from a variety of firms, IIROC discovered clauses that raised regulatory concerns by excluding a firm's liability for losses, including those caused by the firm, or relieving a firm from its securities law obligations, such as suitability. These Firms are trying to avoid accountability. Can such Firms be expected to be watchmen over others when they themselves are exploiters?

We urge the CSA and SRO's to put a priority on vulnerable client protection over their registrants. We believe this will have a huge payoff for all stakeholders.

Permission is granted for public posting.

If there are any questions, do not hesitate to contact us.

Ken Kivenko, President
Kenmar Associates

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Don't ignore impact of lowball offers on complainants, says advocate | Wealth Professional
https://www.wealthprofessional.ca/news/industry-news/dont-ignore-impact-of-lowball-offers-on-complainants-says-advocate/304458

Old Age and the Decline in Financial Literacy
The study shows the ability of the elderly to manage their money may decrease after they reach retirement age, but confidence in their ability to make good financial decisions stays the same. The study, found financial literacy declines at a consistent rate after retirement. The ability to answer basic financial questions decreases as respondents age, and this rate of decline almost exactly matches the gradual erosion of memory and problem-solving abilities later in life. This is worrisome because households aged 60 years and older control about half of the wealth in Canada. A financial professional can be a potent force in protecting the retirement income security of Canadians.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948627

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Bulletin #0797-P | MFDA Senior Investor Protection: MFDA
https://mfda.ca/bulletin/bulletin0797-p/

Palumbo fined $120,000 for taking cash from elderly clients | Sault Star
A Sault Ste. Marie mutual fund representative who misappropriated nearly $200,000 from three clients who were seniors, and gambled away more than half of that cash, faces a stiff six-figure fine and is permanently barred from any securities-related business. The three victims were 64, 78 and 84. MFDA considers them to be vulnerable clients. Their ages were considered "an aggravating factor worthy of a greater sanction." Palumbo falsified their signatures and submitted documents without their consent, the hearing found.
https://www.saultstar.com/news/local-news/palumbo-fined-120000-for-taking-cash-from-clients

CARP calls for Regulation of Investment Advisor Titles and Designations - CARP
https://www.carp.ca/2017/03/29/carp-calls-regulation-investment-advisor-titles-designations/

How mutual fund salespeople in Canada who lie, cheat and steal from clients are escaping justice | Financial Post
https://financialpost.com/news/fp-street/youre-talking-about-how-many-millions-how-sanctioned-mutual-sellers-in-canada-are-avoiding-stiff-punishment

IG settles with MFDA over suitability of DSC sales to elderly clients
The hearing involved two clients over age 90 sold DSC funds with seven-year redemption schedules
https://www.investmentexecutive.com/news/from-the-regulators/ig-settles-with-mfda-over-suitability-of-dsc-sales-to-elderly-clients/

Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends Office of Financial Protection for Older Americans: FCPB
https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf

Misleading Advisor Titles.....Misleading Seniors | Unpublished Ottawa
https://www.unpublishedottawa.com/letter/73867/misleading-advisor-titlesmisleading-seniors

CSA Staff Notice 31-354 Suggested Practices for Engaging with Older or Vulnerable Clients
https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20190621_31-354_suggested-practices-for-engaging-with-older-or-vulnerable-clients.pdf

REDRESS IN RETAIL INVESTMENT MARKETS International Perspectives and Best Practices: CFA Institute
Canada has a long way to go to meet these best practices. Hopefully, 2020 will see some progress made. Vulnerable financial consumers and others financially assaulted in the current system. Need to ban internal "ombudsman" as a starter.
https://www.cfainstitute.org/-/media/documents/article/position-paper/redress-in-retail-investment-markets-international-perspectives-best-practices.ashx

Regulators can do more to protect vulnerable, senior investors – InvestmentNews
https://www.investmentnews.com/regulators-can-do-more-to-protect-vulnerable-senior-investors-170676

Preventing and Intervening in Situations of Financial Abuse: Ontario
http://www.nicenet.ca/tools-preventing-and-intervening-in-situations-of-financial-abuse-ontario

Responding to Financial Exploitation - Seniors First BC
http://seniorsfirstbc.ca/for-professionals/responding-financial-exploitation/

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April 15, 2020

Delivered by email

TO:
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
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C/O:
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Request for comment on proposed amendments to National Instrument 31-103 and Companion Policy 31-103CP

Enhancing Protection of Older and Vulnerable Clients

Dear Members of the Canadian Securities Administrators:

We provide these joint comments in response to your request for comments. Each of our law practices include a significant focus on registrant regulation. We appreciate the opportunity to offer comment informed by both our experiences as former securities regulators and as counsel to the registrant community.

General comments

We encourage the Canadian Securities Administrators (CSA) to use only the term "vulnerable" when describing the class of investors that will get additional protections when the amendments are finalized and brought into force and effect. Using "age" and "vulnerability" together could lead to ageism instead of considered assessment of the facts in a particular client scenario.

We are also concerned that the amendments may lead to the assumption that registrants have an obligation to identify vulnerability. We suggest that registrants should observe client behaviour and patterns, but since they are not trained to identify vulnerability and lucidity in a person with dementia can fluctuate, should not be required to determine whether a client is vulnerable.

The "trusted contact person" concept carries risks with it. This person may have little or no information about the client's arrangements for personal representation and for financial decision making. This person could be the individual exploiting a vulnerable client.

To mitigate these risks, we recommend the CSA consider additional amendments to allow registrants to request information about a client's arrangements for incapacity.

To ensure this information request is well-founded and does not contravene privacy laws (i.e. ask only for that information required to carry out the service you provide), a registrant would have to disclose to a client that providing the information is to guard against an unanticipated mental incapacity and that if the client chooses not to provide the information, it will not prevent the registrant from serving the client (though it could put the client at risk should mental incapacity be an issue in future).

The CSA might want to consider, as well, that a registrant that later communicates with a trusted contact ought to understand whether that individual has a conflict of interest with the client or with other people close to the client. For example, is the trusted contact a beneficiary of the client's estate? Are there other family members in conflict with the trusted contact about what is best for the client?

We note that a portfolio manager acting under discretionary trading authority need not be included in the temporary hold requirements, only the requirement to take reasonable steps to get a trusted contact person's information on record.

We recommend that exempt market dealers in a transactional, rather than ongoing, relationship with a client, be subject only to the requirement to take reasonable steps to get information about a trusted contact person on record. These exempt market dealers do not have any insight into a client's ongoing mental capacity or vulnerability to exploitation. It is unnecessary to provide these dealers with a temporary hold mechanism.

Finally, we recommend that in advance of implementing the amendments, regulators, their advisory committees, and industry work on procedures that will be optimally effective. This will ensure that regulators', investors', and registrants' expectations all align, preventing misunderstanding or, worse, unintended legal risk.

Responses to questions

1. Assuming the trusted contact person requirement is implemented, it should apply to corporations, trusts, and partnerships that are closely held and are, in effect, part of an individual's personal investment plan. Know-your-client questionnaires often ask whether a corporation is a personal holding company in any event. We recommend that the trusted contact person be connected to the individual with instructing authority. It would be unwieldy for a registrant to have, for example, up to four trusted contact persons (assuming four 25% owners/beneficiaries) and it would be outside the scope of a registrant's responsibility to keep current information on all 25% or more owners/beneficiaries.

   If a closely held corporation, trust, or partnership is operating a business, it is not appropriate to request a trusted contact person. It is the responsibility of the business owners and managers to ensure a succession plan for an operating business, not a registrant's responsibility.

   The definitions of "financial exploitation" and "vulnerable client" could be revised to achieve this outcome; sub-section 13.2(8), which applies only to clients who are individuals, would also need amendment.

2. IIROC order execution only (OEO) investment dealers should not be required to take reasonable steps to get trusted contact person information.

   OEO dealers do not provide suitability recommendations. The trusted contact person concept is a tool for registrants concerned that their clients are unable to make sound investment decisions or are being exploited by others. An OEO dealer monitors client trading activity for capital markets gatekeeper concerns and for market integrity concerns related to trading activity. If an OEO dealer is required to take reasonable steps to get a trusted contact name on the account, what next? The OEO dealer does not have regular communications with a client about investment

decisions and has very little information, as a result, that would position the dealer to be able to protect a client against exploitation or failing mental capacity.

We recommend that OEO dealers communicate to their individual (and personal holdings) clients that it is important they have arrangements in place should they unexpectedly lose capacity to make financial decisions. The information could be provided in the Relationship Disclosure Information statement, as a short discussion about the risks of direct investing through an OEO dealer.

3. The temporary hold requirements should be confined to situations of potential financial exploitation.

   While registrants' relationships with clients may give them a view into mental capacity, and it may be reasonable for them to take reasonable steps to prepare for mental incapacity, if registrants have the ability to put a hold on a trade because they are concerned about mental capacity, this will actually open up new legal risks. The availability of the tool will naturally lead to expectations, particularly with 20/20 hindsight, that it be used. It will often be the case that the registrant's information is too deficient for it to make an informed decision about whether or not to place a temporary hold for mental incapacity.

   Registrants can document their disagreements with trading instructions, require clients to sign a waiver of their suitability recommendations, and/or decide to exit a client with whom they do not agree on investing strategy and decisions. Together with potentially having a trusted contact person and/or specific information about plans for financial decision making in the event of mental incapacity, the registrant does not need the additional tool of a temporary hold.

   The risks your stakeholders identified are important and deserve attention. However, it is also important to remember that individuals may have medical, legal, and accounting advisors available to them who will each have a part of the puzzle, as well as trusted family and friends. A registrant does not have these other proficiencies and skills. Securities regulators should design any additional requirements and tools for registrants mindful of the many investor protection requirements already imposed on registrants.

4. The temporary hold requirements should not be extended to purchases and sales of securities. Registrants can document their recommendations against a trade, then require the client to waive the suitability recommendation and/or exit the client. In addition, if a trusted contact person and/or specific mental capacity information is on record, the registrant can take steps to quickly come to a view about potential exploitation and the appropriate next steps to take.

   If a registrant suspects financial exploitation and has reason to believe the client is being coerced or manipulated into moving the account, we recommend the registrant be required to share its concerns and the reason for those concerns with

the recipient registered firm. This will enable a new firm to conduct a know-your-client interview that provides specific assurance about possible exploitation and make a client on-boarding decision that reflects the new firm's assessment.

5. The requirement to provide notice to a client at 30-day intervals is a better choice than putting a time limit on renewing temporary holds.

6. It is unnecessary to impose additional requirements. Registrants should educate and train their people to recognize and address potential exploitation or mental incapacity without imposing an obligation on registrants to recognize either. The requirement to take reasonable steps to get a trusted contact person's information on record, our recommendation that registrant's canvas a client's arrangements for financial decision making in the event of mental incapacity, and temporary hold requirements when a registrant has grounds to suspect financial exploitation are useful additions to a registrant's means of assessing and addressing vulnerability issues.

Courtesy drafting comments

We suggest, as a courtesy, that references to "lack of decision" be replaced with either "failure to make a decision" or "inaction", as the language is somewhat more active.

In paragraph 13.2(e)(ii), you need only refer to mental capacity; the balance of that paragraph could be deleted without changing the meaning.

We recommend that sub-section 13.19 (1) be reframed into positive language. For example:

> *A registered firm … may place a temporary hold in relation to the financial exploitation of a vulnerable client if the firm reasonably believes: …"*

To make sub-section 13.19(2) more concise, it could read:

> *If a registered firm reasonably believes that a client does not have the mental capacity to make financial decisions, the firm or a registered individual sponsored by the firm may place a temporary hold with respect to a client's instruction.*

In sub-section 13.19(3), we wonder if the notice ought not to be going, in addition to the client, to the client's trusted contact person or, even better, legal representative? Given the guidance in the Companion Policy, we assume this was an oversight.

Conclusion

We hope you find these comments constructive and are available to discuss them, should you find that helpful.

Yours truly,

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Par courriel
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Québec, le 18 juin 2020

Me Philippe Lebel
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OBJET : Projets de modifications visant à rehausser la protection des clients âgés et vulnérables

Me Lebel,

Il nous fait plaisir de vous transmettre nos commentaires en lien avec la consultation mentionnée en exergue.

Préambule

MICA Capital Inc. est un cabinet de services financiers inscrit auprès de l'Autorité des marchés financiers au Québec à titre, entre autre, de courtier en épargne collective et en marché dispensé. Un peu plus de 200 représentants y sont rattachés et œuvrent sur tout le territoire québécois. Cette entreprise est la propriété d'intérêts privés et n'est donc pas la propriété d'une compagnie d'assurances ni d'une institution financière.

MICA Capital Inc. permet de distribuer, par l'entremise de ses représentants, les fonds mutuels de plus de 60 sociétés de fonds d'investissement différentes ainsi que les produits du marché dispensé d'une dizaine d'émetteurs. Nous n'émettons aucun produit et ne distribuons donc aucun produit « maison ». Par ailleurs, MICA n'est pas membre de l'ACCFM (MFDA).

Nous tenons à vous remercier de nous donner l'opportunité de faire valoir notre position, nos arguments ainsi que nos pistes de solutions envisageables. La volonté manifestée d'obtenir les commentaires des intervenants de l'industrie démontre un souci d'être à l'écoute des principaux intéressés et nous l'apprécions.

Nous vous exposerons, dans les prochaines pages, nos commentaires et propositions.

Désignation d'une personne de confiance

Nous sommes d'accord avec le fait qu'il faille proposer aux clients d'identifier une personne de confiance. Nous croyons qu'une telle nomination rendra les personnes inscrites plus à l'aise et leur donnera le degré de confort nécessaire pour signaler toute situation de maltraitance à cette personne de confiance afin de protéger les intérêts des clients.

Le fait d'obtenir le consentement du client et de le consigner au dossier facilitera, à notre avis, les interventions des personnes inscrites et favorisera leur implication dans de telles situations. La personne inscrite saura alors quelles sont les informations qu'elle pourra divulguer à cette personne de confiance et dans quelles circonstances le faire.

Blocages temporaires

Nous sommes heureux de constater que le projet de modification prévoit le droit, pour la société inscrite ou la personne inscrite, de bloquer temporairement une transaction dans les circonstances énumérées.

Toutefois, nous sommes d'opinion que pour atteindre l'objectif visé par le régulateur, il eut fallu insérer dans le projet de modification la notion d'une immunité protégeant à la fois la personne inscrite et la société inscrite. Nous croyons que, à défaut de prévoir une telle immunité, les personnes inscrites ou les sociétés inscrites aient encore des réticences avant d'imposer un blocage temporaire craignant d'être poursuivis ou de faire l'objet d'une plainte disciplinaire.

Avec la proposition de modification telle qu'elle existe présentement, bien que l'on veuille donner de la latitude aux sociétés ou aux personnes inscrites, si surviennent des situations floues, nous craignons que des sociétés ne fassent pas de blocage. L'objectif visé par le régulateur est louable, mais si on veut donner aux sociétés inscrites les moyens de l'atteindre, l'immunité est un moyen nécessaire.

Par ailleurs, nous souhaitons que le régulateur précise qu'il n'est pas nécessaire d'avoir obtenu au préalable la nomination d'une personne de confiance pour imposer un blocage tel que prévu au projet de modification. Ces deux concepts (nomination d'une personne de confiance et blocage temporaire) doivent être indépendants l'un de l'autre.

<u>Les questions soumises à la consultation</u>

Nous répondrons ici aux questions soulevées dans cette consultation:

Question 1 :

Nous croyons que la personne inscrite devrait aussi être tenue de prendre des mesures raisonnables afin d'obtenir le nom et les coordonnées d'une personne de confiance pour la personne physique qui se trouve dans l'une des situations suivantes :

i) dans le cas d'une personne morale, elle est propriétaire véritable de plus de 25**%** de ses titres comportant droit de vote en circulation ou exerce une emprise directe ou indirecte sur ces titres;

ii) dans le cas d'une société de personnes ou d'une fiducie, elle en contrôle les affaires?

Au même titre que pour une personne physique détenant ses avoirs dans des comptes à son nom, une personne physique qui a le contrôle sur une personne morale ou une société ou fiducie aurait intérêt à obtenir la même protection advenant un état de vulnérabilité.

De plus, si la personne physique est impliquée avec d'autres personnes physiques dans une personne morale, société de personnes ou fiducie, nous croyons qu'au moins l'une de ces autres personnes impliquées devrait être identifiée comme étant une personne de confiance vers qui pourrait se tourner, au besoin, la personne inscrite ou la société inscrite, vu leurs intérêts directs.

Question 2 :

Nous n'avons aucun commentaire à formuler.

Question 3 :

Nous sommes d'opinion que les obligations en matière de blocage temporaire devraient viser les situations dans lesquelles un blocage est imposé parce que l'on estime raisonnablement que le client ne possède pas les facultés mentales pour prendre des décisions financières, et ne pas être réservées aux seuls cas d'exploitation financière de clients vulnérables.

Question 4 :

Nous pensons que les nouvelles obligations relatives aux blocages temporaires devraient s'appliquer non seulement sur le retrait de fonds ou de titres d'un compte, mais également sur la souscription, l'achat ou la vente de titres, et le transfert de fonds ou de titres à une autre société.

Question 5 :

Nous croyons qu'il ne devrait pas y avoir de limite temporelle pour les blocages temporaires. À notre avis, l'obligation de donner tous les 30 jours au client un avis de la décision de ne pas mettre fin au blocage temporaire, qui en préciserait les motifs, suffisent à protéger les investisseurs.

Question 6 :

Nous vous référons ici à nos commentaires précédemment exposés dans la présente en lien avec le blocage temporaire et la nécessité de prévoir une immunité en faveur de la personne inscrite et de la société inscrite.

<u>Conclusion</u>

En terminant, nous vous remercions de cette opportunité de vous soumettre notre point de vue quant aux questions soulevées.

Au besoin, nous demeurerons disponibles pour toute demande d'informations complémentaires ou encore, à participer à d'éventuelles rencontres d'échanges.

Veuillez accepter, Me Lebel, l'expression de nos salutations les plus cordiales!

Gino Sebastian Savard, B.A., A.V.A.
Président

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Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* Companion Policy 31-103CP to Enhance Protection of Older and Vulnerable Clients (the "Proposed Amendments")

The Investment Industry Association of Canada ("IIAC") welcomes the opportunity to provide comments on the Proposed Amendments to enhance the protection of older and vulnerable clients on behalf of our members.

Overall, the IIAC and its members are supportive of the Proposed Amendments developed by the Canadian Securities Administrators ("CSA"), the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association ("MFDA").

A number of IIAC firms currently employ the use of temporary holds when deemed necessary and many firms request the name of a trusted contact person ("TCP") from clients. However, the Proposed Amendments will provide for a consistent and harmonized approach across Canada to help vulnerable and

older clients receive enhanced protection through a firm and its advisors. It further provides clarity to firms as to what options are available to them when they suspect diminished capacity or financial exploitation.

The IIAC appreciates the challenge faced by the CSA in drafting regulatory provisions that try to balance a client's right to manage his/her own assets and make his/her own financial decisions, against those clients who may be vulnerable or suffer from diminished capacity and are in need of the firm's assistance and protection. In general, we believe the CSA has achieved this delicate balance in the Proposed Amendments, but have some suggested points to consider and concerns that we have outlined below, in addition to answering the questions posed by the CSA.

Trusted Contact Person

Purpose of the trusted contact person

Members are of the view that the CSA needs to further expand the language surrounding the role and purpose of the TCP, including some more details with respect to contacting the TCP in the case of an emergency or urgent situation. We suggest additional clarity regarding the fact that the TCP is contacted as needed as a resource when the client cannot be reached or to understand a client's actions. Furthermore, emphasis should be added regarding what information can be discussed with the TCP. The Companion Policy should also include a discussion of what actions a firm or individual registrants might take in situations when the TCP contacts the registrant.

The IIAC would also suggest some revisions to clause 13.2(2)(e)(iii) in the Proposed Amendments. We question the need for such a detailed list of individuals outlined in sections A through to D. For example, we are perplexed by the reference to making inquiries regarding the name and contact information of an executor of an estate under which the client is a beneficiary. Instead, we suggest that clause 13.2(2)(e)(iii) be revised to state 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 Companion Policy could then include some of the examples set out in clause (iii).

Contacting the trusted contact person and other parties

Although the Companion Policy states that registrants should encourage their clients to notify a TCP that they have been named and they may be contacted in certain circumstances, members still express concern that some clients may not alert their TCP in advance. Members also stated that privacy considerations are an issue when contacting an individual who is not a client. Although the Companion Policy refers to privacy obligations under relevant privacy legislation, members would welcome more guidance and clarity on this topic.

QUESTIONS POSED BY THE CSA

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?

Members agreed that the compliance burden that would result in trying to obtain TCPs in the above cases would be extremely onerous and challenging. Layering on top of this is the current challenges firms face today in identifying beneficial owners without a national registry. For persons exercising control over the affairs of an entity, a TCP may not be an appropriate person to address the interests of the entity, and it would be more effective to raise any concerns with a different representative or owner of the entity, rather than a TCP for the individual.

At this time, it would be best for the proposal to focus on individuals and perhaps re-examine the possibility of expanding the rule at a later time.

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).

The IIAC appreciates that the regulators recognize the unique challenges of the Proposed Amendments within the order execution only ("OEO") channel.

Clearly, clients who use OEO services do not engage in a typical advisor-client relationship and do not have any face-to-face interactions with any advisor. Without such a direct client-advisor relationship, registrants are unable to observe signs of financial exploitation or a decline in a client's mental capacity. Warning signs or red flags will not always be identified via a call centre where numerous registrants may engage with a client in a non-face-to-face setting. Additionally, as OEO firms do not undertake a suitability review nor provide recommendations, this means that red flags of unusual account activity, such as an explained withdrawal or a sudden change in trading behaviour, is not something for which these firms would necessarily review or identify.

As a result of the advisory context being so different, our OEO firms recommend that such firms be exempt from the requirement to obtain TCP information under proposed new paragraph 13.2(2)(e). Similarly, we would recommend that this exemption also be extended to online/digital advisors (i.e. robo) who do not engage in a conventional advisor-client relationship.

In the alternative, if the regulators decide to require OEO and online advisors to take reasonable steps to obtain TCP information, we encourage the CSA and SROs to recognize the need to tailor such provisions to the unique constructs of these business channels, ensuring that the Companion Policy provides greater flexibility for these firms to scale to their business models, is reasonable and acknowledges the specific considerations and factors that apply to OEO and online advisor interactions.

Additionally, OEO firms indicated that there may be situations where a temporary hold may prove useful, provided that the regulators focus on the reasonable belief provision, recognizing that these firms may not

always have the ability to be alerted to the fact that a client is now vulnerable and facing financial exploitation or has now suffered from a lack of mental capacity and is unable to make financial decisions.

Temporary Holds

General Principles

The IIAC appreciates that the Companion Policy expressly states that there may be other circumstances under which a firm or registrant may wish to place a hold on an account. Members are of the view, however, that further expansion and clarity of this point would be beneficial. Stating clearly that the Proposed Amendments do not prevent temporary holds in situations other than the financial exploitation of a vulnerable client or a lack of mental capacity is important given that members often face these very real scenarios. An example of one is romance frauds. In such a situation, the client is not necessarily vulnerable or facing mental incapacity. This is just one example that firms see where a client's account(s) may be compromised and there are many others where firms believe they need to act in order to protect their clients.

It is also suggested that the Companion Policy makes it clear that some firms may contract with clients the grounds and conditions where they may place a temporary hold.

The IIAC further recommends that, for the purposes of clarity, revisions to the drafting of section 13.19, in particular subsections (1) and (2). Upon very close reading and discussion among members, we recognized that subsection (2) which permits temporary holds in relation to the lack of mental capacity does not require the client to be deemed a "vulnerable client". To clarify this point, we suggest separating these provisions - for example, section 13.19 for financial exploitation of vulnerable clients, and section 13.20 for clients in relation to the lack of mental capacity.

There also was a great deal of discussion of the language "must not" in subsections (1) and (2). While all members agreed that mirroring the language contained in the Financial Industry Regulatory Authority's ("FINRA") Rule 2165 (i.e. firms "may" place a temporary hold) would be ideal, we understand that such language would require legislative amendment to allow for permissive authority in the rules and therefore, is not the optimal approach.

QUESTIONS POSED BY THE CSA

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?

The IIAC supports the Proposed Amendments as drafted to include temporary holds not only where there are cases of financial exploitation of vulnerable clients but also where clients are suffering from diminished capacity.

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?

We fully support that the CSA has gone beyond the FINRA Rule 2165, which limited temporary holds to disbursements only. Clients need additional protection to address the harmful financial repercussions of a transaction or transfer of cash or securities.

We would recommend that the definition of "temporary hold" be expanded to also include the opening of new accounts, especially given the situation where a client liquidates their holdings at one firm and transfers to another firm where the financial exploitation is continuing. We would also suggest that the SROs consider the need for exemptions from or amendments to their rules (for example, IIROC Dealer Member Rule 2300 Account Transfers and MFDA Rule 2.12 Transfers of Account) in instances where a temporary hold may be in place.

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?

The IIAC agrees that given the challenges of engaging with relevant third parties, a time limit on temporary holds would be ill advised.

We fully agree with the need for a firm to notify the client every 30 days of its decision to continue or terminate the temporary hold in general. However, in situations where a firm has communicated to the client that the firm needs specific information or action from the client in order to terminate the hold, then we do not believe the continual 30-day notice provision is necessary. For example, if the firm has indicated in its reasons for placing a temporary hold that they are awaiting the client to provide the firm with a legal opinion, then notice every 30 days that the firm is still awaiting this legal opinion should not be necessary.

The IIAC suggests that additional guidance be included in the Companion Policy providing greater clarity as to when a temporary hold should or could be removed, including guidelines about what needs to be documented in order to release the temporary hold.

6. Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

The IIAC would recommend that regulators consider the use of a safe harbour provision that would help ensure that when firms contact a TCP or initiate a temporary hold, the firm would not face the prospect of

litigation or a complaint. These complaints may take the form of a securities regulatory complaint or broader ones, such as a human rights complaint.

As an example, if a firm makes the decision to place a temporary hold on the sale of a security when it has a reasonable belief that a client is vulnerable and financial exploitation has occurred, and then the price of that security falls in value, a safe harbour in such a situation would protect the firm from liability for the loss of value of that security. Further, firms may receive privacy complaints and/or face litigation resulting from contacting a TCP as required under the Proposed Amendments.

The IIAC also recommends that the regulators consider the ability for firms to use temporary holds beyond cases that are simply transactional in nature. For example, firms have had cases where a client has faced pressure to change the name of beneficiaries on an account where the client is vulnerable and the firms believes financial exploitation is occurring. It would be useful in such situations for the firm to put a hold on the instructions and perhaps speak to the TCP. To further protect vulnerable investors, we recommend that the CSA extend the scope of temporary holds beyond a client's instructions for specific transactions to include the client's instructions more generally.

Members also suggested that although the Proposed Amendments are helpful, the CSA and SROs should also consider further training and resources for firms and their employees on how to navigate these situations. For example, the regulators should provide information on when to involve the public guardian and trustee, when to escalate matters to local authorities (including law enforcement), case studies and actions taken, and a help line similar to the one implemented by FINRA. Simply having registrants escalate the concern to supervisory, compliance or legal staff is not sufficient. These cases are extremely challenging and complex and additional education would be most welcome.

Thank you for considering our submission. The IIAC would be pleased to respond to any questions that you may have in respect of our comments.

Yours sincerely,

M. Alexander

ACCP
Association of Canadian Compliance Professionals

"Dedicated to improving compliance operations within the mutual fund dealer industry"

June 30, 2020

BY EMAIL

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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Email: comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director , Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Québec (Québec) G1V 5C1
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames

RE: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103")
and Changes to
Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103CP")
to Enhance Protection of Older and Vulnerable Clients

The Association of Canadian Compliance Professionals ("ACCP") is a national organization whose members are compliance professionals working with mutual fund dealers, exempt market dealers, mutual fund companies, insurance companies and MGAs, as well as industry service providers including legal, technology and independent consultants.

Manny DaSilva, Chair manny@canfin.com 905-829-0020 ext. 227

The ACCP fully supports the CSA's initiative to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients by proposing changes to NI 31-103 and NI 31-103CP. We welcome the opportunity to provide specific comments with respect to the Notice and Request for Comments dated March 5, 2020. Our specific comments are as follows:

Trusted Contact Person "TCP"

The ACCP agrees that the TCP concept will enhance investor protection and that it will be a useful resource that registrants can utilize in protecting their clients from financial exploitation and addressing concerns about a client's mental capacity.

The ACCP strongly supports the CSA's comment that registrants may proceed to open and maintain an account if a client refuses to identify a TCP provided that the registrant took reasonable steps to obtain TCP information.

We believe that reasonable steps should be satisfied by providing clients with an explanation of a TCP and the circumstances in which TCP information will be used by the registrant and by obtaining a recorded "yes" or "no" response from clients to a question asking them if they wish to provide a TCP. A "yes" response, of course, will also require the registrant to record the appropriate TCP information. In any case, the ACCP recommends that the CSA provide additional guidance as to what constitutes reasonable steps.

In response to the CSA's Question for Comment #1, the ACCP is of the view that the Proposed Amendment should only apply to individuals and not to corporations, partnerships, and trusts owned or controlled by an individual. We have no comment with respect to Question for Comment #2.

NI 31-103 Section 1.1 Definitions

The ACCP finds the proposed definitions of "financial exploitation", "mental capacity", "temporary hold", and "vulnerable client" to be both clear and appropriate.

NI 31-103 Section 13.2 (2) Know Your Client "KYC"

The ACCP has no objections or concerns regarding the proposed new TCP wording but does not believe that it should be included in 13.2 (2).

The inclusion of TCP as required KYC information in 13.2 (2) on an equal footing with fundamental KYC information such as investment needs and objectives, risk profile and

investment time horizons is inconsistent with CSA comments in NI 31-103CP that registrants can open and maintain a client account if the client declines to provide a TCP.

While 13.2 (2) begins with "*A registrant must take reasonable steps to …*", it has been the experience of our members that regulators have not permitted registrants to open and maintain accounts for clients who have not provided the KYC information described in 13.2 (2) despite the registrant taking reasonable steps to obtain such information. In other words, 13.2 (2) requirements are, for all practical purposes, mandatory and clients have not historically had any opportunity to decline to provide any KYC information set out therein when opening an account.

We suggest that TCP requirements be located elsewhere in NI 31-103 or wording be added to 13.2(2) that clearly indicates a registrant may still proceed to open and maintain a client account if the client declines to provide TCP information despite the reasonable efforts of the registrant.

NI 31-103 Section 13.19 Condition for temporary hold

The ACCP finds the proposed wording to be both clear and appropriate.

With respect to Question for Comment #3, we firmly believe that temporary hold requirements should apply to both situations – i.e. where there is a reasonable belief that the client has diminished mental capacity or the client is being financially exploited.

With respect to Question for Comment #4, we agree that the new temporary hold requirements should apply to the purchase, sale and transfer of securities in addition to the withdrawal of cash or securities from an account.

With respect to Question for Comment #5, we believe that the proposed 30 day notice requirement is sufficient and a prescribed time limit on temporary holds would not be any more beneficial to clients.

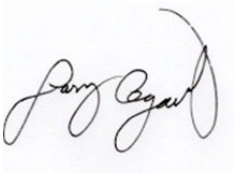
With respect to Question for Comment #6, we believe that the proposed amendments adequately address issues of financial exploitation and diminished mental capacity and no further action is required at this time.

However, we do have deep concerns that the temporary hold requirements may potentially expose registrants to significant increases in complaints and litigation. In this regard, we note that similar legislation in the United States, *FINRA Rule 2165 Financial Exploitation of Specified Adults* provides members and associated persons with a safe harbor from certain other rules when placing temporary holds. We encourage the CSA to ensure that Canadian registrants and associated persons have safe harbors of equal or greater stature as this will also increase investor protection by allowing registrants to act quickly, confidently and decisively when needed.

Thank you for the opportunity to provide our comments. Please contact me with any questions you may have.

Regards,

Manny DaSilva,
Chair, Association of Canadian Compliance Professionals



Gary Legault
Vice Chair, Association of Canadian Compliance Professionals

IFB CISF
Independent Financial Brokers of Canada
740-30 Eglinton Avenue West, Mississauga, ON L5R 3E7

July 6, 2020

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

Delivered to:
The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Corporate Secretary and Executive Director
Legal Affairs Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Submitted via email**:** comments@osc.gov.on.ca ; consultation-en-cours@lautorite.qc.ca

Subject: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* Companion Policy 31-103CP to Enhance Protection of Older and Vulnerable Clients (the "Proposed Amendments")

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on the Proposed Amendments to enhance the protection of older and vulnerable clients.

IFB is a national, professional association with approximately 3,500 members. IFB members are provincially licensed financial advisors. The majority are mutual fund registrants and/or life insurance licensees, although many hold other financial licenses or designations, such as the CFP®, which permit them to provide clients with more comprehensive advice and planning. Most IFB members are self-employed owners of small to medium-sized financial practices in their home community.

IFB CISF
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IFB supports the professional needs of its members, and the financial industry more broadly, by providing high quality in-person, online, and virtual education, access to a comprehensive professional liability program, and compliance support. An important part of the work IFB does on behalf of its members is to respond to regulatory initiatives and proposals which affect their business or their clients.

Advisors and firms need to be aware of how the provision of financial advice and associated investment strategies may need to change when addressing the needs of older investors, and the steps they can take to protect a client who exhibits signs of diminished capacity, or is at risk of financial exploitation.

IFB welcomes the CSA's initiative to adopt measures that will better position advisors and firms with the tools and guidance they need to respond in circumstances where financial exploitation or diminished mental capacity of older and vulnerable clients is suspected. IFB identified this need over a decade ago and since then has provided educational sessions specifically focused on these complex situations to help advisors understand and deal with such circumstances. In June of this year, IFB offered a session at its Virtual Summit which focused on mental health and the financial advice relationship. It has been our experience that such sessions are well attended and generate much discussion based on these advisors' own experiences with clients, and their desire to help them.

The kinds of personal interaction advisors have with their clients can put them in a unique position to identify possible red flags, but it is important to recognize that they are not trained mental health professionals. Advisors in these difficult situations often face uncertainty between wanting to do the right thing for their client and not knowing the acceptable boundaries of appropriate action, or to whom they should communicate their concerns. There is a clear, and growing, need for better information, tools, and training for advisors and firms in this area. While the CSA has included guidance in the Companion Policy on possible signs, IFB recommends that such training should be mandatory given the risks to registrants and clients if the TCP or a Temporary Hold is acted upon in an inappropriate way.

As a general comment, IFB views it as positive that the CSA's proposals will harmonize the Trusted Contact Person and Temporary Hold provisions across jurisdictions as well as with the existing guidance provided by IIROC and the MFDA. Clients should be able to rely on a similar standard of protection, regardless of their jurisdiction of residence or their advisor's registration category.

IFB suggests the definition of Mental Capacity in Section 1.1 be amended to read: "the ability to understand ***relevant*** information or appreciate the foreseeable consequences of a decision or lack of decision".[1] The requirement to understand <u>any</u> information is too broad and may prevent clients who have not reached this stage from accessing the protections. The ability to understand <u>relevant</u> information (in this case the more complex type of decision-making required for investment and financial planning purposes) lowers this threshold.

Our specific comments on the proposals follow.

[1] (2020) 43OSCB 1974

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Independent Financial Brokers of Canada
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Trusted Contact Person (TCP)

IFB supports the requirement to request that clients name a Trusted Contact Person (TCP). However, its purpose, and the circumstances under which it may be used, will have to be carefully explained in order to avoid confusing clients. For example, a client may have named a Power of Attorney, yet a TCP is not a power of attorney and cannot make financial decisions. These distinctions will require explanation. Some clients may not have a close friend or relative suitable to act as a TCP so, while naming the same person as a TCP and POA can be discouraged, it should not be prevented. We agree the TCP should not be the registrant (unless it falls under the close relative exemption which exists under IIROC and MFDA rules.)[2]

IFB believes it would be helpful to encourage firms to provide a copy of the client's permission to appoint a TCP directly to the TCP, provided the client agrees. This will ensure the TCP is aware of their designation by the client and what it means. This raises questions, however, around what will happen if the TCP refuses the appointment.

We note that there is no restriction on naming more than one TCP, and while we agree it may be useful to do so, we suggest that when that happens, the client should be asked to rank the TCPs in order of preference. This will prevent the registrant from potentially having to contact all TCPs when needed but provides an alternative in the event the primary TCP cannot be reached or is suspected of being involved in the financial exploitation of the client.

Questions:

1. Should registrants be required to take reasonable steps to obtain the name and contact number 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?

Expanding this requirement beyond individuals is likely to be challenging for registrants given the often-opaque nature of some corporate structures and beneficial ownership. This is a challenge that has often been cited in the context of identifying corporate clients as required under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* in Canada. However, there may be value in having a client name a TCP if they are a sole proprietor or own a small business where the ownership structure is less complex, and bearing in mind there is no obligation for the registrant to verify the TCP information.

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 OEO service context, particularly the requirement to take reasonable steps to obtain TCP information under new paragraph 13.2(2)(e).

[2] IIROC Rule 43.2(5)(i)(b); MFDA Rule 2.3.1

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Independent Financial Brokers of Canada
740-30 Eglinton Avenue West, Mississauga, ON L5R 3E7

We recognize that OEO firms do not have a traditional, client-facing, advisory role and, therefore, may not be able to detect financial irregularities, or a decline in mental capacity. However, we see no harm in providing the opportunity for clients to name a TCP as part of the client onboarding process.

Temporary Holds

IFB supports the framework outlined by the CSA. We note that FINRA requires a client to be notified of a temporary hold within 2 business days, whereas the CSA is suggesting notice be provided 'as soon as possible'.

Questions:

3. 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?

Subject to our earlier comment, that financial advisors are not mental health professionals, IFB agrees that in either of these cases it could be prudent to place a temporary hold.

4. 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?

IFB supports this provision.

5. Should we prescribe a time limit on temporary holds? Or is the notice requirement proposed by the CSA sufficient to protect investors?

IFB supports the 30-day requirement. However, we suggest the timeline for notification to the client of the hold should be specified, rather than "as soon as possible". There could be an exception for extenuating circumstances that prevent notification to the client within the timeline.

6. Are the proposed amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed?

IFB supports the amendments proposed by the CSA. However, we are concerned that, without a specific safe harbour provision, advisors and firms will face uncertainty and hesitate to act out of concern over potential liability and risk of litigation. We encourage the CSA to pursue a safe harbour provision that will shield registrants from such risks, provided they have acted in accordance with the regulatory requirements, in good faith, and have exercised reasonable care in fulfilling their obligations.

Certainly, if these proposed amendments are to be successful, registrants will require targeted training including signs to look for, red flags, and who to go to in their firm for direction. Internal staff at firms (COOs, CCOs, etc.) will also require specific training to be able to respond to an advisor's concerns and invoke any next steps. This groundwork must be laid to prevent undue delay, which could have devastating consequences for the client.

CSA members will need to monitor uptake of the TCP and use of the temporary holds to consider whether any modifications to the proposals are required or additional next steps.

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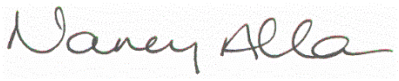
740-30 Eglinton Avenue West, Mississauga, ON L5R 3E7

IFB encourages the CSA to work alongside the Canadian Council of Insurance Regulators, its insurance counterpart on this initiative, so that clients who have life insurance and securities investments with the same advisor have similar protection. If an advisor is concerned about financial exploitation or notices diminished capacity, the advisor should have a protocol to follow for that client's account, regardless of the type of investment.

IFB has no objection to these amendments coming into force on the same date as the CFRs.

Thank you for the opportunity to comment. Should you wish to discuss, please contact the undersigned, or Susan Allemang, Director Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,



Nancy Allan
Executive Director
Email: allan@ifbc.ca

INVESTOR ADVISORY PANEL

July 9, 2020

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

RE: Proposed amendments to National Instrument 31-103 to enhance protection of older and vulnerable investors

On behalf of the Investor Advisory Panel (IAP), I wish to thank you for this opportunity to comment on the Canadian Securities Administrators' proposed amendments to National Instrument 31-103 to enhance protection for older and vulnerable investors. The IAP is an independent standing advisory committee, created and mandated by the Ontario Securities Commission to bring investor perspectives to the OSC's policymaking and rule development process.

We welcome this initiative by the CSA to promote widespread use of trusted contact persons and enable the placement of temporary holds on disconcerting transactions. We also endorse the CSA's balanced approach to creating a regulatory safe harbour for registrants who reasonably and responsibly invoke temporary holds.

Together, these protective measures will help safeguard many older and vulnerable investors from financial abuse and other harm.

It is worth noting that these proposals were developed quickly and efficiently through a collaborative process that could be adopted for other policy initiatives. Much preliminary work was done by the Vulnerable Investor Task Force (VITF) convened by the Investment Funds Institute of Canada. This was, in essence, a stakeholder council with participants from investment firms, investor advocacy groups and some regulatory agencies. They identified key issues, examined emerging reform proposals in other countries, and formulated ideas for regulatory mechanisms that would be effective and practical in a Canadian context.

We imagine this preliminary work facilitated the efforts of CSA staff tasked with refining the proposals. In addition, we expect the collaboration and practicality that marked the VITF's efforts will help foster widespread buy-in for the CSA's policy proposals from all constituencies in the investment community. For that reason, we urge the CSA to use stakeholder councils at the beginning stages of policy development wherever possible in future.

We would be very pleased to discuss these matters further, at your convenience.

Sincerely,

Neil Gross
Chair, Investor Advisory Panel

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Via Email

July 14, 2020

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

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
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Fax: 416-593-2318
comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and
Executive Director, Legal Affairs
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Fax: 514-864-8381
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Dear Sirs / Mesdames:

Re: **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 (the "Proposed Amendments").**

Edward Jones welcomes the opportunity to provide comments with respect to the Proposed Amendments.

Background

Edward Jones is a limited partnership in Canada and is a wholly owned subsidiary of Edward D. Jones & Co., L.P., a Missouri limited partnership. Edward D. Jones & Co., L.P. is a wholly owned subsidiary of The Jones Financial Companies, L.L.L.P., a Missouri limited liability limited partnership.

We are registered with the Investment Industry Regulatory Organization of Canada (IIROC) as an investment dealer and have more than 900 financial advisors located across Canada managing over $30 billion of assets under care.

As a full-service investment dealer, we help individuals achieve their serious, long-term financial goals by understanding their needs and implementing tailored solutions. At Edward Jones, we build close, ongoing relationships with our clients, beginning with a meeting between client and financial advisor to identify the client's specific long-term goals. We then develop a thoughtful investment strategy and a diversified portfolio of quality investments. Edward Jones believes that all clients, regardless of the amount of investable assets, deserve the services of a professional financial advisor and the benefits of professional advice. As a result, we do not provide order execution only services nor do we offer online investing or online advice.

Overview

We appreciate the opportunity to comment on the questions included in the Proposed Amendments and would like to thank the Canadian Securities Administrators (CSA) for providing an additional 45-day extension to comment in light of the COVID-19 developments. This extension not only provided us with the flexibility we needed to focus on critical business decisions, but it also provided us with the ability to refocus at the appropriate time so we could comment on this initiative, which we believe further enhances investor protection and thus warrants industry attention.

We agree with, and fully support, the substance and purpose of the Proposed Amendments. We believe the inclusion of provisions related to trusted contacts and temporary holds will provide additional measures for firms and advisors to address issues of financial exploitation and diminished mental capacity of older and vulnerable clients.

Comments

Below are our comments and responses to the specific questions posed in the CSA's request for comments.

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?

We do not believe that it would be necessary to contact a trusted contact person regarding matters related to corporations, partnerships or trusts. The identified trusted contact person may not be familiar with or otherwise in a position to address matters related to the entity. As such, it would be more effective to

address concerns with connected individuals or representatives as identified by other documentation such as the articles of incorporation, partnership agreement, or trust agreement.

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).**

As a full-service investment dealer, we are not in a position to comment and will defer comments regarding the appropriateness of the proposed framework in the order execution only service context to those dealer members who offer execution only services.

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?**

We believe that temporary holds should also apply to clients who do not have the mental capacity to make financial decisions and may therefore need protection from mishandling or dissipating their own assets. As such, we support the Proposed Amendments related to the applicability of temporary holds to clients with diminished capacity as drafted.

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?**

We agree that temporary holds should apply to the purchase or sale of securities and the transfer of cash or securities to another firm. These transactions can equally be as harmful to clients as withdrawals of cash or securities from an account. It is possible, for example, for a client who is being financially exploited to be pressured to transfer their accounts from one firm to another in order to avoid red flags being raised with the current institution. Applying temporary holds to transactions beyond the withdrawal of cash or securities gives firms the flexibility to employ protective measures, such as temporary holds, as deemed necessary and regardless of the transaction being requested. With respect to the purchase or sale of securities, there is a risk that the proposed transactions by the power of attorney or trading authority may not be suitable for the client.

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?

Recognizing that different circumstances regarding potential financial exploitation may require different timeframes to resolve, we agree with the approach in the Proposed Amendments to not impose a time limit on temporary holds. Imposed time limits may result in incorrect or inadequate actions being taken in order to meet prescribed deadlines.

6. **Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received**

We applaud the progress towards enhanced investor protection, which we believe is furthered by the Proposed Amendments. We would also suggest that the CSA also consider the following as next steps are being contemplated:

Additional Guidance

Additional guidance on regulatory expectations with respect to temporary holds would be beneficial. Specifically, we would suggest additional guidance on:

- Under what circumstances a trusted contact may be contacted;
- What information may be disclosed to a trusted contact; and
- What is expected when a temporary hold is lifted, and a transaction is either subsequently completed or not accepted.

This additional guidance will help to ensure consistency of application and clarity on expectations once a temporary hold is in place.

Safe Harbour Provision

We believe the CSA should also consider including a safe harbour provision to protect firms from client complaints, litigation or other consequences with respect to, for example market losses, privacy complaints, and allegations of age discrimination, should they utilize temporary holds in response to potential or real financial exploitation or other issues with diminished capacity.

Implementation Date

We believe the implementation of the Proposed Amendments should align with the implementation of the Know-Your-Client provisions of the Client Focused Reforms (i.e. December 31, 2021). The new trusted contact and temporary holds requirements will require technology enhancements, which 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 of any program and policy changes, as well as systems and technology changes. As such, we would strongly recommend that the Proposed Amendments be finalized by the Fall of 2020 to allow firms sufficient time to adequately plan and prepare for implementation, especially where technology enhancements are required.

We would be pleased to discuss and elaborate if requested.

Yours truly,

Wayne Bolton

Wayne Bolton
Principal, Compliance

c. David Gunn, UDP, Edward Jones
Nawaz Meghji, General Counsel (Canada), Edward Jones

INDIVIDUAL INVESTOR

July 15, 2020

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Autorite des marches financiers
Place de la Cite, tour Cominar
2640, boulevard Laurier, bureau 400
Quebec, Quebec G1V 5C1

RE: Request for comments-Nat. Instrument 31-103 to enhance protection of older and vulnerable investors

Dear Members of the Canadian Securities Administrators:

I provide these comments in response to your request , and out of deep concern that the views of individual investors, who are very much 'stakeholders' in this matter, have not in my view been seriously and actively sought.

While individual investors can undoubtedly appreciate that financial advisors and brokerage firms need to protect themselves from legal and financial liability while serving their clients of any age, we would like to be informed and consulted before any organization with a mandate to protect investors undertakes a project which could, if inappropriately handled, fail to respect the autonomy of investors of any age, and/or attempt to restrict the right of investors to invest as they so choose.

The stated purpose of your proposal is 'to enhance protection of older and vulnerable clients'. I have also seen the term 'seniors' used numerous times in your documents. It is, in my view, essential to state clearly and definitively from the outset your understanding of the terms "older", "vulnerable", and "senior". I applaud the response of Jakab and Armstrong dated April 15, 2020 which states:

> "We encourage the Canadian Securities Administrators (CSA) to use only the term "vulnerable" when describing the class of investors that will get additional protections when the amendments are finalized and brought into force and effect. Using "age" and "vulnerability" together could lead to *ageism* instead of considered assessment of the facts in a particular client scenario." (italics mine)

Further, your "Request for Comments" notes that "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."

I would also encourage the CSA to consider the case of Warren Buffett! He is neither vulnerable nor subject to any 'aging process limitation', but he is undoubtedly older. Would you, in all seriousness, attempt to force him to give an adviser the name of a Trusted Contact Person? While not as famous perhaps, there are a large number of older investors who are perfectly capable of conducting their own affairs and do not deserve to be lumped into a catch-all category such as 'older and vulnerable clients'. Some are, some aren't ! By the same token, there are large numbers of clients under the age of 50 who are not capable of competently managing their own financial affairs.

Again to second the response of Jakab and Armstrong:

> "The 'trusted contact person' concept carries risks with it. ... To mitigate these risks, we recommend the CSA consider additional amendments to allow registrants to request information about a client's arrangements for incapacity. To ensure this information is well-founded and does not contravene privacy laws (i.e. ask only for that information required to carry out the service you provide), a registrant would have to disclose to a client that providing the information is to guard against an unanticipated mental incapacity and that if the client chooses not to provide the information, it will not prevent the registrant from serving the client (though it could put the client at risk should mental incapacity be an issue in future.) "

As an investor, and understanding your wish to protect truly cognitively compromised clients, I am prepared to accept a request from a brokerage firm or financial adviser to provide the name of a TCP if, and only if:

- it is not mandatory at any time, now or in the future, in order to continue to work with that advisor or brokerage AND
- it is to be requested from all investors of any age AND
- each investor is provided with written confirmation of their choice to provide the name or to decline to provide a TCP

In conclusion, please remember that most investors have many other personal and professional contacts to consult who are also concerned with the client's well-being: a lawyer, an accountant, a doctor, and close family and friends. While it is admirable for your organization to want to establish policy to protect individual investors, we all expect a policy which will continue to respect each individual's right to autonomy in their personal and financial life.

Thank you for the opportunity to comment on my reservations about this initiative along with my hope that you will make amendments that will serve your ultimate goal of protecting truly vulnerable investors. I am disappointed that more individual investors have not responded to your invitation. The label 'stakeholder' definitely needs to include the breadth of opinions of all investors when a consultation such as this is taking place. I am available should you wish to discuss my comments further.

Very truly yours,

Linda Clunie

July 16, 2020

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

Submitted by e-mail to:

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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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consultation-en-cours@lautorite.qc.ca

Re: Proposed Amendments to CSA National Instrument 31-103 to Enhance Protection of Older and Vulnerable Clients

Sun Life Financial Investments Services (Canada) Inc. (SLFISI) commends the work being done by the CSA to enhance protection for older and vulnerable clients. We believe the proposed amendments regarding trusted contact persons and temporary holds are reasonable steps towards protecting vulnerable clients, and generally support the proposed amendments to National Instrument 31-103. Our comments are summarized below.

Trusted Contact Person (TCP)

Question 1. The CSA has 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 agree that TCP provisions should not apply to a client that is not an individual. In addition, we note that, as drafted, the amendment falls within the Know Your Client section of the National Instrument and could be interpreted as a KYC obligation for firms, thus requiring registrants to request TCP information from all clients, regardless of the client's situation. We suggest the amendment be revised to allow firms flexibility in applying the TCP protection measure, perhaps through a risk-based approach (e.g., based on some criteria that would indicate a client could be at risk of being vulnerable or becoming vulnerable in the future). Further, we suggest it be set out as a new TCP section 13.2(2)(2.1) in support of a risk-based approach to applying the TCP measure.

Temporary Holds

Question 3. 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?

Question 4. 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?

We agree that a Temporary Hold is a reasonable client protection measure in situations where the client is vulnerable and financial exploitation could occur, or where the client lacks the mental capacity to make financial decisions. We further agree that withdrawals, purchases and transfers could all potentially harm the client in cases of financial exploitation, and Temporary Holds should be a tool that firms can employ to protect their clients in these scenarios.

We note that the National Instrument amendments do not offer safe harbour measures if legal actions are taken against firms that place Temporary Holds in order to protect clients. Further, as noted in the Companion Policy, firms and advisors are not judges of mental capacity. This element of uncertainty in a firm's ability to determine a client's mental capacity, combined with a lack of safe harbour, may limit the use of Temporary Holds as a client protection measure. We encourage the CSA to provide some safe harbour measures for firms.

Thank you for the opportunity to provide our comments for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karen Woodman
President, Sun Life Financial Investments Services (Canada) Inc.

July 16, 2020

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
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Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Companion Policy to Enhance Protection of Older and Vulnerable Clients

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OVERVIEW

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and Companion Policy (**CP 31-103**) to Enhance Protection of Older and Vulnerable Clients (both, the **Consultation** or the **Proposed Amendments**).

PMAC represents over 280 investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, most of our members are also registered as investment fund managers and/or exempt market dealers. PMAC's members encompass both large and small firms managing total assets in excess of $2.8 trillion for institutional and private client portfolios.

KEY RECOMMENDATIONS

- Establish a regulatory safe harbour for registrants that act in good faith to contact trusted contact persons (**TCPs**) and/or place temporary holds on client accounts (**Holds**) within the requirements of the Proposed Amendments in the short term while in the longer term, work with the necessary federal and provincial stakeholders to establish a legal safe harbour for registrants that act in good faith to contact TCPs and/or place Holds;
- Clarify that the TCP must be of the age of majority in their own jurisdiction of residence, and that the TCP does not need to reside in the same jurisdiction as the client;
- Move from a 30-day notification requirement regarding the status of a Hold to a more principles-based notification framework where status updates would be required for significant developments;
- Enhance third-party supports for registrants and clients in the case of suspected financial exploitation and abuse and/or diminished capacity; and
- Empower investors with information about registration and registration categories through the provision of easier-to-find and understand information on the National Registration Search Database.

FEEDBACK

Vulnerable investor protection measures

PMAC is very supportive of the work done by the various members of the CSA in the form of research, registrant and investor outreach and this Consultation to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients. PMAC has recently published a resource on this issue for member firms titled "PMAC Guidelines to preparing a senior/vulnerable investor policy" which we believe supports the goals of the CSA in helping registrants to create policies, procedures and training to address issues particular to vulnerable and/or senior investors.

Subject to the specific comments in this submission, PMAC believes that it will be beneficial to codify the Proposed Amendments to provide registrants with a set of tools and expectations around TCPs and placing Holds.

Additionally, because Canadian investors interact with firms regulated by the CSA as well as by the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**), we are pleased to see that the Proposed Amendments will also apply to firms registered with IIROC and the MFDA.

Safe Harbours Required

As fiduciaries, PMAC firms take their client obligations, including privacy obligations, very seriously.

The Proposed Amendments require registrants to take reasonable steps to obtain a client's written consent to contact a TCP in prescribed circumstances and, with respect to that requirement, the CSA has included generic language[1] referencing firms' potential privacy obligations in the Proposed Amendments to CP 31-103. Rather than cautioning registrants about privacy requirements in the CP 31-103, PMAC believes that a "safe harbour" provision within NI 31-103 with respect to privacy obligations would provide certainty and encourage firms to reach out to a TCP when circumstances warrant, which would benefit vulnerable investors. We recommend that the CSA express an intention to establish legal protection for good-faith compliance with the Proposed Amendments.

PMAC continues to have concerns about the interaction between the Proposed Amendments and applicable privacy legislation. The Canadian Centre for Elder Law and the Canadian Foundation for Advancement of Investor Rights set out the dilemma that registrants may face when determining what to do in instances of suspected diminished capacity or financial abuse in the Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity (the **Vulnerable Investors Report 2017**):

> Financial services firms are already concerned about a Catch-22: either they report suspected issues and may possibly be sued for the breach of disclosure of confidentiality or privacy, (including the risk that they have alerted the abused accidentally) or they do nothing and risk being liable for failure to prevent the abuse or taking instructions from someone who may not have the mental capacity to give them[2].

The Vulnerable Investors Report 2017 contains 6 recommendations, 3 of which the CSA have adopted in the Proposed Amendments and/or through the Client Focused Reforms, notably: obtaining a TCP from clients, providing firms with the ability to place a Hold and mandatory education and training for employees. However, the recommendation to establish a legal safe harbour in the Vulnerable Investors Report 2017 is noticeably absent from the Proposed Amendments. That recommendation reads as follows:

> "Regulators should implement a legal safe harbour that shields firms and their representatives from regulatory liability if they act in good faith and exercise reasonable care in making a disclosure about a client to his or her designated TCP or specified government agency or securities commission or other designated reporting body. In addition, a regulatory legal safe harbor should be extended to the firm and their representatives for placing a temporary hold on disbursements or trades from the account of a vulnerable client, provided the firm and its representatives act in accordance with the regulatory requirements (which are discussed in this report) including the applicable provisions of a regulator-approved conduct protocol.

[1] Regarding TCPs, the CP 31-103 states: "When contacting a TCP, registrants should be mindful of privacy obligations under relevant privacy legislation and client agreements relating to the collection, use and disclosure of personal information". Regarding Holds, the CP 31-103 states: "Firms should also assess their contractual and statutory privacy obligations before contacting the TCP, other individuals or organizations with the intent of sharing or obtaining personal information regarding a client".

[2] Vulnerable Investor Protective Action and Legal Safe Harbour Project

Canadian governments at provincial and federal levels should undertake legislative law reform to provide for a legal safe harbour from civil liability where the regulatory requirements are met including reform of the PIPEDA legislation. While beyond the scope of this project, it is also strongly recommended that the PIPEDA sections dealing with 'financial abuse' intervention undergo separate law reform to provide clarity of language and terminology, and to ensure that the responders indicated in the PIPEDA section match up with provincial responses and legal terminology.

In the meantime, courts should give administrative deference to the securities regulatory regime when determining whether there is any civil liability (including breach of privacy laws) resulting from placing a temporary hold on trades or disbursements or disclosures to third parties as set out above, to the firm and/or its representatives in accordance with the framework and requirements set out in the report.

Firms and their representatives should be protected from claims of breach of privacy or other breaches of obligations that might otherwise arise from a disclosure to the TCP or a securities regulator or other authority (government agency or police) if they act in good faith and exercise reasonable care in making such disclosure or in respect of notifications as a result of holds on disbursements or trades. In order to obtain the benefits of a safe harbour, the firm and its representatives must have acted with reasonable care and in accordance with:

a) the regulatory requirements established by the securities commissions;
b) the applicable provisions of an accepted conduct protocol by the securities commissions; and
c) investment firms must have undertaken appropriate education and training of all staff, representatives and qualified individuals on elder abuse, financial exploitation of vulnerable investors, undue influence and diminished mental capacity issues."

While we acknowledge that privacy legislation is not within the jurisdiction of the CSA, we nonetheless feel that a more explicit safe harbour from civil and regulatory liability for firms and individual registrants who contact TCPs, place Holds and/or report suspected financial abuse is required. PMAC strongly urges the CSA to amend the Consultation to include a regulatory safe harbour when firms follow the spirit of the Proposed Amendments, and to urge the necessary legislative changes federally, provincially and territorially to implement a safe harbour from civil liability on an expedited basis.

PMAC notes that the U.S. Federal Senior Safe Act protects "covered financial institutions," which includes investment advisers (the U.S. equivalent of portfolio managers), and associated persons called "eligible employees" from liability in any civil or administrative proceeding for reporting a case of potential exploitation of a senior citizen to a list of specific government agencies (a "covered agency,"), provided that they have been trained to identify and report exploitative activity against seniors before making a report, and that the report is made in good faith and with reasonable care. We note that the Consultation briefly references the CSA's consideration of the U.S. policy landscape, noting that the CSA adopted certain elements of the U.S. regime where appropriate for Canada.

In the absence of introducing an explicit safe harbour for firms and their registered individuals, it would be helpful to better understand why the CSA did not adopt this aspect of the U.S. Seniors Safe Act.

We further believe that, despite the CSA's statement in the Consultation that "there is nothing in Canadian securities legislation that prevents registered firms and individuals from placing a temporary hold that they are otherwise legally entitled to place", additional comfort is required for firms that place a Hold over client assets, including potentially reporting the firm's reasonable belief of financial exploitation and/or diminished capacity to an external body. The Vulnerable Investors Report 2017 recommended the imposition of a regulatory safe harbour with respect to temporary holds and PMAC urges the CSA to provide additional comfort to firms of their ability to place such holds, when complying with the Proposed Amendments in good faith.

We believe that further clarity and discussion on the issue of regulatory and legal safe harbours will be critical for firms and, ultimately, will empower registrants to help their vulnerable investors through contacting a TCP, imposing a Hold and/or reporting suspected financial exploitation to an appropriate external body.

Consultation Questions

PMAC has the following comments on certain of the questions set out in the Consultation, as well as some other general comments. The questions are numbered as they appear in the Consultation.

A) Trusted Contact Persons

To eliminate confusion as to the requirements regarding who can be a TCP, we believe additional clarity is required in the drafting of Section 13.2(2)(e). While PMAC believes that the CSA intends that the TCP should be a person of the age of majority in the *TCP's* own jurisdiction of residence, there has been some confusion as to whether the CSA intended that the TCP must be of the age of majority and live in the *client's* jurisdiction of residence. The latter would be unduly onerous for many clients and we do not believe this is what the CSA intended. We offer the following alternative drafting for consideration:

> 13.2(2)(e) obtain from the client the name and contact information of a trusted contact person, who is an individual of the age of majority or older in the ~~individual's~~ trusted contact person's jurisdiction of residence, and the written consent of the client for the registrant to contact the trusted contact person to confirm or make inquiries about any of the following […]

B) Temporary Holds

> **Question 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?

Because the decision to impose a Hold requires a firm to hold a reasonable belief and firms must act in the best interest of clients, we do believe that where a client may not have the mental capacity to make financial decisions, a firm should be permitted to place a Hold in accordance with all of the requirements of the Hold provisions in the Proposed Amendments and the firm's own policies and procedures.

> **Question 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?

PMAC believes that the wider the scope of Hold powers provided in the Proposed Amendments, the more each firm will be able to assess the appropriate scope for each Hold on a case-by-case basis, thereby potentially improving the range of actions a firm can take to protect a client's assets. With respect to transfers, PMAC believes the CSA should provide additional comfort and guidance in the CP 31-103 about the expectation and ability for firms to share information with receiving institutions about suspected financial exploitation and/or financial abuse. Once a registrant has identified red flags about a client and begins to ask questions, it is possible that the client's assets will be transferred to a new firm where it may take time for the new firm and its registrants to identify those same red flags as to capacity and/or diminished expectation (or these may not be identified by the new firm). Additional guidance and assurances that firms will be protected from liability for any reasonable delays (and changes in markets) that may occur while conducting due diligence on a transfer out to another firm and from sharing reasonably held suspicions of financial exploitation and/or diminished capacity would be helpful for firms. We believe that this information sharing should also be expressly covered by the safe harbour.

> **Question 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?

Firms do not believe that imposing a time limit on Holds would be beneficial to investors. Firms can think of several situations in which, notwithstanding best efforts by the firm to ascertain whether a client has diminished mental capacity or is the subject of financial exploitation, the answers are not within the firm's ability to generate and the firm must rely on third parties. Requiring a Hold to be lifted after an arbitrary period of time could result in investor harm and/or rushed and incomplete analyses of each case.

Moreover, PMAC members are concerned that requiring notice every 30 days of the decision not to terminate a Hold could be very onerous and costly without ultimately bringing new information to the investor. Moreover, since firms have the ability to select which portion of the client's assets should be subject to the Hold, there is room for firms to ensure that the client is still able to access

funds for routine disbursements such as long-term care costs, living costs, etc. PMAC strongly encourages the adoption of a less prescriptive timeframe for providing notice of a decision of whether to terminate a Hold to allow firms to balance the need to communicate with clients on this important issue while not being made to generate a report that may or may not have new, or readily available, information every 30 days.

> **Question 6:** Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

As discussed above, PMAC believes that more express liability protections for firms and individual registrant that adhere to the requirements in the Proposed Amendments would enhance firms' comfort when imposing Holds as well as to more effectively and efficiently resolve and lift these Holds by being able to communicate information to outside agencies such as the police and regulatory authorities, and, in the case of transfers, with other registrants and financial institutions.

The Report on Vulnerable Investors 2017 acknowledges the lack of clarity that firms are concerned about, stating:

> Stakeholders agreed that the lack of clarity about the legal ramifications of taking protective action is a profound and significant deterrent to firms taking supporting and protective steps to help vulnerable investors. Stakeholders unanimously (save for one stakeholder who thought the safe harbour should only be regulatory), agreed that a legal safe harbour provision, which shields firms and representatives from both regulatory and civil liability for acting in good faith to protect a vulnerable investor, is absolutely critical[3].

While outside the jurisdiction of the CSA, PMAC believes that additional resources are required to assist firms in reporting and/or assessing potential financial exploitation or diminished mental capacity. Without external resources with expertise in criminal, social, mental health and forensic accounting or cyber skills, firms are unlikely to be able to do more than identify red flags and take certain limited steps to determine whether a client is at risk of or the target of financial exploitation or experiencing a decline in mental capacity. Members grapple with the challenges posed by asking advisers to be on the front lines of detecting the red flags of diminished mental capacity. Additional resources from the CSA or external bodies that provide principles-based guidance, plain-language educational materials surrounding these issues would be welcome.

> **Transition Question:** If the Proposed Amendments were to be approved, they would come into force at the same time as the Client Focused Reforms relating to know-your client. Comments on this transition plan?

Subject to greater clarity around Holds, firms are comfortable with the Proposed Amendments coming into force at the same time as the Client Focused Reforms relating to Know-Your-Client.

[3] Report on Vulnerable Investors 2017 at page 68

Empower Investors

Additionally, while PMAC agrees that registrants are often at the forefront of being able to identify and flag potential financial exploitation or diminished mental capacity, PMAC would like to reiterate the importance of easy-to-access and understand information about who investors are trusting with their assets. The SEC views the Senior Safe legislation as going hand-in-hand with increased investor awareness of registration categories. SEC Chairman, Jay Clayton noted:

> Financial professionals can provide a critical frontline role in identifying and reporting senior financial exploitation … [The SEC] also encourages all investors, including our most vulnerable, to ensure they are dealing with a registered investment professional[4].

We believe that bolstering protection for vulnerable investors is an incredibly important – and multi-faceted – issue. In addition to the role that registered firms and individuals play in identifying potential financial exploitation and/or diminished mental capacity, we believe that the CSA have a crucial role to play in helping investors understand to whom they are entrusting their assets. PMAC has long called for improvements to the CSA's National Registration Search (**NRS**) to empower investors to research and understand their registrant. For example, the NRS should be modified such that:

- It no longer requires the exact spelling of a registrant's name to locate the firm and/or individual;
- On the search results page for each registrant, explain in plain language the registrant's category of registration along with a simple-to-understand explanation of the types of services the registrant can provide as well as of the duty of care to which that registration category is subject;
- On the search results page for each registrant, clearly set out any terms and conditions on registration along with a plain language explanation of the reason for those terms and conditions. I.e.: are they imposed as standard terms & conditions because an individual is a Client Relationship Specialist, or because the firm is an on-line adviser, or, are the terms and conditions the result of disciplinary action and, if so, a plain language explanation of the disciplinary action; and
- Provide information across agencies including CSA members, SROs and other regulatory bodies such as those that regulate insurance and mortgage investment representatives.

CONCLUSION

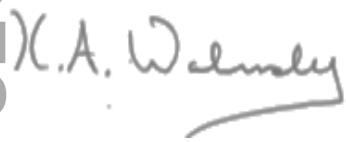
We would like to thank the CSA for the opportunity to respond to this Consultation and for providing a draft framework to help registrants help their vulnerable clients. While we have commented on several aspects of the Proposed Amendments, we believe that the key element for the CSA to address is that safe harbours are required to make the Proposed Amendments more impactful and to enable firms to solicit information about clients and report suspected financial abuse or diminished mental capacity for the benefit of these clients without fear of liability.

If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018.

[4] SEC, NASAA, and FINRA Issue Senior Safe Act Fact Sheet to help promote greater reporting of suspected senior financial exploitation, May 2019

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
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July 17, 2020

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The Secretary
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Me Philippe Lebel
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Quebec

Re: CSA Proposed Amendments to NI 31-103 and 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to Enhance Protection of Older and Vulnerable Clients

Dear Sirs and Mesdames:

Manulife is pleased to provide this submission to the Canadian Securities Administrators (CSA) on enhancing the protection of older and vulnerable clients.

About Manulife

Serving one in five Canadians, Manulife is a leading financial services organization offering a wide range of protection, estate planning, investment and banking solutions through a diversified multi-channel distribution network.

Manulife Investment Management Limited and its entities provides a range of investment fund products and a range of services including acting as a portfolio manager and investment fund manager. In addition, it provides comprehensive asset management solutions for institutional investors and investment funds in key markets around the world. This investment expertise extends across a broad range of public, private and alternate asset classes, as well as asset allocation solutions.

Manulife Securities consists of Manulife Securities Investment Services Inc., a mutual fund dealer, Manulife Securities Incorporated, an investment dealer, and Manulife Securities Insurance Inc., an insurance agency, each of which is a wholly owned subsidiary of Manulife. Our advisors provide Canadians with access to stocks, bonds, mutual funds, and other investment products as well as a suite of life and health insurance solutions.

Overview

Manulife commends the initiative of the CSA, the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association (MFDA) to provide registrants with tools to combat financial exploitation of senior and vulnerable investors and to address issues arising from a client's diminished mental capacity to make financial decisions.

Manulife

We appreciate the policy intent to uphold an investor's autonomy while protecting them from issues arising from vulnerability and undue influence and believe that the CSA has reached an appropriate balance in this regard.

The proposed amendments are timely given Canada's growing population of seniors and will provide enhanced protection to senior and vulnerable clients as well as clarity and valuable resources to registrants to respond to concerns of diminished mental capacity or financial exploitation of their clients. We offer additional points for your consideration below.

Temporary Holds

While many investors, regardless of age, rely heavily on their advisor to guide their financial decisions, it is important for a client to be capable of understanding relevant information and appreciating the reasonably foreseeable consequences of their decisions to manage their investment decisions.

In this regard, we recommend that 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 in addition to cases of financial exploitation of vulnerable clients.

Information Disclosure to the Receiving Dealer Concerning Account Transfers

We strongly agree that transactions and transfers, in cases of financial exploitation or diminished mental capacity, can be just as harmful to clients as withdrawals. As such, we support the proposal that the temporary hold requirement apply to transfers of cash or securities to another firm.

In situations where dealers are taking appropriate steps to protect a vulnerable client where there is suspected financial exploitation or a lack of mental capacity, the dealer may receive an order to transfer the entire account (in-kind or in cash) to another dealer. The receiving dealer may know nothing of the issues or suspected exploitation that are known to the current dealer, and therefore will not take steps to adequately protect the vulnerable client.

Given that firms cannot disclose confidential information of clients to other firms, we recommend that the new requirement permit a dealer faced with a request to transfer the entire account of a vulnerable client where there is suspected financial exploitation or concerns about diminished mental capacity to put a hold on the account transfer, and be able to fully disclose the circumstances and concerns about the client to the Chief Compliance Officer of the receiving firm. The Chief Compliance Officer of the receiving firm can then determine whether or not to proceed with the transfer.

Conclusion

Manulife is appreciative of the opportunity to participate in this review and we would be pleased to respond to any questions you may have towards our comments.

Yours very truly,

Rick Annaert
SVP, Head of Advisory Services
President & CEO, Manulife Securities

CFA Societies Canada

Canadian Advocacy Council

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July 17, 2020

VIA EMAIL

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
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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 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") and Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("31-103CP") to Enhance Protection of Older and Vulnerable Clients (collectively, the "Proposed Amendments")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following comments on the Proposed Amendments.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.
CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 158 local member societies. For more information, visit www.cfainstitute.org.

CFA Societies Canada

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General Comments

Scope of Amendments

We understand that the Proposed Amendments are intended to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients. We appreciate that these are difficult issues for registrants to confront and support the CSA's efforts to address them through the ability to name a trusted contact person as well as offer the ability to more clearly place temporary holds on an account in enumerated circumstances.

In principle, such intervention by firms may be able to prevent harm or limit the damage to victims of financial exploitation. We think the Proposed Amendments are a good first step to help ensure that registrants keep vulnerable client issues top of mind. However, in addition to the Proposed Amendments, we believe the CSA must take a more holistic view to effectively address potential elder and vulnerable client abuse by continuing to develop and consider new approaches to these challenges, while recognizing that registrants with investment expertise may not be best suited to identify psychological symptoms of cognitive impairment.

It is important for registrants to have support from as many resources as possible to help protect vulnerable clients. The Proposed Amendments do not currently address the material negative outcomes for registrants if they act incorrectly on reasonable beliefs.

As a continuing or new policy project, the CSA should consider working with governmental or quasi-governmental agencies specializing in vulnerable persons to create a framework within which the Proposed Amendments could form a part. Advisors could be required to report concerns to an overriding agency with the staff, medical expertise, data and resources to genuinely assist an individual in need, as well as provide guidance to registrants. The medical professionals who identify symptoms and diagnose mental capacity are highly educated professionals with extensive training and experience because of the recognized difficulties in assessing a person's mental capacity. Instead of having to determine whether to accept the information provided by a trusted contact person or continually placing a hold on a client's account, a registrant should be required to report suspected abuse or diminished capacity to such an agency, similar to a "whistleblower" program.

We would thus urge the CSA to consider expanding the Proposed Amendments subsequent to their implementation. Our comments on the Proposed Amendments as currently contemplated, which we support as part of a potential broader policy initiative, follow.

Definition of Vulnerable Investors

The definition of a "vulnerable investor" is proposed to mean a client of a registered firm or a registered individual, who may have an illness, impairment, disability or aging process limitation that places the client at risk of financial exploitation. There

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may be additional clarification that can be provided in the definition. For example, the *Securities Act* (Alberta) ("**Alberta Securities Act**") regulates certain "unfair practices", which is defined to include:

> "taking advantage of a person's inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security or a derivative" [2].

We see a benefit in the definition in the Alberta Securities Act as it is broader than the definition in the Proposed Amendments and includes the concept of exploitation. It also references an individual's ability to understand matters relating to certain financial decisions. The definition includes the word "language", which is helpful if a vulnerable individual is convinced to make an investment based on offering documents or advice in a non-native language, which may amount to exploitation. Both the definition in the Proposed Amendments and in the Alberta Securities Act would benefit, however, from more specific criteria.

Red Flag Examples

We would prefer to see some of the more subjective illustrations of financial exploitation set out in the proposed amendments to 31-103CP removed. For example, it is stated that warning signs of financial exploitation might include increasing isolation from family or friends, or signs of physical neglect or abuse. Observations of this nature are quite subjective and may cross into a gray area under privacy legislation. These items are not easily observable and may not directly relate to a client's financial decision-making capacity or ability.

There are similar potential issues with the proposed examples used in 31-103CP for the definition of mental capacity. Warning signs are said to include a reduced ability to solve everyday math problems, which would be difficult to detect in a typical advisor/client interaction. Some of the listed characteristics, such as a change in personality, or increased passivity, anxiety, aggression or other changes in mood, might also be very subjective. The proposed addition also includes a reference of "uncharacteristically unkempt appearance" as a warning sign of a decline in a client's mental capacity. While that may be true it some cases, it may be just as likely to reflect a natural decline in appearance as one ages due to physical difficulty and not representative of an issue with mental capacity. Persons that have less experience with older individuals may unnecessarily focus in on these aspects, which adds risk to the client/advisor relationship.

We wish to reiterate that financial exploitation and diminished mental capacity are very complicated matters and, particularly with respect to identifying "red flags", many advisors will not have the training or background necessary to reliably identify concerns in real time. While the examples provided to advisors are helpful, not every vulnerable person will present in the same way (e.g. diminished appearance, forgetfulness), nor

[2] *Securities Act*, RSA 2000, c S-4, s 92(5)(b).

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may an advisor have a long enough history or frequent enough face to face interactions to identify changes which may be a sign of diminished capacity.

Impact on Advisor/Client Relationships

In the absence of more explicit guidelines, there may be a delayed reaction time as advisors try to assess the situation where a vulnerable investor may be present. Advisors could also be expected to hesitate rather than make the wrong decision about calling out financial exploitation or diminished capacity, for fear of losing the client. An advisor could face serious consequences if they make a judgement or accusation of impairment or abuse based on the typical number of meetings per year with their clients and the subjective red flags resulting in a hold placed on an account. Placing a hold or contacting a trusted contact person with concerns could be an irreversible action that will alter or sever the client relationship and could permanently damage a vulnerable client's trust in the financial system overall. If clients lose trust in their advisor and pull their own accounts, it may lead to a situation where they forego advice to their own detriment. The foregoing could lead to a situation where a vulnerable client has less professional support, less trust in the financial system, and made even more vulnerable to bad actors.

As it is in any advisor's best interests to keep clients and increase assets under management, registrants may feel pressure, in the absence of medical evidence or a direction from an overriding outside agency to the contrary, to conclude that no issues exist. If registrants were permitted to share valid concerns with an overriding agency without fear of breaching other laws or losing their clients, and such concerns were investigated by specialized medical or cognitive specialists, the outcomes desired by the Proposed Amendments may be more likely to be achieved.

We recommend that training on vulnerable clients for registrants should be mandatory to help address some of these issues. It is also important to educate retail clients on the purpose of the trusted contact person and the temporary holds to help preserve the trusted client/advisor relationship. Advisors should also help clients by asking targeted questions and providing examples of fraud/exploitation. Over time, this will help build a relationship where a vulnerable client will hopefully call their advisor for a second opinion if approached with "too good to be true" investment opportunities or if someone is trying to otherwise exploit them financially.

Trusted Contact Person

With respect to the trusted contact person requirements, we believe the Proposed Amendments are an important first step to start a conversation between a registrant and his or her clients. It is commonly suggested that many cases of financial exploitation of seniors is perpetrated by someone close to the vulnerable individual, often a family member. With that background, it may be prudent to recommend where possible that the trusted contact person be an independent person outside of the vulnerable person's immediate family.

When identifying a trusted contact person, the Proposed Amendments would require a client to provide written consent for the registrant to contact the trusted contact

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person in enumerated circumstances. The client should also be required by NI 31-103 to acknowledge that the individual has been notified that they are the trusted contact person and has consented to act as such. This may help protect the registrant and facilitate difficult future client discussions, as well as simplify discussions if needed with the trusted contact person if they know the registrant may be contacting them.

We believe the proposed statement in the Companion Policy to the effect that a trusted contact person does not have the authority to transact on the client's account or make decisions on behalf of the client by virtue solely of being named a trusted contact person is an important safeguard that should be maintained.

In addition, the Proposed Amendments suggest that registrants should first speak with the client about concerns about financial exploitation or mental capacity prior to contacting the trusted contact person. However, noting the concerns about the red flag examples set out above, unless the proposed guidance includes more objective criteria, registrants may not be able to make the necessary assessments, or have these sensitive conversations directly with clients.

Books and Records Requirement

The Proposed Amendments would require registrants to maintain books and records to demonstrate compliance with the conditions for placing a temporary hold. There may be inconsistent legislation dealing with how long these records must be kept under securities legislation, privacy legislation, and criminal law requirements. It may be beneficial for registrants if the CSA could highlight other legislation or obligations that they are aware of with respect to these record retention rules. As an example, albeit in a different context, ASC Staff Notice 31-701 *Account Opening Assistance* sets out certain requirements under the *Income Tax Act* (Canada) and anti-money laundering legislation that registrants should be aware of when opening an account, and a similar approach could be taken here.

In addition, the Proposed Amendments indicate that registrants must keep records that demonstrate compliance with the new requirements of NI 31-103. If a client refuses to provide the name and contact information for a trusted contact person, the registrant may make further inquiries about the reasons for the refusal. If the client does not provide any additional information, we query whether a registrant will be able to produce documentation to satisfy their books and records requirement.

Internal Controls

The Proposed Amendments seem to focus on external factors, in that registrants are expected to look out for red flags of financial abuse and diminished mental capacity. However, we believe that enhanced internal controls and supervision of registrants and accounts held by vulnerable clients are also key to preventing exploitation.

A wider framework for vulnerable investors could include more specific policies and procedures to help registrants identify issues such as appropriate investment strategies. Training, as noted above, should be mandatory for client facing registrants as well as

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supervisory and compliance staff. While there are some regulations specifying registrants should provide clear and easy to understand information, requirements for even sharper plain language disclosure should be required for vulnerable investors. The importance of maintaining conversation notes should also be emphasized. Registrants that are "advisors to seniors" or those with many retiree clients could be subject to enhanced supervision and spot checks.

We also wish to respond to the following specific questions for comment.

Specific Consultation Questions

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?*

   We are not aware of any policy reason to exclude registrants from having to identify a trusted contact person for the stated beneficial owners of a corporation or individuals who exercise control over the affairs of a partnership or trust. For other KYC purposes in NI 31-103, including identification of clients, registrants will have to gather identification information for these individuals in any event, and can easily request information about a trusted contact person at the same time. While that may result in more than one trusted contact person for a client, that is already contemplated by the Proposed Amendments and should not prevent a registrant from attempting to contact the appropriate trusted contact person when it reasonably believes it is required to do so.

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).*

We believe it is important that execution only brokers be permitted to place temporary holds on accounts if a reasonable belief exists that the client does not have the mental capacity to make financial decisions. While challenges will exist given the nature and frequency of the contact with clients, this should also not absolve the Dealer Member from the obligation to take reasonable steps to obtain the information related to a trusted contact person. These Dealer Members would need to ensure that such information is updated in accordance with the requirements related to the client profile.

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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?*

We believe that the temporary hold requirements should apply where there exists a reasonable belief that the client does not have the mental capacity to make financial decisions rather than just be limited to cases of financial exploitation of vulnerable clients. If there is this belief of diminished capacity, the temporary hold period will allow a registrant the opportunity to investigate, contact the TCP or escalate to an appropriate authority, and thus reduce the opportunity for the mishandling or dissipation of assets.

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?*

We believe that the temporary hold requirements should apply to holds that are placed on the purchase or sale of securities and the transfer of cash or securities to another firm. A bad actor could quickly become aware of ways in which to circumvent the hold period and convince a client to transfer the cash or securities to another firm and at that time exploit the individual. By not closing this potential 'loophole' the Proposed Amendments would leave the client vulnerable to financial exploitation at 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?*

With respect to temporary holds, the Proposed Amendments would require a registered firm to further review the facts, once a hold is placed, that caused the firm or individual to place the temporary hold. Additional rules and guidance with respect to this

"internal investigation" and what is expected of registrants during this period would be welcome. For example, NI 31-103 could require that an internal investigation be completed within a specified number of days to ensure that assets are not tied up indefinitely.

6. *Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.*

As mentioned in the notice accompanying the Proposed Amendments, in the United States the North American Securities Administrators Association members have adopted and advocate for states' adoption of a model Act, the *NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation* ("**Model Act**")[3]. The Model Act uses the term "eligible adult", which refers to a person 65 years of age or older, or a person subject to the relevant state's Adult Protective Services statute. One alternative framework that could be considered, like that suggested by the Model Act, would involve mandating the use of an overarching agency outside of the CSA which specializes in the area of vulnerable investors, as set out in our introductory comments. Such an agency could investigate further (or outsource the investigation, as appropriate) and the individual client would never know that the registrant made the initial call to the agency, thus preserving the advisor/client relationship.

The Model Act also contains an explicit exculpation from liability for advisors who disclose potential financial exploitation. Such an explicit "safe harbor" would also be helpful in the Proposed Amendments. Registrants who are otherwise required to try to gather additional KYC information upon opening an account or during regular updates to gauge potential exploitation or diminished mental capacity might otherwise determine that the amount of work required is not commensurate with their potential remuneration, leaving the potential vulnerable individual without ongoing financial advice.

If the Proposed Amendments are implemented, it will be very important to monitor them in practice for the first few years to determine if additional safeguards or clarifications are required. Policy work, which is continuing in other jurisdictions, including by NASAA, should also be considered and followed as global practices and regulations evolve.

As a general matter, we are also concerned about the interaction of the Proposed Amendments and privacy legislation, including the *Personal Information Protection and Electronic Data Act* ("**PIPEDA**"). As noted in the Proposed Amendments, registrants should be mindful of privacy legislation and client agreements relating to the collection, use and disclosure of personal information. It would be helpful to gain clarity from the CSA and privacy regulators that the trusted contact person requirements will not generally breach Canadian privacy requirements and such comfort should be given directly in NI 31-103. The investor protection measures of the Proposed Amendments are likely to be ineffective if firms are wary of breaching their privacy obligations.

[3] NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation, online: North American Securities Administrators Association <http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf>.

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More specifically, PIPEDA involves "Ten Principles[4]" regarding the collection, use and disclosure of personal information. The second principle, Identifying Purposes, provides that the purposes for which the personal information is being collected must be identified before or at the time of collection. Collecting, recording and controlling the information to assess financial exploitation or concerns about mental capacity is a grey area that may benefit from collaborative guidance from the CSA and the Office of the Privacy Commissioner of Canada and its provincial counterparts to ensure compliance with both types of rules.

PIPEDA's fourth principle, Limiting Collection, provides that the collection of information must be limited to what is needed for the purposes identified by the organization. The guidance in 31-103CP could be expanded to include specific limits on why and what information on the registrant's client can be collected, particularly with respect to subjective information such as personality traits and physical appearance.

The last two PIPEDA principles relate to Individual Access and Challenging Compliance. For firms trying to gather additional information about vulnerable clients to make an informed decision, it would be helpful if privacy legislation confirmed that such collection could be made without having to disclose the information at that time to the individual under consideration, pursuant to their privacy right to access or correct errors or omissions in their personal information. As an example, under the *Personal Information Protection Act* (Alberta), a firm may refuse to provide access to personal information upon request if the information was collected for an investigation or legal proceedings[5]. We query whether a firm could rely on this or a similar category when investigating cases of potential exploitation or vulnerability. It might be helpful to have guidance address this key investor protection area to ensure that the Proposed Amendments are effective.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of*
CFA Societies Canada

The Canadian Advocacy Council of
CFA Societies Canada

[4] PIPEDA fair information principles, online: Office of the Privacy Commissioner of Canada <www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/p principle/>.
[5] *Personal Information Protection Act,* SA 2003, c P-6.5, s 24(2)(c).

Desjardins

Le 17 juillet 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registraire des valeurs mobilières, Territoires du Nord-Ouest
Registraire des valeurs mobilières, Yukon
Bureau du surintendant des valeurs mobilières du Nunavut

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The Secretary
Commission des valeurs mobilières de l'Ontario
20 Queen Street West
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Objet : Commentaires du Mouvement Desjardins sur les projets de modifications au *Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites* et de *l'Instruction générale relative au Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites.*

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Madame,
Monsieur,

Le Mouvement Desjardins remercie les Autorités canadiennes en valeurs mobilières (ACVM) de consulter l'industrie à propos du *Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites* (« le Règlement ») et de *l'Instruction générale relative au Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*.

Nous appuyons la volonté des ACVM d'améliorer la protection des aînés en situation de vulnérabilité et d'adapter le cadre réglementaire à la lutte contre l'exploitation financière. C'est avec intérêt que nous avons pris connaissance des modifications réglementaires proposées par les ACVM et souhaitons, par les présents commentaires, proposer des améliorations à celles-ci.

Le Mouvement Desjardins en bref

Avec un actif de plus de 326,9[1] milliards de dollars, le Mouvement Desjardins est le premier groupe financier coopératif au Canada et le cinquième au monde. Pour répondre aux besoins diversifiés de ses 7 millions de membres et clients, particuliers comme entreprises, il offre une gamme complète de produits et services par l'entremise de son vaste réseau de points de service, de ses plateformes virtuelles et de ses filiales présentes à l'échelle canadienne. Il exerce ses activités dans les domaines suivants : Particuliers et Entreprises, Gestion de patrimoine, Assurance de personnes et Assurance de dommages.

Comme institution financière coopérative, le Mouvement Desjardins se préoccupe de toutes les facettes du bien-être financier de ses membres et clients, y compris la prévention de l'exploitation financière des aînés et des personnes vulnérables. Pour ce faire, nous mettons à la disposition de nos employés plusieurs ressources, comme des aide-mémoires et un guide. Nous agissons également en amont, par exemple par des partenariats avec différents organismes. Dans les circonstances extraordinaires de la pandémie, ce sont 319 000 de nos membres et clients considérés plus à risque qui ont reçu une lettre personnalisée pour les sensibiliser aux risques d'exploitation financière. Nous avons également créé une file d'attente prioritaire pour les membres de soixante-dix ans et plus dans notre ligne d'aide téléphonique pour nos membres et clients.

[1] Au premier trimestre de 2020.

Le Mouvement Desjardins appuie la lettre de l'Institut des fonds d'investissement du Canada (IFIC) en réponse à la présente consultation. Vous trouverez ci-dessous nos commentaires en complément de ceux de l'IFIC. Ils visent notamment à permettre de mieux outiller les institutions et les courtiers inscrits afin qu'ils puissent bien mettre en œuvre les mécanismes relatifs au blocage de compte et aux personnes de confiance, et en définitive, à aider les autorités à adapter adéquatement le cadre réglementaire à la lutte à l'exploitation financière.

Les blocages temporaires

L'ajout de l'article 13.19 au Règlement clarifie la possibilité, pour les institutions, d'avoir recours au blocage temporaire d'une transaction d'un client vulnérable, sous réserve de certaines conditions. Cette clarification nous apparaît justifiée. D'abord, et comme le reconnaissent les instructions générales relatives au Règlement, les sociétés et les personnes inscrites sont bien placées pour reconnaître les signes d'exploitation financière, vu leur relation de proximité avec les clients. Ensuite, cet ajout au Règlement vient confirmer que les institutions inscrites peuvent avoir recours à cette mesure en toute conformité au cadre réglementaire actuel.

Le recours au blocage temporaire d'une transaction est un geste significatif, qui peut avoir des répercussions importantes pour le client visé, le courtier et l'institution. Nous apprécions que les instructions générales du Règlement fournissent des indications supplémentaires pour guider les institutions dans le processus, notamment en ce qui a trait à la documentation du cas par l'institution inscrite et aux indices à repérer. Néanmoins, compte tenu de l'importance du geste, nous estimons que les ACVM devraient présenter une marche à suivre claire et précise, qui 1) fournira les indices à déceler pour qualifier une situation d'exploitation financière et 2) présentera les étapes de la démarche spécifique à suivre pour effectuer un blocage temporaire et y mettre fin. On pense par exemple aux confirmations à obtenir pour avoir la certitude que la personne n'est pas en mesure de prendre une décision et l'utilisation d'un mécanisme pour confirmer rapidement l'inaptitude.

L'encadrement doit refléter la portée du geste et son caractère délicat, et fournir les outils adéquats. Une approche bienveillante avec le client, conjuguée à une interprétation rigoureuse du règlement et une documentation exhaustive des cas ne pourront pallier l'absence de directives claires. Les courtiers et les institutions se retrouveront à assumer seuls les conséquences éventuelles d'une contestation du blocage par les clients. Le *Guide pratique pour*

l'industrie des services financiers : Protéger un client en situation de vulnérabilité[2], produit par l'Autorité des marchés financiers (AMF) pourrait servir de base à une marche à suivre formelle et précise. De plus, les sociétés inscrites disposeraient ainsi d'un guide qui les aiderait à répondre aux attentes des ACVM liées aux processus ou politiques internes, telles que formulées dans les instructions générales.

Les modifications réglementaires proposées ne suffiront pas, à notre avis, à fournir un niveau de certitude adéquat pour la prise de décision relative aux blocages temporaires et à la mise en place de politiques et de processus ou la modification de ceux-ci, à la hauteur des objectifs des autorités réglementaires. Une marche à suivre précise de la part des autorités servirait d'une part à alimenter et normaliser l'approche des institutions, et d'autre part à s'assurer que les employés de première ligne sont bien outillés pour détecter l'exploitation financière et à l'aise d'avoir recours au blocage temporaire de compte lorsque la situation le commande.

Les personnes de confiance

À la lecture des modifications réglementaires proposées, le volet portant sur les personnes de confiance devrait être conforme aux exigences actuellement en vigueur en matière de protection des renseignements personnels. Les autorités devraient notamment indiquer clairement quels renseignements peuvent être communiqués aux personnes de confiance et le rôle de celles-ci, ainsi que les moyens jugés suffisants pour déterminer si la personne de confiance proposée représente ou non un risque. De plus, il apparaît raisonnable que les demandes d'obtention des noms et des coordonnées d'une personne de confiance se limitent aux personnes physiques et aux particuliers qui possèdent des entreprises à titre de propriétaire unique, étant donné que ce sont eux qui sont les plus susceptibles d'avoir recours à cette possibilité en cas d'abus ou d'exploitation.

Par ailleurs, il serait pertinent d'explorer la possibilité qu'une institution ou un intervenant (du réseau de la santé ou des services sociaux par exemple) puisse assurer un rôle de personne de confiance dans les situations où une personne vit seule ou sans famille et qu'une validation est requise. Enfin, un mandataire ne devrait pas également pouvoir agir comme personne de confiance, sans quoi il serait difficile de prévenir une tentative d'exploitation financière de sa part.

[2] Autorité des marchés financiers, 2019, à l'adresse : https://lautorite.qc.ca/fileadmin/lautorite/grand_public/publications/professionnels/tous-les-pros/guide-bonnes-pratiques-personnes-vulnerables_fr.pdf

Dans une perspective plus large, nous invitons également les autorités à considérer non seulement la diminution des facultés mentales, mais également celle des facultés physiques. Elles sont tout aussi présentes chez les aînés et créent une situation de dépendance, ce qui est un facteur de maltraitance. Si ce n'est dans le règlement dont il est ici question, les autorités pourront les considérer dans les prochaines étapes visant à bien protéger les clients âgés et vulnérables.

Nous vous invitons à communiquer avec le soussigné pour obtenir des précisions ou tout complément d'information.

Veuillez recevoir, Madame, Monsieur, nos salutations distinguées.

Bernard Brun
Directeur Relations gouvernementales et institutionnelles
Encadrement du secteur financier

c. c. M. Yvan-Pierre Grimard, vice-président, Relations gouvernementales et institutionnelles, Mouvement Desjardins

E-MAIL:
comments@osc.gov.on.ca;
consultation-en-cours@lautorite.qc.ca

July 18, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumer Services Commission of 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
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to Enhance Protection of Older and Vulnerable Clients (the "Proposed Amendments")

We are pleased to provide comments on the Proposed Amendments on behalf of Investors Group Inc. ("IG Wealth Management"). If enacted, the Proposed Amendments will provide needed clarity to registrants on the actions they can take to help protect their senior and vulnerable clients. We strongly support this important initiative.

Our Company

IG Wealth Management is a diversified financial services company and one of Canada's largest managers and distributors of mutual funds, including the exclusive distributor of its own products. We carry out our distribution activities through our subsidiaries Investors Group Financial Services Inc. and Investors Group Securities Inc., which are members of the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada, respectively. IG Wealth Management also carries out insurance advisory services through I.G. Insurance Services Inc. We are committed to comprehensive planning delivered through long-term client and advisor relationships. The company provides advice and services through a network of advisors, whom we call "Consultants", located across Canada to over one million clients. IG Wealth Management has over $88 billion in assets under management as at May 31, 2020.

We are part of IGM Financial Inc., which is a member of the Power Financial Corporation group of companies.

General Comments

We support the CSA's efforts to address issues of financial exploitation and diminished mental capacity among senior and vulnerable clients. The Proposed Amendments will provide key tools to help both firms and advisors safeguard their clients, and at the same time, deliver needed clarity on the specific actions they can take.

Over the last several years, we have introduced a number of policies and practices specific to the protection of our clients. For example, we formed a cross-functional committee, comprising members from client services, compliance, advanced financial planning, and legal, dedicated to senior and vulnerable client issues. We also established a centralized escalation and review mechanism for our advisors when they are concerned with financial abuse and diminished capacity of clients, and we regularly conduct advisor training on these important issues. Notably, we also gather a "trusted contact person" for clients and have a well-defined process to initiate temporary holds in matters involving financial exploitation generally.

The initiatives we have undertaken to protect our clients, coupled with our first-hand experience dealing with issues of financial exploitation and diminished mental capacity, make us keenly aware of the risks and issues senior and vulnerable clients can face. It is from this viewpoint that we offer the following feedback on specific aspects of the Proposed Amendments.

Specific Comments on the Proposed Amendments

Trusted Contact Person

We support the proposed requirement that registrants take reasonable steps to obtain the name and contact information of a trusted contacted person ("TCP"), as well as a client's written consent to contact the TCP in the prescribed circumstances as proposed. We agree with the CSA that the TCP can be a key resource for firms and advisors to assist in protecting their clients against possible financial exploitation, or if there are concerns of diminished mental capacity. It is critical that the CSA maintain the proposed guidance that clarifies firms and advisors are not prevented from opening and maintaining an account if a client refuses or fails to identify a TCP, as some clients may be unwilling to provide this information.

Temporary Holds

We support the proposals that clarify when firms and advisors are not prohibited from placing a temporary hold, as well as the steps they must take if they do so. These proposals provide key tools to firms and advisors that will help them protect their clients against financial exploitation and issues arising from a client's diminished mental capacity. To bolster these protections, we believe aspects of the proposals must go further.

(i) Firms must have discretion to determine how best to notify a client of a temporary hold

The Proposed Amendments require firms to provide notice to clients when a temporary hold is initially placed, as well as subsequently if and when the hold is extended. We agree that clients must be notified, but we believe firms must have the discretion to determine how best to notify the client in the particular circumstances. While written notice may be appropriate in most situations, there may be occasions where written notice is not advisable. For example, a person committing a financial exploitation may intercept a written notice and be "tipped", which can potentially accelerate and/or further aggravate the exploitation. While the proposed guidance suggests firms can provide verbal notice, it is predicated on written notice also being provided. Firms must have the ability to determine the best way to notify the client, including exclusively verbally if appropriate.

(ii) Temporary holds must apply to client instructions generally

The Proposed Amendments do not prohibit, in suspected cases of financial exploitation or diminished mental capacity, a firm or advisor 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". We agree that the temporary hold must cover these circumstances. However, these are not the only instructions that can lead to or aggravate financial exploitation or issues involving diminished mental capacity. A change of account ownership, beneficiary, power of attorney, or banking instructions, for example, can equally put clients at risk. We strongly encourage the CSA to expand the permitted circumstances to extend to all client instructions generally.

(iii) The CSA must broaden the definition of "vulnerable clients" to strengthen the protections afforded by the Proposed Amendments

Given the recognition in the proposed guidance that vulnerability can take many forms, we question why the proposals define a vulnerable client only as one "who may have an illness, impairment, disability or aging process limitation." This definition would exclude many clients who, based on our experience, are vulnerable because they are substantially dependent on another person (due to social, economic or other reasons), are socially isolated and/or lonely, or that are otherwise prone to being taken advantage of. These clients have fallen victim to financial exploitation in a variety of ways, including through online romance scams and fake investment scams. We urge the CSA to broaden the definition to include any other circumstance, personal or otherwise, that may reasonably place the client at risk of financial exploitation. This will ensure the protections afforded by the Proposed Amendments are provided to all those in need.

(iv) The Proposed Amendments should shield firms and advisors from liability when acting in good faith

We strongly encourage the CSA to include a "safe harbour" that shields firms and advisors from liability if acting in good faith and exercising reasonable care in placing a temporary hold, as well in making a disclosure about a client to his or her designated TCP. This would help alleviate concern at both the firm and advisor level that making a wrong determination about a client's mental capacity or vulnerability will lead to liability. A safe harbor will help ensure cases are brought forward and dealt with appropriately without fear or liability repercussions.

Conclusion

We thank you for the opportunity to provide comments on the Proposed Amendments. Please feel free to contact me or Danielle Tetrault, Chief Compliance Officer, at danielle.tetrault@ig.ca, if you wish to discuss our feedback further or require additional information.

We would be pleased to engage further with you on this important initiative.

Yours truly,

IG Wealth Management

Jeffrey R. Carney
President and Chief Executive Officer

FAIR | Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

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

July 20, 2020

Delivered via email to:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorite des marches financiers
Place de la cite, tour Cominar
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consultation-en-cours@lautorite.qc.ca

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

FAIR Canada[1] is pleased to provide comments on the CSA Proposal that has been published for public comment and is intended to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients.

1. General Comments

1.1 FAIR Canada is supportive of the CSA's efforts to enhance investor protection of vulnerable clients. Given the demographics of Canada, an aging population and increasing life expectancies, these are important issues to address. As noted in the CSA Proposal, an aging population has created challenges associated with vulnerability, diminished mental capacity and financial exploitation that the financial services sector needs to address urgently.

1.2 In 2017, FAIR Canada partnered with the Canadian Centre for Elder Law (CCEL) to produce the Report on Vulnerable Investors[2] (the "2017 Report"), which focused on the two main areas of challenge for vulnerable investors: (i) elder financial abuse and undue influence; and (ii) diminished capacity.

1.3 The 2017 Report recommended that the following six measures be developed and implemented:

a) **Trusted Contact Person** - Securities regulators should implement a rule requiring firms to make reasonable efforts to obtain the name and contact information of a trusted contact person (a "TCP").

b) **Temporary Hold** – Securities regulators should implement a rule that authorizes qualified individuals in a firm to place a temporary hold on trades and disbursements of funds or securities from the account of a vulnerable client in appropriate (and limited circumstances).

c) **Legal Safe Harbour** - Regulators should implement a legal safe harbour that shields firms and their representatives from regulatory liability for disclosure to a TCP or other reporting body or for the use of a temporary hold, in good faith.

d) **Conduct Protocol** – Securities regulators should publish a 'Conduct Protocol' that defines key terms and sets out the steps firms and representatives should take to identify and protect vulnerable clients.

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[1] FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

[2] FAIR Canada and Canadian Centre for Elder Law, Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity. November 2017.

e) **Education and Training –** It can be difficult to determine whether a person is suffering from diminished mental capacity or financial exploitation. Accordingly, firms should be required to ensure that their representatives have competency-based training in the areas of elder abuse, undue influence, mental capacity issues, enduring powers of attorney and ageism. Securities regulators should take the lead in establishing the content and competencies required of registered individuals and relevant operations, supervisory, legal and compliance staff.

f) **Firms Become Familiar with Outside Resources and Responders** - Firms need to learn how and when to appropriately refer a case of suspected elder financial abuse, undue influence or diminished mental capacity to local responders. As there is no single place for reporting these issues in Canada, firms will need to learn the provincial or territorial responders in each area. Such information should be widely available to a registrant's staff.

1.4 As part of its stakeholder consultation in preparing the 2017 Report, FAIR Canada and CCEL consulted with a wide range of stakeholders. These stakeholders included: Canadian Public Guardians and Trustees, experts on aging, industry associations and foreign and domestic regulators in the securities industry. We found a broad consensus around the need to address these issues.

1.5 We are pleased to see that the CSA Proposal incorporates the measures of requiring registrants to make reasonable efforts to obtain the name and contact information of a trusted contact person and provision for temporary holds on trades and withdrawals or transfer of cash or securities from client accounts when there is reasonable belief that a vulnerable client is being financially exploited or the client does not have the mental capacity to make financial decisions, consistent with the recommendations of the 2017 Report.

1.6 Concerns about mental capacity of older adults are often a key concern, for the older adult and/or their supporters, and for firms handling their investments. Older adults are subjected to ageist beliefs, which include the erroneous notion that because people are older, they must have cognitive impairment. This is simply not true. However, the issue of diminished capacity is still a significant issue in the aging Canadian population.

1.7 Elder financial abuse is one of the most common forms of elder abuse. Financial exploitation occurs when a person steals or misuses another adult's financial property. It is particularly devastating for older adults, who

are often dependent on their investment savings to pay their living costs and who do not have the means or time to offset significant losses.

1.8 Older adults who need support, often receive it from family, friends or caregivers who assist with daily tasks and decision-making. This makes these older adults particularly vulnerable to undue influence whereby the decision-making process is subverted by manipulation. While undue influence in the investment context is often exerted to the financial benefit of the influencer, this is not always the case.

1.9 The CSA Proposal is an urgently needed measure to establish consistent minimum regulatory requirements and expectations for the securities industry that provides clarity to firms, registered representatives and investors to protect older and vulnerable clients from financial exploitation.

Questions Posed in the Request for Comments

Trusted Contact Person

CSA Q 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**?

2.1 FAIR Canada believes that the TCP should apply to an individual who, in the case of a corporation, is a beneficial owner of or exercises direct or indirect control or direction of the corporation. Similar requirements to determine whether a TCP exists for an individual with comparable interests in a partnership or a trust.

2.2 While clients who use holding companies, partnerships or trusts as part of their financial and tax planning may tend to be individuals with higher net worth, that does not mean that these individuals can not be vulnerable investors subject to financial exploitation.

2.3 As we stated in the 2017 Report, we believe registrants should use reasonable efforts to obtain a TCP for every non-institutional client.

CSA Q 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).

2.4 FAIR Canada recommends these requirements apply to dealers offering order execution only ("OEO") services. There is no justification to exempt OEO dealers from the amendments to the KYC requirements to require the dealer to take reasonable steps to obtain the name and contact information of a trusted contact person (TCP) and the clients written consent to contact the TCP in prescribed circumstances.

2.5 We believe that OEO dealers can monitor accounts, aided by technology, to ascertain unusual trading and/or requests for withdrawals or transfers of cash or securities from client accounts that may be indicative of financial exploitation of vulnerable clients or that may indicate a client with diminished mental capacity. OEO dealers should be required to take reasonable steps to review unusual trading or other transactions in client accounts and to make appropriate inquiries, including potentially contacting the TCP.

2.6 OEO dealers should be permitted to place a temporary hold on the client account if there is reason to believe that the client is vulnerable and is being financially exploited or the client does not have mental capacity to make financial decisions.

2.7 Additionally, many OEO firms have a wealth of data that can be analyzed to detect changes in trading and investment patterns of clients. This can facilitate detection of mental capacity issues of investors on OEO and/or financial exploitation. FAIR Canada recommends that OEO dealers recognize that they have a role in combatting exploitation of vulnerable investors.

Temporary Holds

CSA Q 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?

2.8 FAIR Canada is supportive of the use of temporary holds as a method of protecting vulnerable clients, including those clients where a registrant has a reasonable belief that a client lacks mental capacity to make financial decisions. We believe the temporary hold requirement should apply in these circumstances and not be limited to financial exploitation.

CSA Q 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?

2.9 FAIR Canada believes the temporary hold requirements can be appropriate for a broad range of transactions – including a purchase or sale of securities and the transfer of cash or securities to another firm. Accordingly, FAIR Canada supports extending the temporary hold requirements in these circumstances.

CSA Q 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?

2.10 FAIR Canada does not believe a prescribed time limit on temporary holds is necessary and a notice requirement for investors is appropriate.

2.11 FAIR Canada recognizes that issues relating to financial exploitation and diminished capacity can be complex. The appropriate solution will vary depending on a number of factors. Requirements for documentation of holds and reasons for not terminating holds is appropriate. FAIR Canada believes it would be constructive to include guidance in the Companion Policy. In large measure, the time limit on a temporary hold will be dependent on the facts that arise in each set of circumstances.

CSA Q 6 Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

2.12 FAIR Canada suggests that registrants report to the relevant member of the CSA on temporary holds. We believe strongly that there is a value to collecting data on this issue so that policy solutions can evolve as needed**.**

3. Other Comments

Definition of "Mental Capacity"

3.1. The CSA Proposal defines "mental capacity" as follows:

> '"mental capacity" means the ability to understand information or appreciate the foreseeable consequences of a decision or lack of decision'

3.2. In the investment context, a client must be capable of understanding relevant information and appreciate the consequences of their decisions. Low financial literacy along with increasing product complexity create some interesting challenges as clients age.

3.3. Mental capacity is a spectrum. While the Companion Policy expands on concepts of mental capacity and provides examples of warning signs of a decline in mental capacity, FAIR Canada encourages the CSA to recognize the nuanced nature of changes in mental capacity. In the context of aging and cognitive changes, the 2017 Report noted that:

"With the normal aging process, cognitive abilities that are associated with skills, knowledge and experience gained over time remain stable while fluid

abilities regarding reasoning and problem solving in novel situations tend to decline with age…"[3]

The guidance in the Companion Policy on mental capacity is helpful in providing examples of warning signs of changes in mental capacity, but FAIR Canada urges the CSA to emphasize to registrants the need for training, particularly scenario-based training.

Conduct Protocol

3.4. The 2017 Report also advocated for firms to establish a conduct protocol (the "Conduct Protocol"). A Conduct Protocol, as described in the report, would set out the steps that firms and representatives should take to identify and protect vulnerable clients.

3.5. The CSA Proposal does enumerate an expectation that registered firms have written policies and procedures that address:

a) Protocols around identifying, documenting and contacting a TCP;
b) Financial exploitation or lack of mental capacity;
c) Delineate firm and individual responsibilities for addressing concerns;

3.6. These expectations are included in the Companion Policy. We suggest this expectation be included in the amendments to NI 31-103 in order to ensure that these are requirements that can be enforced by securities regulators where necessary.

3.7. In addition to what the CSA Proposal currently proposes for policies and procedures, we recommend that such policies and procedures be required to address: (i) undue influence; (ii) warning signs of undue influence, financial exploitation and diminished capacity; (iii) a process for conducting internal reviews when financial exploitation, undue influence or issues of mental capacity are suspected; and (iv) reporting these matters to a public guardian and trustee, public curator and/or police.

Education and Training

3.8. There is a value and need for guidance and resources on issues relating to vulnerable investors for registrants. Competency-based training in the areas of elder abuse, undue influence, mental capacity, enduring powers of attorney and age-ism is critical to ensuring that registrants are able to provide sound financial advice and service to older and vulnerable clients.

[3] *Ibid* at 22, citing The Big Window, "The Ageing Population: Ageing Mind Literature Review", 2017, at 11, online at: https://www.fca.org.uk/publication/research/ageing-mind-literature.pdf.

3.9. As we've noted previously in these comments, the CSA Proposal should also include minimum proficiency requirements for registrants in this area.

a) FAIR Canada believes that the regulatory safe harbour proposed in the CSA Proposal should be tied to the proficiency requirements for firms and individual registrants.

b) FAIR Canada urges CSA members, the IIAC and CBA to consider meaningful partnerships with clear, measurable goals and objectives to develop effective education and training tools that are updated regularly.

Expectations of Firms and Individual Registrants

3.10. The CSA Proposal does not include expectations of firms to monitor the conduct of their individual registrants and staff. While there are fitness standards and high expectations of individual registrants in the investment industry, not all registrants live up to those standards. FAIR Canada believes the CSA Proposal should include guidance in the Companion Policy for firms on how CSA members expect registrant firms to deal with individual registrants who may be deficient in their dealings with vulnerable clients.

Canadian Adult Protective Agency

3.11. Elder abuse, financial exploitation, vulnerable investors and diminished mental capacity are broad social issues. We commend the CSA's efforts to address them in the investment context. However, given the complexity and broader social impact of these issues, FAIR Canada re-iterates the recommendation from its work with CCEL that an adult protective agency is in order. Such an agency can triage and help direct individuals or organizations to the appropriate regulatory authority.

3.12. While such an agency may be beyond the purview of the CSA, the CSA and the financial industry can help to advocate for such an agency. Pushing for a modern adult protective agency that utilizes the most effective and least intrusive interventions is a logical and beneficial complement to the mandate of CSA members to protect investors.

3.13. The 2017 Report noted that such an agency could look at numerous U.S. initiatives for Canada to emulate. In particular, the National APS system is one model of how such an agency might function. Alternatively, building out the Canadian Anti-Fraud Centre to respond to and report on allegations of financial exploitation is another model.

National Seniors Strategy

3.14. Canada's population is aging. These demographics create challenges that impact all sectors of society. The U.S. Consumer Financial Protection Bureau has noted:

"Experts and professionals in the field agree that increased multidisciplinary community collaboration and interagency cooperation is vital to addressing the problem of elder abuse, especially financial exploitation."[4]

3.15. A national seniors strategy is necessary in Canada and CSA members are important stakeholders in such a strategy.

We thank you for the opportunity to provide our comments and views in this submission. We welcome the public posting of this submission and would be pleased to discuss this letter with you. Please feel free to contact Doug Walker should you have any questions or require further explanation at douglas.walker@faircanada.ca.

Sincerely,

Douglas Walker, Deputy Director
mailto:douglas.walker@faircanada.ca
Canadian Foundation for Advancement of Investor Rights

[4] CFPB, "Report and Recommendations: Fighting Elder Financial Exploitation through Community Networks", Office for Older Americans at 13, online at: https://files.consumerfinance.gov/f/documents/bcfp_fighting-elder-financial-exploitation_community-networks_report.pdf

Federation of Mutual Fund Dealers
Fédération des courtiers en fonds mutuels

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorite des marches 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

VIA EMAIL ONLY:
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The Secretary
Ontario Securities Commission

Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs Autorité des marchés financiers

Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"); and changes to

Companion Policy 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103")* to Enhance Protection of Older and Vulnerable Clients

The Federation of Mutual Fund Dealers ("Federation") has been, since 1996, Canada's only dedicated voice of mutual fund dealers. We currently represent dealer firms with over $124 billion of assets under administration and greater than 24 thousand licensed advisors that provide financial services to over 3.8 million Canadians and their families. As such we have a keen interest in all that impacts the dealer community, its advisors, and their clients.

We support the CSA's initiative to enhance the protection of older and vulnerable clients and appreciate the opportunity to comment. In reviewing comment letters already submitted we see some common themes and like responses and most align with our members' thinking including that of the Association of Canadian Compliance Professionals.

Aside from the common themes contained by many submissions, we support the submission by Sandra Jakab, Jakab Law & Compliance and Veronica Armstrong, Veronica Armstrong Law Corporation which brings a valuable perspective.

> *We agree in their Responses to Questions that the TCP requirement should apply to corporations, trusts, and partnerships that are closely held and are, in effect, part of an individual's personal investment plan. They recommend*

> *that the TCP be connected to the individual with instructing authority. However, if a closely held corporation, trust, or partnership is operating a business, it is not appropriate to request a trusted contact person. It is the responsibility of the business owners and managers to ensure a succession plan for an operating business, not a registrant's responsibility.*

In addition, we support the Key Recommendations submitted by the Portfolio Management Association to:

- *Establish a regulatory safe harbour for registrants that act in good faith to contact trusted contact persons (TCPs) and/or place temporary holds on client accounts (Holds) within the requirements of the Proposed Amendments in the short term while in the longer term, work with the necessary federal and provincial stakeholders to establish a legal safe harbour for registrants that act in good faith to contact TCPs and/or place Holds;*
- *Clarify that the TCP must be of the age of majority in their own jurisdiction of residence, and that the TCP does not need to reside in the same jurisdiction as the client;*
- *Move from a 30-day notification requirement regarding the status of a Hold to a more principles-based notification framework where status updates would be required for significant developments;*
- *Enhance third-party supports for registrants and clients in the case of suspected financial exploitation and abuse and/or diminished capacity; and*
- *Empower investors with information about registration and registration categories through the provision of easier-to-find and understand information on the National Registration Search Database.*

We agree with the Investment Industry Association of Canada's member concerns regarding contacting the TCP and others:

> *That although the Companion Policy states that registrants should encourage their clients to notify a TCP that they have been named and they may be contacted in certain circumstances, members still express concern that some clients may not alert their TCP in advance. Members also stated that privacy considerations are an issue when contacting an individual who is not a client. Although the Companion Policy refers to privacy obligations under relevant privacy legislation, members would welcome more guidance and clarity on this topic.*

And with respect to temporary holds:

> *We would recommend that the definition of "temporary hold" be expanded to also include the opening of new accounts, especially given the situation where a client liquidates their holdings at one firm and transfers to another firm [which may operate under another registration category or SRO] where the financial exploitation is continuing. We would also suggest that the SROs*

consider the need for exemptions from or amendments to their rules (for example, IIROC Dealer Member Rule 2300 Account Transfers and MFDA Rule 2.12 Transfers of Account) in instances where a temporary hold may be in place.

We appreciate the opportunity to comment.

Respectfully,

MATTHEW T. LATIMER
Executive Director

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LEEDE JONES GABLE

July 20, 2020

Delivered Via Email

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

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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%202016.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.

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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

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July 20, 2020

The Secretary
Ontario Securities Commission
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VIA EMAIL: comments@osc.gov.on.ca

Request for comments on proposed amendments to NI 31-103 regarding Registrant obligations to enhance protection of older and vulnerable clients

Quadrus Investment Services Limited (Quadrus) appreciates the opportunity to provide the following comments regarding the notice on enhancing protection of older and vulnerable clients. Quadrus is one of the largest mutual fund dealers in Canada with more than 3100 registered investment representatives. It is a subsidiary of The Canada Life Assurance Company.

We have provided our responses to the applicable questions below:

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

- ***In the case of a corporation, is a beneficial owner of, or exercises direct or indirect control over more than 25% of the voting rights attached to the outstanding voting securities of the corporation, or***
- ***In the case of a partnership or trust, exercises control over the affairs of the partnership or trust?***

It is our view that the trusted contact person requirements should not apply to these two situations.

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?

It is our view that the temporary hold process should apply to both mental-capacity related cases where the client is not represented by a POA or other legal representative, and to cases of financial exploitation of vulnerable clients. It is a reality that clients who lack capacity can do considerable harm to their finances without any third-party involvement. Registrants that are concerned that a client does not have the capacity to provide instructions should have this avenue available. This should particularly be the case where following instructions will cause the client harm.

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?

It is our view that, in addition to the temporary holds on the withdrawal of cash or securities from an account, the requirements should also apply to holds that are placed on the purchase or sale of securities and the transfer of cash or securities to another firm or financial institution. This could help protect against scenarios where a vulnerable person is coerced into moving assets to a new advisor or institution with less knowledge of the client and that is less likely to recognize abuse.

Should we prescribe a time limit on temporary holds? Or is the notice requirement proposed by the CSA sufficient to protect investors?

It is our view that the notice requirement proposed by the CSA is sufficient and a time limit should not be prescribed on temporary holds. However, we are concerned that the requirement to provide an update every 30 days could in some circumstances be burdensome and discourage registrants from placing holds. Alternatively, in some situations, 30 days may be too long of a period to wait to provide an update. Consideration should be given to a reasonableness approach to a reporting interval.

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?

Under the proposed amendments, we understand that registrants cannot place a temporary hold unless the firm reasonably believes that the client is vulnerable and financial exploitation has occurred or is occurring. Consideration should be given to including situations where the client does not have the mental capacity to make financial decisions and is not represented by a POA or other legal representative.

Even if the registrant reasonably believes that the conditions are met, there is no obligation to place temporary holds. In fact, the firm, “must not place a temporary hold” unless conditions are satisfied. As well, there are many steps to take subsequent to a temporary hold, including documenting, providing notice and reasons, reviewing and providing updates every 30 days until the matter is resolved. We note as well that that there is no safe harbour to protect the firm and registrants if it places a temporary hold in good faith or takes steps to protect a vulnerable client and it is later determined that this was not reasonable in the circumstances. The lack of a safe harbour, and the obligations when placing a temporary hold, will not encourage registrants to act to protect vulnerable clients. In our view, safe harbor immunity should be considered, similar to what we can find in the U.S. under FINRA’s rule 2165 when firms exercise discretion in placing temporary holds (https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165 https://www.finra.org/sites/default/files/2019-05/senior_safe_act_factsheet.pdf). We understand that FINRA was conducting a review recently to assess whether the safe harbour should be extended in the case of mental capacity matters (https://www.finra.org/rules-guidance/notices/19-27).

We understand that there will be a need to add an explanation of the circumstances under which a dealer would place a temporary hold, and a description of the notice that will be given to the client, to a dealer’s relationship disclosure document. We would like to better

understand what the CSA is looking for in terms of the notice description in that document.

We would be happy to discuss any of the points raised herein or to provide any additional information that you may find useful.

Regards,

Andrew Fitzpatrick
Assistant Vice-President, Government Relations & Public Policy

July 20, 2020

BY EMAIL

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 of 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

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Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations" ("NI 31-103")

and to

Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103CP")

Portfolio Strategies Corporation ("PSC") is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a mutual fund dealer and exempt market dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Northwest Territories and Quebec, and as an investment fund manager in Alberta and Ontario.

We appreciate the opportunity to provide comments on the CSA/ACVM Notice and Request for Comments (the "Notice") dated March 5, 2020. We strongly support this initiative to enhance investor protection by addressing issues of financial exploitation and diminished mental capacity of older and vulnerable clients. Having said that, it would be helpful if the CSA were to include "Safe Harbour Provisions" to protect registrants from legal or regulatory action, when they were acting in good faith to protect the interests of vulnerable clients. Our firm has had to deal with this very issue recently and the lack of guidance and protection for advisor and dealer registrants has been a concern. Below we provide our responses to the questions posed in the Notice.

Questions for Comment

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

Trusted Contact Person

1. *We have proposed that the new paragraph 13.2 (2)(e) not apply to a registrant in respect of a client that is not an individual. We acknowledge that some individuals structure their accounts as holding companies, partnerships or trusts for various reasons. Should registrants be required to take reasonable steps to obtain the name and contact information of a trusted contact person for the individuals who,*
   (i) In the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation, or
   (ii) In the case of a partnership or trust, exercises control over the affairs of the partnership or trust?

Yes, we agree that the concerns for vulnerable clients still exist in the situations listed above. In our opinion, the idea of a trusted contact person will improve investor protection and it will also serve as a valuable asset that registrants can use in shielding their clients from being financially manipulated, and may help eliminate concerns with regard to a client's mental capacity.

Likewise, we also concur with the comment from the CSA that says that registrants may carry on with account opening if a client refuses to identify a trusted contact person, given that the registrant has taken sufficient measures to acquire the trusted contact person information.

While we agree with the approach the CSA is taking, we believe that these practical steps ought to be fulfilled by offering clients more education about the concept of a Trusted Contact Person, and the situations in which the Trusted Contact Person information will be utilized by the registrant, and by procuring a pre-recorded "yes" or "no" answer from clients to a question in which they are asked if they would wish to provide a Trusted Contact Person. If they give a "yes" reply, then the registrant is expected to record the suitable Trusted Contact Person information. Having said that, PSC proposes that the CSA give extra directions as to what represents reasonable steps.

13.2 Know your client

In our opinion, it would make sense for the Trusted Contact Person definition to be clearly defined, and how a TCP could or should be utilized when it comes to protecting vulnerable clients, earlier in the National Instrument or in a preamble to the Know Your Client section. It should be clear that a registrant can still go ahead with opening a client's account if the client declines to provide a Trusted Contact Person even though the registrant has made reasonable efforts.

1.1 Definitions

We accept that the recommended definitions for "mental capacity" "vulnerable client" "financial exploitation" and "temporary hold" are all clear and appropriate.

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)*

   Order execution only dealers should still be required to obtain TCP information because their vulnerable clients are subject to the same risks. If an OEO firm receives an "out of character" or unusually large redemption request, this trade should be questioned. If OEO firms are exempted from the requirement to obtain TCP information, an unintended consequence could be that predatory beneficiaries may encourage vulnerable clients to move their investment accounts to OEO firms, where detection and prevention of improper trades are less likely to be challenged.

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?*

   Yes. We think it is realistic to expect temporary hold requirements to apply in these mentioned situations where there is a reasonable belief that the client does not have the mental capacity to make financial decisions as well as in a situation where the client is being exploited financially.

4. *We have proposed that the new temporary hold requirements may 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?*

   Yes. We agree that the purchase, sale and transfer of securities in addition to the withdrawal of cash or securities from an account are just as critical, so it is right for the new temporary hold requirements to apply to them as well. Vulnerable clients may come under pressure from family members to make equity or debt investments in failing businesses controlled by those same family members, or corporations where these family members are officers or directors.

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?*

We are of the belief that currently, the proposed 30-day guideline should be sufficient for most cases, therefore there would be no need to prescribe specific time limits.

6. *Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.*

   We are of the opinion that the current proposed amendments are adequate enough in addressing the issues regarding diminished mental capacity, as well as financial exploitations, therefore nothing more needs to be done in that regard.

Thank you for the opportunity to provide our comments. If the CSA/ACVM have any questions or require additional clarification, we would be pleased to discuss our comments further.

Yours truly,

"Mark Kent"

Mark S. Kent, CFA, CLU
President & CEO
Portfolio Strategies Corporation

MBC LAW
PROFESSIONAL CORPORATION / SOCIÉTÉ PROFESSIONNELLE

July 20, 2020

Via email

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Me Philippe Lebel Corporate Secretary and Executive Director,
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Fax: 514-864-8381
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Greetings:

Re: 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
https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20200305_31-103_protection-older-vulnerable-clients.pdf

We appreciate the opportunity to provide comments on these proposed amendments being the promotion of the use of trusted contact persons, and enabling the placement of temporary holds on transactions of concern. I write on my own behalf and on behalf of MBC Law Professional Corporation's Financial Loss Advisory Group. Our firm routinely represents investors who seek redress from retail financial services firms, both investments and insurance.

We commend the Canadian Securities Administrators ("**CSA**") for its work on these issues and its ongoing efforts to improve overall consumer protections, with its special focus on the necessary public protection of vulnerable investors. We also commend the Ontario Securities Commission ("**OSC**") and the Autorité des marchés financiers ("**AMF**") who are Canadian leaders in engaging investors in policy making and the protection of vulnerable investors.

We have reviewed the submissions of Kenmar and the OSC's Investor Advisory Panel. We agree and adopt their submissions. Rather than repeat them as part of this submission, we will focus on additional comments.

We agree with the CSA's proposal to clarify and extend protections to vulnerable investors. A key aspect of these protections is providing firms and their advisors with the tools that would enable them to take proactive steps to detect and protect vulnerable investors. A strong compliance regime is crucial to these protections and, more generally, the protection of Canadian retail investors. To further enhance investor protection the CSA should require financial advisors to (1) undertake related additional planning for investors, (2) provide additional and ongoing related education to investors (3) undertake additional related training for advisors and (4) additional/enhanced related reporting.

Additional planning for investors

The CSA's proposal recognizes that any investor is potentially a vulnerable investor and that any vulnerable investor is in turn a potential victim of malfeasance and/or becoming partially or fully incapacitated. Any and all investors may become vulnerable as a result of aging, health challenges, mental challenges and other vagaries of life. This unpredictability is a key factor. We cannot focus reforms only on people of a certain age or with specific known attributes. For reforms and protections to work, industry must be alert to the possibility that any investor may suffer impairment and, as a result, have increased risk of investment self-harm or be susceptible to third-party malfeasance.

Some health and mental changes are not foreseeable. This unpredictability is what creates the need for an Industry that is alert, with systems in place that would enable it to be responsive to these changes. When red-flag events occur, industry must have a robust alert system to recognize these events and be in a position to impose a swift plan of action. This plan would include a strict compliance process that would provide for minimal interference while investigating and protecting and would ultimately have an exit strategy to end any necessary, yet temporary, interference with the rights of the investor.

Planning protective steps are easily added to the current client onboarding process and KYC updates, such that in the case of a triggering event, protective steps can be swiftly taken with minimal restrictions to the rights and interests of the investor. This additional planning is the primary recommendation of our comments.

Additional and ongoing education to investors

Recognizing that every investor may need these protections, means that they will in turn need to be informed of them. Industry will therefore need to educate every investor at key opportunities about the available protections, the benefits of these protections, and how to empower industry to best activate protections while complying with investor wishes.

Industry must take the lead in this education and must be required to take proactive steps. The education of protections to investors is best delivered during client onboarding and KYC updates. The education should be delivered by both firms and their advisors in plain language educational brochures and mandatory plain language advisor communications. This will require expert drafting of the brochures.

Additional Training for advisors

In addition, the CSA should require mandatory and expert training of advisors. Advisors will need to be well informed on the new proposal in order to both educate and advise investors. Advisors are a crucial link in the protection of investors and will likely be the "first responders" in the event of a red flag. Advisors will need training to ensure consistent recognition of red flags and, in the event of a red flag , to know where and how to seek out expert assistance from their dealers in order to ensure best practices in handling of the red flag. Both steps of early recognition and seeking advice are necessary to turn a regulatory initiative into effective investor protection.

We also support informed investor choice. While believing that the Trusted Contact Person ("TCP") proposal is in the interest of all investors, we support the right of any informed investor to refuse to appoint a TCP. If an investor exercises their right to refuse to appoint a TCP, we believe a dealer and/or an advisor should be free to terminate the advisor relationship on reasonable notice.

Additional/Enhanced Reporting

An important benefit of the CSA's proposed reforms is the requirement for enhanced reporting. Enhanced reporting will improve empirical evaluation of the retail market and associated risks. Empirical evaluations in turn will lead to improved market conduct rules and informed policy, regulation and rule making.

Concluding submissions

Kenmar's comments with respect to the definition of "vulnerable client" highlight the need for improved drafting of the proposal. We support the definition used by the UK FCA which we view as more encompassing. For example, the CSA proposed definition arguably, excludes potential clients and potential harm during the onboarding process. Extension of the definition to include

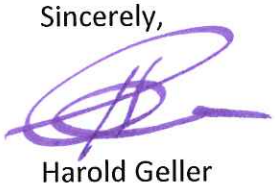
abuses through firm arbitrage will enable intervention to prevent harm or limit the damage to victims of financial exploitation and other harms at the earliest possible stage. Currently dealer and advisors of the largest Canadian dealers routinely deny any duties are owed in soliciting clients. These dealers defend negligence actions by relying on the concept that no duties are owed before the client account is accepted by the firm, including all events up to that stage in the onboarding process. We commonly see this defence in Commutation of Pension negligence actions. This loophole is harmful to investor confidence in the markets and is contrary to the business advisory model. The UK FCA definition eliminates this unnecessary and unfair loophole.

We specifically support Kenmar's comments about additional vulnerable investor categories and his comments relating to the improvement of proposed Temporary Holds.

In conclusion, we support the CSA's proposal with the amendments suggested above, as they are likely to deter harm to vulnerable investors. We strongly recommend mandatory data gathering and reporting by firms; this is the key to future iterations of this proposal and potential additional protective reforms. We commend the CSA and its member Commissions for these steps to improve capital markets by protecting vulnerable investors.

Please feel free to contact me if any questions.

Sincerely,



Harold Geller

INCLUDES COMMENT LETTERS RECEIVED

THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

IFIC Submission

Re: 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

THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

IFIC.CA

PAUL C. BOURQUE, Q.C., ICD.D / c.r. IAS.A
President and CEO *Président et chef de la direction*
pbourque@ific.ca 416 309 2300

July 20, 2020

Delivered By Email: consultation-en-cours@lautorite.qc.ca, comments@osc.gov.on.ca

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 of 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

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Dear Sirs and Mesdames:

RE: 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

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on the Canadian Securities Administrators' (**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 (**Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector

where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

We commend the CSA on this initiative to enhance investor protection by addressing the issues of financial exploitation and diminished mental capacity of older and vulnerable clients. Our members deal regularly with areas of concern for these investors, and we welcome regulatory support to provide the best advice and services to clients experiencing financial exploitation or diminished mental capacity.

In this letter we provide our comments on aspects of the Consultation where we believe there is room for further improvement. Our comments on more technical aspects of the Consultation and our responses to certain questions posed by the CSA are set out in Appendix A and B, respectively.

Need for a Safe Harbour for Representatives and Dealers who Rely on the Temporary Hold Provisions

The proposed temporary hold provisions are crucial for representatives and dealers who have concerns that, with respect to the instructions they are receiving from a client, the client does not have mental capacity to make financial decisions. We support the requirement for firm involvement in the decision to impose a temporary hold, and the requirement to revisit the decision every 30 days until a final determination is made concerning the instructions.

However, we believe that few in the industry will rely on the temporary hold provisions without protection from a lawsuit for having made the determination to impose a temporary hold in accordance with the terms set out in the Consultation. Should there be a decline in the value of the assets subject to the hold in the period between the imposition of the temporary hold and its removal, a client, or a proxy, could institute litigation to recover the difference in the value of the assets.

A safe harbour from a legislative requirement is not a new concept. We note that section 138.4(9) of the Securities Act (Ontario) (**Act**) sets out a safe harbour for reporting issuers concerning forward-looking information. It provides that if reporting issuers follow the requirements of that section (including the use of reasonable cautionary language and a reasonable basis for drawing the conclusion or making the forecasts and projections set out in the forward-looking information), reporting issuers will not be liable for damages in an action for a misrepresentation in forward-looking information.

We are aware of at least one National Instrument that contains provisions that are intended to explicitly reduce potential liability. Section 3.9(3) “Standard of Care” of National Instrument 81-107 *Independent Review Committee for Investment Funds* provides that a member of an independent review committee does not breach his or her duty or standard of care if the member exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance in good faith on certain documents.

We urge the CSA, and the provincial governments as required, to provide a safe harbour for representatives and firms who make a reasonable decision to impose a temporary hold if they follow the requirements otherwise applicable to temporary holds.

Clarify that Collecting Information about a Trusted Contact Person is not an Element of the Know Your Client Requirement

The proposed trusted contact person (**TCP**) amendments are currently incorporated in section 13.2 of National Instrument 31-103 “Know your client”. While we agree that from a timing perspective it is best to collect the TCP information at the same time as collecting or updating the information currently required under section 13.2(2), we think the TCP information should be separated from the existing know your client

(**KYC**) information. A failure to collect the information set out in current section 13.2(2) can result in a deficiency finding on an audit or even lead to disciplinary action. TCP information is specifically identified in 31-103 Companion Policy as important information to collect, but "registrants are not prevented from opening and maintaining a client account if the client refuses or fails to identify a TCP". If the requirement remains as part of section 13.2(2) the refusal by a client to provide TCP information could result in a deficiency finding on an audit.

As a result, IFIC recommends that the TCP amendments be included as new section 13.(2)(2.1) and indicate that at the time the KYC information is being collected or updated under 13.2(2) a registrant should also take reasonable steps to obtain the TCP information.

A Role for the CSA in Training Representatives Concerning Vulnerable Investors

Determining whether a client is being financially exploited or has diminished mental capacity is difficult because it is subjective and nuanced. This expertise is not currently widespread within the investment funds industry although it is a crucial expertise that firms are developing. It is an expertise best informed by those who are experts in elder law and protecting vulnerable investors.

Because the understanding of financial exploitation and diminished mental capacity is based on subjective elements, it would be best for the investment funds industry and its clients if there could be a commonality of understanding across the industry and securities regulatory authorities of the elements of financial exploitation and diminished mental capacity, as well as their applicability to client situations.

We recommend that the CSA develop, in partnership with elder law experts, a training course on these topics, which would be available to all industry participants. There is precedent for this suggestion. We note that on page 5 of the Ontario Securities Commission's (**OSC**) *Statement of Priorities Report Card* for 2019-2020 it is stated that the OSC "partnered with Elder Abuse Prevention Ontario to deliver training and education to staff who interact with older individuals, such as when receiving inquiries and complaints, or when conducting compliance reviews or enforcement matters." We commend the OSC for this partnership with Elder Abuse Prevention Ontario and strongly urge the CSA to work in a similar partnership with elder law experts to develop a national course on financial exploitation and diminished mental capacity.

OSC Qualitative and Quantitative Analysis of the Anticipated Costs of the Proposed Amendments

IFIC consistently advocates for the OSC and the CSA to adopt robust cost-benefit analyses in advance of proposing new regulatory instruments, and we acknowledge the OSC's cost-benefit analysis in Appendix D of the Consultation. While our members do not hesitate to incur the costs that will be involved in instituting policies and procedures to establish TCPs and to utilize temporary holds where appropriate, we believe the estimate of the costs to do so in Appendix D is incomplete and/or inaccurate in places. We provide the following examples to help guide future cost-benefit analyses.

In our view, it is significantly inaccurate to assert that updating policies and procedures, KYC forms and RDI documents, existing IT systems and internal training programs can be accomplished in 21 hours. It will be many multiples of 21 hours to update existing documents and, particularly, to develop and hold training programs relating to the temporary hold provisions. All of this work will require the involvement of multiple subject matter experts from various parts of the registered dealer and numerous meetings to coordinate information flow and ensure consistency of approach.

The estimate of 30 minutes to train a registered individual on both the TCP and temporary hold provisions severely underestimates the resources that will be devoted to both developing and delivering training on these two critical initiatives. Understanding financial exploitation and diminished capacity, as well as the concepts relating to them such as mental capacity, cannot be accomplished in 30 minutes.

Finally, our members disagree that it would take, on average, 1 minute and 20 seconds to collect trusted contact information from a client once they are contacted. This assumption does not take into account the requirements in the trusted contact proposal itself about the amount of information that must be communicated to a client about the purpose for collecting and using the information in advance of actually collecting the information.

* * * * *

IFIC appreciates this opportunity to provide the CSA with our comments on this important initiative. Please feel free to contact me by email at pbourque@ific.ca or by phone at 416-309-2300—I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Paul C. Bourque, Q.C, ICD.D
President and CEO

APPENDIX A - TECHNICAL COMMENTS

1. **Introductory language section 13.2(2)(e).** The introductory language to proposed section 13.2(2)(e) requires that the trusted contact person must be "an individual of the age of majority or older in the individual's jurisdiction of residence". We do not believe the TCP should have to be of the age of majority, since there is no trading being done on the account by the TCP. Further, we do not believe the TCP must be in the "individual's jurisdiction of residence." There is no trading activity being conducted by the TCP which might require this geographic restriction.
2. **Privacy considerations.** We are concerned that the requirement for the client to provide contact information for the TCP may raise privacy considerations. Perhaps the Companion Policy could indicate that firms should consider whether the client should obtain the TCP's prior consent to provide any personal information to the firm.
3. **Section 13.19(1).** Currently this section provides that "a registered firm, or a registered individual whose registration is sponsored by the registered firm, must not place a temporary hold…unless the firm reasonably believes". As the temporary hold provision is permissive, please consider redrafting the section to provide that a firm or individual "may" place a temporary hold "if" the firm "reasonably believes".
4. **Appendix G--Part 13 - Assisting Vulnerable Clients, "Conditions for temporary hold".** This section states "We expect registered firms to have written policies and procedures". As the Companion Policy is guidance only we suggest this be redrafted to state "Registered firms may have written policies and procedures which contemplate some or all of the following". Further, as it is the client's decision whether to provide the information or participate in it being updated, firms should only be guided to use reasonable efforts to collect and update the information and document the TCP collection process.

APPENDIX B - CONSULTATION QUESTIONS

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?**

It is sufficient for the proposed new paragraph 13.2(2)(e) apply only in respect of clients which are individuals.

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).

While our members do not offer order execution only services, we believe that careful consideration will need to be given to how a dealer which does not provide advice can obtain TCP information.

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?

It is unclear why a temporary hold should only be available in the case of financial exploitation; as noted, individuals suffering from diminished mental capacity may also need to be protected from mishandling or dissipating their own assets. Dealers and representatives should have the ability to do the analysis as to whether to apply a temporary hold when there is concern about the financial exploitation or about diminished mental capacity.

We therefore strongly urge the CSA to provide that the temporary hold requirements can apply both in the case of financial exploitation and in the case of diminished mental capacity to make financial decisions.

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?

We strongly support the ability to place a temporary hold in all the situations outlined in this question and, for greater certainty, on account closings. To the extent it is not clear from the current language that a transfer of cash or securities includes a transfer to another firm and account closings, we would encourage the CSA to make this explicit

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?

We agree with the requirement to provide notice of the decision not to terminate the temporary hold, and reasons for that decision, every 30 days. Given that we recommend that a temporary hold may be imposed both in cases of financial exploitation and in the case of diminished mental capacity, we are concerned with the efficacy of the notice in the latter case. The Companion Policy might encourage firms to consider if any other notices would be appropriate in the case of diminished mental capacity.

To the extent the use of the term “notice” might be interpreted to mean written notice delivered by way of mail, we encourage the CSA to clarify that each firm should make its own determination as to the best method of delivery of the notice to a client, which may, for example, be by telephone.

6. Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.

As noted in our letter, in the absence of a safe harbour provision for dealers and representatives who rely on the temporary hold provisions, we are concerned that these provisions will not be embraced as fully as they might otherwise be.

Advocis
The Financial Advisors Association of Canada

July 20, 2020

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 of 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

Care of:

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec City, Québec G1V 5C1
consultation-en-cours@lautorite.qc.ca

SENT VIA EMAIL

Dear Sirs/Mesdames:

Re: Proposed Amendments to Enhance Protection of Older and Vulnerable Clients

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments on the Canadian Securities Administrators' (CSA) proposed amendments to enhance protection of older and vulnerable clients.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, risk management, tax planning, employee benefits, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

2. OUR COMMENTS

EXECUTIVE SUMMARY

We applaud the CSA for acting to protect vulnerable investors. As trusted client-facing professionals, financial advisors are in a key position to identify when clients may be exposed to financial exploitation or experience a change in mental capacity. We are encouraged that regulators are recognizing the importance of the advisor-client relationship and the role that advisors play in serving vulnerable clientele. The proposed amendments align with a broader shift towards professional standards and expectations in the financial advice industry and provide greater protections and benefits for clients of financial advisors.

However, we are concerned that advisors lack adequate protection from the risks of regulatory and legal action when acting in good faith to discharge these new professional obligations or when conscientiously refusing to act when, in their judgment, a situation falls outside their area of expertise. We feel that the proposed amendments would be enhanced by additional guidance offered by the CSA regarding its expectations and specific legal “safe harbour” protections that shield advisors from regulatory and civil liability.

TRUSTED CONTACT PERSON

Advocis supports the requirement to take reasonable steps to obtain the information of a Trusted Contact Person (TCP) for individual client accounts. As certain dealers have proactively started collecting TCP information from clients to address the situations outlined in the consultation paper, we recommend that the CSA review these approaches and include guidance in the Companion Policy that reflects existing best practices.

Specifically, guidance should clearly outline that the TCP is not a substitute for a Power of Attorney (POA) and ensure that dealers and advisors have clear instructions on how and when to contact the TCP or the POA respectively. As a matter of best practice, the TCP generally should not have an interest in the client's account and to avoid any conflict of interest, investors should be encouraged to name different individuals as their TCP and as their POA, although this may not always be possible.

We also suggest that the Companion Policy include guidance with respect to when financial advisors or firms should contact other parties, such as an office of a Public Guardian and Trustee (PGT) or law enforcement, especially where financial exploitation of a vulnerable client is suspected. However, we have heard from our members that third parties such as the PGT and law enforcement are not always engaged and responsive to reports of financial exploitation. We encourage CSA members to engage directly with these third parties to make them aware of the role that the CSA is asking registrants to take, so that these matters are appropriately acted upon when reported. We further encourage the CSA to explore possible regulatory solutions where local gaps exist in the necessary mandate, resources, or will to act in cases of financial exploitation.

Finally, we recommend that the CSA work with federal and provincial governments to ensure that a legal "safe harbour" protection exists for registered individuals and firms who contact a TCP in good faith and in compliance with securities regulation, especially with respect to privacy legislation. The safe harbour should apply both in regards to regulatory and civil liability.

Questions for Comment

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?

Response:

In our view, the same investor protection concerns frequently exist in situations where clients have structured their personal investment plan to include personal holding companies or other closely-held entities over which the client exercises significant control or ownership. However, identifying when the use of a TCP is appropriate may be more challenging for clients that are not individuals, especially where that client is actively operating as a business. Other shareholders and decisionmakers may be involved in managing the company's financials and adhering to the suggested criteria may result in requiring more than one TCP per client that is not an individual, increasing the compliance burden.

We feel that the CSA should engage in further consultations to ensure that investor protection concerns are appropriately addressed when clients structure their investments in personal holding companies or similar entities. This subsequent consultation should deal specifically with the nuances of closely-held entities and how their structure (including familial ownership) intersect with the objects behind identifying a TCP.

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).*

Response:

We recognize the challenge that Dealer Members exclusively providing order execution only services face in obtaining TCP information, especially when OEO dealers are not completing suitability assessments and do not typically maintain an active, engaged relationship with their clients. Also, while robo-advisors may assess suitability, similar challenges exist for assessing a client's mental capacity and vulnerability to financial exploitation as in the OEO channel.

Advocis is concerned that the investor protections afforded by tools such as the TCP and temporary holds will not be accessible to clients using OEO dealers or robo-advisors to manage their investments. Without an element of initial and ongoing personal contact that would expose a dealer to potential indicators of a client's mental state or general wellbeing, investors using OEO dealers or robo-advisors will be lacking these additional protections. At the very least, this should be reflected in the disclosure that clients receive when they open an account with an OEO dealer or robo-advisor. However, we recommend that the CSA engage in additional consultations to ensure that vulnerable clients in these channels are sufficiently

informed and protected in the event of financial exploitation or a decline in mental capacity. These non-advised channels raise particular issues regarding how investors participating in these channels can receive adequate protection.

TEMPORARY HOLDS

Advocis supports the proposal to permit the use of temporary holds where registered individuals or firms reasonably believe that a vulnerable client is being financially exploited or does not have the mental capacity to make financial decisions.

However, while advisors may be well-positioned to spot potential indicators of diminished mental capacity, this type of assessment falls outside of most advisors' area of expertise. The term "reasonable belief" suggests a legal test or threshold that may be difficult for an advisor to support or appropriately document without exposure to additional legal risk. Care should be taken to limit advisor regulation to areas where they have the relevant proficiencies and skills to execute these obligations with an appropriate degree of diligence.

As part of the Companion Policy, we believe that the CSA should include guidance on when, especially in scenarios of suspected diminished mental capacity, other tools and resources may be available and appropriate – including the involvement of a client's POA or another resource with specialized expertise, such as a provincial PGT. As noted previously, we encourage CSA members to engage with the PGT office, law enforcement and other relevant parties in their jurisdiction to ensure that the responsibilities of parties are well-understood and cases of financial exploitation can be appropriately and effectively addressed.

Guidance should also 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. Collaboration with other trusted professionals may be something that should be encouraged and supported, with appropriate balancing of privacy concerns.

Questions for Comment

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?*

Response:

We support the availability of temporary holds where there is a reasonable belief that a client does not have the mental capacity to make financial decisions. We do not believe that temporary holds should be limited to cases of financial exploitation of vulnerable clients. However, we recommend that the CSA include extensive guidance within the Companion Policy to assist financial advisors and dealers with identifying signs of changes in mental capacity and appropriate next steps. While financial advisors may be uniquely positioned to identify when a client is experiencing diminished mental capacity, this is a sensitive and challenging issue that lies outside of the typical financial advisor's core areas of expertise. Especially given the regulatory and legal risks present when making these assessments, financial advisors should be provided with as much guidance and support on this issue as is practicable.

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?*

Response:

Given the comparable risks to vulnerable clients, we are of the view that temporary hold requirements should apply to the purchase and sale of securities and the transfer of cash or securities.

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?*

Response:

Advocis agrees that given the complexity of issues relating to financial exploitation and diminished mental capacity and the time it takes to engage with third parties, a strict time limit on temporary holds could defeat the policy objectives behind issuing them. In our view, it is appropriate to require firms to provide ongoing notice and rationale to clients for every 30 days that a temporary hold is in place. However, we encourage the CSA to include guidance within

the Companion Policy regarding how these decisions should be made, and provide as much clarity as possible regarding when a temporary hold should be maintained or terminated, including what documentation should be collected by the firm in support of any decision.

We also encourage the CSA to be cognizant of circumstances where temporary holds could be exploited by advisors or dealers who are not operating fully in good faith. For example, executing a temporary hold on a major client account at fiscal year end or another key financial milestone could have a significant impact on revenue or asset management reporting. The CSA should take all necessary steps to ensure that a temporary hold is treated as a serious investor protection measure that should only be used in good faith, with appropriate rationale and supporting documentation.

6. *Are the Proposed Amendments regarding temporary holds adequate to address issues of financial exploitation of vulnerable clients or diminished mental capacity, or does more need to be done to ensure these issues are addressed? The CSA will consider next steps based on the input received.*

Response:

Advocis feel that the proposed amendments would be enhanced by specific civil and regulatory "safe harbour" protections for financial advisors and their firms acting in good faith, provided they are acting in accordance with regulatory requirements. Absent these protections, we are concerned that financial advisors may be faced with significant legal and financial risk even when acting to protect vulnerable clients.

Our members work closely with their clients, and often develop ongoing and involved relationships over a period of years. In our consultations, our members expressed enthusiasm for both the TCP and temporary holds as available tools to help protect their clients when there is a diminishment in their mental capacity or a case of financial exploitation. In general, financial advisors have expressed a willingness to take on the responsibility and the challenges associated with protecting vulnerable clients. However, we are concerned that absent appropriate "safe harbour" legal protections, financial advisors and dealers will find it difficult to manage the risks associated with using these tools to their full purpose.

We encourage the CSA to work with federal and provincial governments to ensure that financial advisors and firms have sufficient clarity around the liabilities faced, both civil and regulatory, when acting to protect vulnerable investors.

We look forward to working with the CSA as it continues to explore opportunities to protect older and vulnerable clients within the capital markets. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at 416-342-9849 or jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors

20 July 2020

Sent via email on 20 July, 2020 to comments@osc.gov.on.ca, Consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Re: Proposed amendments to CSA National Instrument 31-103 to enhance protection of older and vulnerable clients

CARP is Canada's largest advocacy association for older Canadians, with 320,000 members, and 26 member chapters across Canada. We are committed to working with all levels of government to advocate for older Canadians. Our mission is to advocate for better health care, enhanced financial security, and freedom from ageism and abuse for older adults.

Thank you for your kind consideration.

Sincerely,

Marissa Lennox
Chief Policy Officer

Bill VanGorder
Vice Chair, National Board of Directors

Summary

CARP is pleased to have the opportunity to provide input on the proposed amendments to National Instrument 31-103 – to Enhance Protection of Older and Vulnerable Clients.

CARP supports the initiative by the CSA to enhance investor protection by promoting the use of trusted contact persons (TCP) and enabling temporary holds on potentially exploitative transactions.

Trusted Contact Person

CARP supports the need for firms to make reasonable efforts to obtain the name and contact information of a trusted contact person (TCP) from their clients. A TCP will help to safeguard older adults from financial abuse and harm by giving the firm consent to contact the trusted person to address possible financial exploitation, or to discuss concerns regarding diminished capacity as it relates to the client's financial decision making ability.

We agree with the provision that requires a firm to provide a description of the circumstances under which the firm may disclose information about the client or the client's account to the TCP.

Should the client wish to be referred to resources such as a brochure for more information, firms should have the appropriate resources and materials in large print and plain language available.

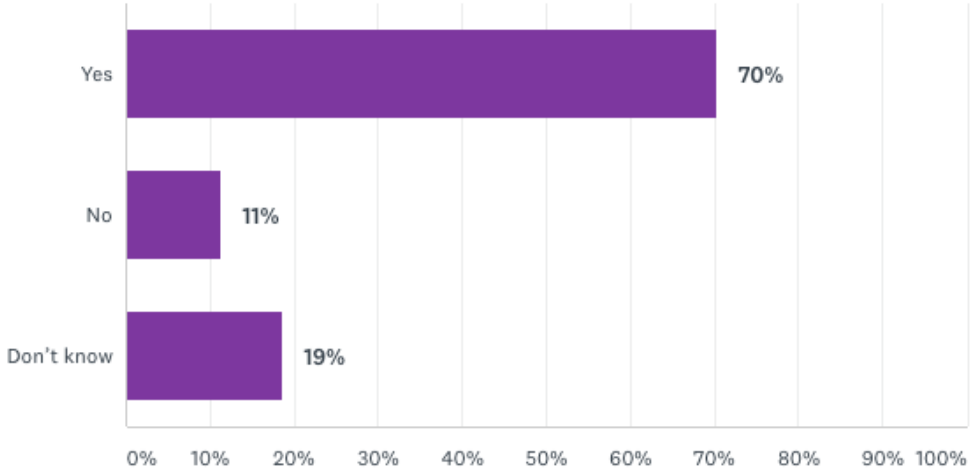
A TCP should not be cited as the power of attorney, but rather a separate individual that the advisor can call upon if they suspect wrongdoing.

Financial fraud against older adults is most often perpetrated by those closest to the victims: family members, friends, or caregivers. This underscores the importance of ensuring a trusted contact is established before any issues arise.

In a survey conducted between May 29 and June 4, 2020, 70% of CARP members said they support the need for a trusted contact. Of those who had an opinion, 86% supported.

CARP Members' View

Q. Would you like your investment firm or bank to ask you for the name of a trusted person to contact in the event that they suspect fraud or other harm to you?



* This survey, conducted between May 29 and June 4, 2020, received over 3,500 responses.

Temporary Holds

CARP supports the proposed rule to allow a firm to a place a temporary hold on certain transactions where there is a reasonable belief of financial exploitation or undue influence of the client. In addition, CARP supports the proposed conditions for a temporary hold, including where the firm reasonably believes the client is a vulnerable client, and financial exploitation of the client has occurred, is occurring, has been attempted or will be attempted.

CARP supports a legal safe harbour provision that shields advisors and firms from liability if they act in accordance with regulatory requirements, in good faith and exercise reasonable care in making a disclosure about a client to the designed TCP or in placing a temporary hold on transactions.

Conclusion

Thank you for the opportunity to provide input on the proposed amendments. Please feel free to contact Marissa Lennox, marissa@carp.ca, or Bill VanGorder, vangorder@carp.ca if you require additional information or would like to engage further on this.

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Borden Ladner Gervais

July 28, 2020

Delivered by Email

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

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Me Philippe Lebel, Corporate Secretary and
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Dear Sirs/Mesdames:

Re: 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 to Enhance Protection of Older and Vulnerable Clients published for comment on March 5, 2020 (the Proposed Amendments)
Comments of Borden Ladner Gervais LLP

We are pleased to provide the members of the Canadian Securities Administrators (**CSA**) with comments on the above-noted Proposed Amendments. Our comments are those of the individual lawyers in the Investment Management and Disputes practice groups of Borden Ladner Gervais LLP listed below, and do not necessarily represent the views of BLG, other BLG lawyers or our clients.

We commend the CSA for moving forward with the Proposed Amendments. We have long supported the concept of a "trusted contact person" (TCP) and recognized the need for registrants to contact a TCP in appropriate circumstances. We have also advocated in support of registrants being empowered to put certain temporary holds on accounts where they reasonably suspect financial exploitation, diminished capacity of clients or there exist other valid reasons why a particular transaction should not be processed in a client's account.

We intend our comments to enhance the drafting of the Proposed Amendments so that registrants will have a clearer understanding of the requirements and the CSA guidance. We also urge the CSA to work to provide greater legal certainty to registrants when they follow the Proposed Amendments.

Need for Greater Legal Certainty for Registrants from the CSA

1. Throughout the discussion, particularly in Appendix G, but also in the Notice explaining the Proposed Amendments, the CSA state multiple times that:

    a. Appointing a TCP and contacting the TCP is subject to privacy and other laws and a registrant must be "mindful of privacy laws" and

    b. Putting a temporary hold on an account is subject to applicable legal requirements, including privacy laws, other than securities laws, which the CSA explain do not prevent a temporary hold.

    In our view, the CSA cannot simply state that other laws may apply and registrants should be aware of them. There is a need for guidance on these matters precisely because registrants are currently subject to potentially conflicting legal obligations that the Proposed Amendments should resolve. To make these statements runs the risk of undermining the Amendments by replicating the current uncertainty. These statements leave a registrant open to client and regulatory criticism and litigation risk unless they obtain legal opinions as to their ability to comply with the rules and adhere to the CSA guidance. We consider this an untenable position for a registrant. What is a registrant to do if it receives an opinion that it cannot comply with the Proposed Amendments as encouraged (*required*) by the CSA? We feel this is an extremely important topic and requires further CSA analysis and guidance. We consider that it is not sufficient for the CSA to point these out in the vague ways set out in the Proposed Amendments. At a minimum, we recommend that the CSA explain how the Proposed Amendments fits within the privacy regime in Canada, and the role that client consent to contact a TCP plays to alleviate privacy concerns. Without this further explanation and guidance, the Proposed Amendments will leave considerable litigation and regulatory risk and uncertainties for registrants, which in this very important area for all Canadians, particularly older Canadians, is unacceptable.

2. The Proposed Amendments do not include the concept of a reasonable due diligence or provide for a safe harbour provision for registrants in appropriate circumstances.

Appropriate circumstances will include where a registrant has exercised sound judgment and made sensible inquiries, but did not detect mental incapacity (which may be expected given that they are not medically trained), other vulnerability or financial exploitation and took appropriate, understandable action in response to the circumstances. Given the nature of the objectives of the CSA, we encourage the CSA to include such a safe harbour or give assurances to registrants that will lessen litigation risk or the risk of adverse regulatory actions.

3. The CSA requests comment on whether or not the Proposed Amendments insofar as they relate to TCPs should apply to individuals who set up an account through a corporate, partnership or trust structure. This question raises difficult legal questions that require further thought and analysis. At a practical level, it may be very difficult for registrants to obtain information about the beneficial ownership of these entities and come to conclusions about the need for a TCP in the circumstances.

   The "easier" case will be in circumstances where an individual is the sole director and officer of a corporation, or the sole trustee of a trust, who has the power to appoint an alternate trustee (but has not done so) or a partnership where the general partner is a corporation with the individual acting as a sole director and officer. Even in these circumstances, there will be no need to appoint a TCP if the constating documents of the applicable vehicle allow for the appointment of an alternate decision maker, because the registrant can take instructions from the alternate decision maker for the investment vehicle. These factual circumstances raise significant privacy issues, given the individual's right to privacy, which would include the individual's right to create the structure he or she has established for investments. We do not recommend that the Proposed Amendments simply impose the same requirements on the vehicles listed by the CSA in the Notice, given that there will be a range of vehicles with varying degrees of complexity.

Drafting Comments:

1. **Section 13.2(2)(e):**

   a. The reference to "trusted contact person, who is an individual of the age of majority or older in the individual's jurisdiction of residence" can be read in two ways. Clarification is necessary to make it clear that "jurisdiction of residence" modifies "age of majority" and does not have the effect of requiring a TCP to live in the same province as the client or the registrant. We initially read this section to have the latter meaning, which meaning would unduly limit who may be a TCP. For instance, given modern means of communication, we see no reason why an adult child living in another province or country cannot be a TCP (particularly where the client may have no one else available for the role of TCP).

   b. We read this section as stating that a registrant has to obtain a TCP from <u>each</u> individual client, no matter the condition of the client at the time of account opening. This should be clarified. The consequences of not being provided with this information by the client should be expanded upon in the proposed Appendix G. The fact that the requirement to obtain the TCP information is in the same

section as the requirements to obtain other KYC and suitability information (all considered vital for account opening and for compliance purposes) may lead a registrant to conclude that it will be improper to open an account without this information, notwithstanding the statements in Appendix G. We recommend that the TCP provisions be drafted as a separate section in the Rule. The Rule should be clear that an account can be opened in circumstances where the client does not wish to provide the information and the registrant documents its reasonable efforts to obtain the TCP information, as well as the reasons provided by the client for declining to name a TCP.

c. The rule should deal clearly with obtaining a TCP for existing clients who do not yet have one on file with the registrant when the Proposed Amendments come into force. There must be a reasonable and sufficient transition period for existing clients. We think this is even more acute given that the Proposed Amendments are intended to come into force at the same time as the majority of the "client focused reform" amendments to NI 31-103. The CSA should carefully consider the transition and coming into force matters in light of the industry resources to implement and comply with these changes at the same time as dealing with issues arising from COVID-19. We recommend a later coming into force date for the Proposed Amendments.

d. The Proposed Amendments should also offer clarity on updating existing TCP appointments or refusals to make one. For a client who does not have a TCP when the Proposed Amendments come into force, the registrant presumably could discuss and seek to obtain a TCP at its next meeting with the client to discuss the account and update KYC information (subject to a reasonable transition period). As with new account openings, it should be clear that the registrant may proceed to open or maintain an account for the client, if the client expressly declines to appoint a TCP and the registrant documents that refusal. We recommend that Appendix G also discuss regulatory expectations on the need for registrants to update TCPs during regular KYC/account discussions between registrants and clients. 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.

e. We consider that a TCP cannot be the registered representative who is responsible for the client's account, nor should it be any other registered representative within that registrant. Appendix G suggests this "should not" be the case, but, given the obvious conflicts of interest inherent in having these individuals be the TCP, we recommend that this be prohibited in the rule. Otherwise, we appreciate the flexibility provided in Appendix G as to who can be a TCP for a client – in contrast to the more restrictive provisions established by the MFDA's guidance for example.

f. The drafting is not clear whether the circumstances listed in subparagraphs (i) to (iv) are the ONLY things about which a registrant can contact a TCP. We assume so, but this should be clarified.

2. Section 13.19

a. The drafting of section 13.19 does not mention the client's TCP. Can a registrant contact the TCP if it considers this would appropriate, while it is considering placing a temporary hold on the account (assuming the TCP is not the person giving rise to a cause for concern)? We feel that a better tie-in to the TCP is necessary for this section (although we recognize the discussion in Appendix G).

b. In our view, section 13.19 and Appendix G on the topic of temporary holds establish too onerous pre-requisites for registrants to place temporary holds. We recommend that the CSA consider carefully how much of the discussion in Appendix G is necessary and consider the commentary received from industry participants on this issue.

By way of brief observation and example only, a client may be vulnerable to the misuse of funds by family or friends without suffering from illness, impairment, disability or the aging process, and may find it otherwise be prudent to put a temporary hold on withdrawals. The current definition of vulnerable client and the current pre-requisites for a temporary hold do not encompass this common scenario.

Further, the nature and extent of any temporary hold should be contextual. For example, the sale of securities may mitigate risk particularly in a falling market and therefore should not form part of a temporary hold depending upon the circumstances.

++

We hope that the CSA consider our comments as positive and helpful to advance the CSA's considerations of the important matters outlined in the Proposed Amendments. Thank you for considering our comments after the comment deadline of July 20, 2020.

Please contact Rebecca Cowdery at rcowdery@blg.com and 416-367-6340 if you have any questions on our comments or wish to meet with us to discuss any or all of our comments.

Yours very truly,

Borden Ladner Gervais LLP

Jason Brooks Rebecca Cowdery Lynn McGrade Laura Paglia Michael Taylor

(Lawyers in BLG's Investment Management Practice Group and Disputes Group)

CHAIRE EN GOUVERNANCE ET DROIT DES AFFAIRES
Université de Montréal

By email
consultation-en-cours@lautorite.qc.ca

Montréal, July 17, 2020

Me Philippe Lebel
Secrétaire et directeur général des affaires juridiques
Autorité des marchés financiers
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2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Me Lebel,

Re: CSA Notice and Request for Comment – Proposed Amendments to Enhance Protection of Older and Vulnerable Clients

On March 5, 2020, the Canadian Securities Administrators (CSA) issued a Notice and Request for Comments relating to Proposed Amendments to Regulation 31-103 and to Policy Policy 31-103 ("Notice of Consultation") to enhance protection of older and vulnerable clients.

You will find below the comments I make in the context of this consultation as a Full Professor and Chair in Business Law and Governance at the Faculty of Law of the Université de Montréal (www.droitdesaffaires.ca).

1. General Comments

1.1 The Proposed Amendments to National Instrument 31-103 and to Companion Policy 31-103CP ("Proposals") address an issue of great importance that is central to the investor protection mandate of the CSA. Indeed, as many studies and reports have pointed out, the vulnerability of investors is unfortunately exploited by registered and unregistered persons, causing losses which have disastrous consequences for the financial security of these investors.[1] In this context, we welcome this initiative by the CSA, which is in addition to a series of measures put in place in recent years and to which the Notice of Consultation refers.

[1] Raymonde CRÊTE et Christine MORIN, « La protection juridique des personnes ainées contre l'exploitation financière », (2016) 46 Revue générale de droit 5 (hors série); FONDATION CANADIENNE POUR L'AVANCEMENT DES DROITS DES INVESTISSEURS, Rapport sur les investisseurs vulnérables : maltraitance envers les personnes âgées, exploitation financière, abus d'influence et aptitudes mentales diminuées, novembre 2017; INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSION, Senior Investor Vulnerability, Final Report, FR03/2018, Mars 2018.

1.2 As the International Organization of Securities Commissions (IOSCO) suggests, it is possible to distinguish the abuses committed towards vulnerable investors according to the status of the people who commit the wrongdoings.[2]

1.3 On the one hand, we find abuses committed by unregistered individuals. These abuses consist of financial exploitation maneuvers generally perpetrated by relatives or people of confidence. Abuse can also take the form of financial fraud by third parties who offer the purchase of highly speculative securities or participation in fraudulent financial schemes.

1.4 On the other hand, registrants can engage in financial fraud or even participate in financial abuse harming vulnerable investors. In addition, they can offer investment products that are not suitable for them in view of their investor profile, by focusing on elements such as poor financial literacy, product complexity and pressure selling techniques.

1.5 We understand that the Draft Amendments primarily target the first type of abuse, i.e. those committed by unregistered individuals. They also address the issues raised by the diminished cognitive capacities of elderly investors. Recognizing the role of sentinels of registered individuals and companies, the CSA Notice of Consultation identifies two specific changes to strengthen the protection of vulnerable investors.

1.6 The first amendment would require that registrants take reasonable steps to obtain the name and contact information of a trusted contact person from each of their clients and their written consent to communicate with them. Under the proposed amendment, Companion Policy 31-103NP would clarify that registrants who are concerned about a client's financial exploitation or mental capacity should tell them about their concerns about their account or well-being before to communicate with anyone else, including the trusted contact person. In addition, Companion Policy 31-103NP states that if consent has been obtained, “a registrant might contact a TCP if they notice signs of financial exploitation or if the client exhibits signs of diminished mental capacity which they believe may affect the client’s ability to make financial decisions” [emphasis added].

1.7 Although it is a relevant protective measure, it is possible to question the regulatory strategy chosen to implement it. The wording of the proposed amendments to National Instrument 31-103 suggests that the added obligation would be limited to obtaining the contact details of the support person. The steps to be taken in the event of a concern relating to the vulnerable investor would be found in Companion Policy 31-101CP, which does not have the same normative value. In addition, as recognized in the CSA Notice and Requestion for Comments, Policy Policy 31-103 is limited to providing guidance on their expectations regarding the use of a trusted contact person. In order to achieve the objectives pursued, it would seem preferable to state in National Instrument 31-103 the conduct expected of the registrant in such a context. Such precision would also improve legal predictability for companies and registrants.

1.8 The second amendment would add a new provision relating to temporary holds. Specifically, section 13.19 would state that nothing in the legislation or regulations prevents the registered firm or the registered individual whose registration it sponsors from imposing a temporary hold when the firm reasonably believes that one of the following two situations applies: i) the firm reasonably believes that a vulnerable customer is being exploited financially; or ii) in relation to an instruction he has given, the client does not have the mental capacity to make financial decisions.

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1.9 This is an important protective measure. With respect to its scope of application, it seems appropriate that temporary holds any form of operation as currently proposed by the proposals. Indeed, it seems that a protective provision like the one proposed should be broad and inclusive in order to achieve the objectives pursued. Similarly, the two main situations triggering the application of the new obligations relating to temporary holds are relevant.

2. Vulnerable Client

2.1 The following definition of “vulnerable client” is proposed. It is closely related to that of “financial exploitation”.

> “vulnerable client” means a client of a registered firm or a registered individual, who may have an illness, impairment, disability or aging process limitation that places the client at risk of financial exploitation;
>
> “financial exploitation” means, in respect of an individual, the use, control or deprivation of the individual’s financial assets through undue influence or wrongful or unlawful conduct;

2.2 There is no definition of vulnerable investor (client) in the academic literature. In the common sense, the vulnerable person as "one who can be easily reached, who has difficulty defending himself, who is fragile".[3] In this perspective, the vulnerable investor is the person who uses the services of a financial intermediary and who is in a situation where he finds it difficult to defend his own interests. Investor's vulnerability can result from personal characteristics, as well as relational elements. Thus, the diversity of factors contributing to vulnerability means that there is no such thing as a "typical type" of the vulnerable investor.

2.3 Nevertheless, in the light of our literature review, we have identified four main criteria relevant to qualify an investor as vulnerable, namely age, state of health, visible minority status and level of knowledge.[4]

2.4 We note that the definition of vulnerable investor retained by the proposals only refers to two of these four main criteria. In addition, the definition seems to link the vulnerability of the investor to financial exploitation. This choice is probably explained by the limited nature of the proposed modifications which target specific situations of potential abuse.

2.5 We believe it is necessary for the CSA to go further in their efforts to put in place a regulatory framework that protects vulnerable investors. Among the initiatives to be considered is a more fundamental reflection on the definition of the vulnerable investor who would target the entire management of the financial sector under the CSA’s umbrella.

2.6 In particular, it is suggested that the CSA work with self-regulatory organizations to develop a common definition of a vulnerable investor.[5] By establishing a common definition of vulnerability, regulators would create a frame of reference that highlights the fundamental elements of this issue. In addition to facilitating exchanges, adopting a definition common to regulators would help to ensure that the components of vulnerability are recognized regardless of the forum where the vulnerability is present. Similarly, the definition would allow decision-

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making bodies to have guidelines for identifying this aggravating factor. Finally, this definition could be used by intermediaries as part of their own initiatives to prevent abuse by vulnerable investors.

In closing, I would like to thank the CSA for the opportunity to provide comments on this important regulatory initiative.

Yours truly,

Me Stéphane Rousseau, Ad. E.
Professor and Chair in Business Law and Governance
Université de Montréal

CHAIRE EN GOUVERNANCE ET DROIT DES AFFAIRES
Université de Montréal

By email
consultation-en-cours@lautorite.qc.ca

Montréal, July 17, 2020

Me Philippe Lebel
Secrétaire et directeur général des affaires juridiques
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Québec (Québec) G1V 5C1

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You will find below the comments I make in the context of this consultation as a Full Professor and Chair in Business Law and Governance at the Faculty of Law of the Université de Montréal (www.droitdesaffaires.ca).

1. General Comments

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Me Stéphane Rousseau, Ad. E.
Professor and Chair in Business Law and Governance
Université de Montréal

CHAIRE EN GOUVERNANCE ET DROIT DES AFFAIRES
Université de Montréal

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Montréal, le 17 juillet 2020

Me Philippe Lebel
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Objet : **Avis de consultation des ACVM - *Projets de modification visant à rehausser la protection des clients âgés et vulnérables***

Me Lebel,

Le 5 mars 2020, les Autorités canadiennes en valeurs mobilières (ACVM) ont publié un Avis de consultation relatif à des Projets de modification au Règlement 31-103 et à l'Instruction générale 31-103 (« Avis de consultation ») visant à rehausse la protection des clients âgés et vulnérables.

Vous trouverez ci-dessous les commentaires que je formule dans le contexte de cette consultation à titre de Professeur titulaire de la Chaire en gouvernance et droit des affaires de l'Université de Montréal (www.droitdesaffaires.ca).

1. Observations générales

1.1 Les Projets de modification au Règlement 31-103 et à l'Instruction générale 31-103 (« Projets de modification ») abordent une question d'une grande importance qui est au cœur de la mission de protection des investisseurs des ACVM. En effet, comme bon nombre d'études et de rapports l'ont fait ressortir, la vulnérabilité des investisseurs est malheureusement exploitée par des personnes inscrites et non inscrites, causant des pertes qui ont des conséquences désastreuses

pour la sécurité financière de ces investisseurs[1]. Dans ce contexte, il convient de saluer cette initiative des ACVM qui s'ajoute à une série de mesures mises en places au cours des dernières années et auxquelles réfère l'Avis de consultation.

1.2 Comme le suggère l'Organisation internationale des commissions de valeurs (OICV), il est possible de distinguer les abus des investisseurs vulnérables en fonction du statut des personnes qui commettent les actes répréhensibles[2].

1.3 D'une part, nous retrouvons les abus commis par des personnes qui ne sont pas inscrites. Ces abus consistent en des manœuvres d'exploitation financière généralement commises par des proches ou des personnes de confiance. Les abus peuvent aussi prendre la forme de fraudes financières commises par des tiers qui proposent l'achat de titres hautement spéculatifs ou la participation à des montages financiers frauduleux.

1.4 D'autre part, des personnes inscrites peuvent se livrer à des fraudes financières, voire participer à l'exploitation financière, portant préjudice aux investisseurs vulnérables. De plus, elles peuvent proposer des produits d'investissement qui ne conviennent pas à ces derniers en regard de leur profil d'investisseur, en misant sur des éléments tels que la faible littératie financière, la complexité des produits et les techniques de vente sous pression.

1.5 Nous comprenons que les Projets de modification visent primordialement le premier type d'abus, c.-à-d. ceux commis par des personnes non inscrites. Ils traitent aussi des enjeux soulevés par la diminution des capacités cognitives des investisseurs âgés. Reconnaissant le rôle de sentinelles des personnes et sociétés inscrites, l'Avis de consultation des ACVM fait état de deux modification particulières pour renforcer la protection des investisseurs vulnérables.

1.6 La première modification exigerait que la personne inscrite prenne des mesures raisonnables pour obtenir du client le nom et les coordonnées d'une personne de confiance et son consentement écrit à communiquer avec elle. Suivant la modification proposée, l'Instruction générale 31-103 préciserait que la personne inscrite qui craint un cas d'exploitation financière ou de diminution des facultés mentales d'un client devrait lui parler de ses préoccupations entourant son compte ou son bien-être avant de communiquer avec qui que ce soit d'autre, dont la personne de confiance. De plus, l'Instruction générale 31-103 mentionnerait qu'une fois le consentement obtenu, « la personne inscrite peut communiquer avec la personne de confiance lorsqu'elle remarque des indices d'exploitation financière ou si le client montre des indices de diminution des facultés mentales qu'elle estime susceptibles de nuire à sa capacité de prendre des décisions financières » [nos soulignés].

1.7 S'il s'agit d'une mesure de protection pertinente, il est permis de s'interroger sur la stratégie réglementaire retenue pour la mettre en œuvre. La lecture du Projet de modification au Règlement 31-103 suggère que l'obligation ajoutée se limiterait à l'obtention des coordonnées de

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[1] Raymonde CRÊTE et Christine MORIN, « La protection juridique des personnes ainées contre l'exploitation financière », (2016) 46 *Revue générale de droit* 5 (hors série); FONDATION CANADIENNE POUR L'AVANCEMENT DES DROITS DES INVESTISSEURS, *Rapport sur les investisseurs vulnérables : maltraitance envers les personnes âgées, exploitation financière, abus d'influence et aptitudes mentales diminuées*, novembre 2017; INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSION, Senior Investor Vulnerability, Final Report, FR03/2018, Mars 2018.

[2] INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSION, Senior Investor Vulnerability, Final Report, FR03/2018, Mars 2018

la personne de confiance. Quant à elles, les démarches à effectuer en cas de préoccupation relativement à l'investisseur vulnérable se retrouverait dans l'Instruction générale 31-101 qui n'a pas la même valeur normative. De surcroît, comme le reconnaît l'Avis de consultation des ACVM, l'Instruction générale 31-103 se limite à fournir « des indications sur leurs attentes en matière de recours à la personne de confiance ». Afin d'atteindre les objectifs poursuivis, il paraît souhaitable de baliser dans le Règlement 31-103 la conduite attendue de la personne inscrite dans un tel contexte. Un tel balisage améliorerait aussi la prévisibilité juridique pour les sociétés et les personnes inscrites.

1.8 La seconde modification ajouterait une nouvelle disposition relative aux blocages temporaires. Spécifiquement, l'article 13.19 édicterait que rien dans la législation ou la réglementation n'empêche la société inscrite ou la personne physique inscrite dont elle parraine l'inscription d'imposer un blocage temporaire lorsque la société estime raisonnablement que l'une des deux situations mentionnées suivantes s'applique : i) la société estime raisonnablement qu'un client vulnérable est exploité financièrement; ou ii) à l'égard d'une instruction qu'il a donnée, le client ne possède pas les facultés mentales pour prendre des décisions financières.

1.9 Il s'agit d'une mesure de protection importante. S'agissant de son champ d'application, il paraît opportun que les blocages temporaires visent toute forme d'opération comme le proposent actuellement les Projets de modification. En effet, il semble qu'une disposition protectrice comme celle qui est proposée devrait être large et englobante afin d'atteindre les objectifs poursuivis. De même, les deux grandes situations déclenchant l'application des nouvelles obligations relatives aux blocages temporaires sont pertinentes.

2. Notion de « client vulnérable »

2.1 Les Projets de modification proposent la définition suivante de « client vulnérable » qui est liée à la notion « d'exploitation financière »:

> « « client vulnérable » : tout client d'une société inscrite ou d'une personne physique inscrite qui peut être atteint d'une limitation liée au vieillissement, d'une maladie, d'une déficience ou d'une incapacité qui le met à risque d'exploitation financière »
>
> « « exploitation financière » : à l'égard d'une personne physique, l'utilisation, le contrôle ou la spoliation de ses actifs financiers par l'exercice d'une influence indue ou une conduite illégale ou fautive

2.2 Il n'existe pas de définition d'investisseur (client) vulnérable dans la littérature académique. Selon le sens courant, la personne vulnérable comme « celle qui peut être facilement atteinte, qui se défend difficilement, qui est fragile »[3]. Dans cette perspective, l'investisseur vulnérable est la personne qui a recours aux services d'un intermédiaire financier et qui est dans une situation où elle éprouve des difficultés à défendre ses propres intérêts. La vulnérabilité de l'investisseur peut résulter de caractéristiques personnelles, ainsi que d'éléments relationnels. Ainsi, la diversité

[3] Marie-Hélène DUFOUR, « Définitions et manifestations du phénomène de l'exploitation financière des personnes âgées », (2014) 44 *Revue générale de droit* 235, 245.

des facteurs contribuant à la vulnérabilité fait en sorte qu'il n'existe pas un « portrait type » de l'investisseur vulnérable.

2.3 Néanmoins, à la lumière de notre revue de littérature, nous avons identifié quatre principaux critères pertinents pour qualifier un investisseur de vulnérable, soit l'âge, l'état de santé, le statut de minorité visible et le degré de connaissances[4].

2.4 Nous constatons que la définition d'investisseur vulnérable retenue par les Projets de modification ne réfère qu'à deux de ces quatre principaux critères. De plus, la définition semble lier la vulnérabilité de l'investisseur à l'exploitation financière. Ce choix s'explique vraisemblablement par la nature circonscrite des modifications proposées qui visent des situations d'abus potentiels précises.

2.5 Nous sommes d'avis qu'il est nécessaire pour les ACVM d'aller plus loin dans leurs efforts destinés à mettre en place un cadre réglementaire assurant la protection des investisseurs vulnérables. Parmi les initiatives à envisager se trouve une réflexion plus fondamentale sur la définition de l'investisseur vulnérable qui viserait l'ensemble de l'encadrement du secteur financier relevant des ACVM.

2.6 Plus particulièrement, il est suggéré que les ACVM travaillent de concert avec les organismes d'autoréglementation afin d'élaborer une définition commune de l'investisseur vulnérable[5]. En arrêtant une définition commune de la vulnérabilité, les régulateurs créeraient un cadre de référence qui met l'accent sur les éléments fondamentaux de cet enjeu. En plus de faciliter les échanges, l'adoption d'une définition commune aux régulateurs contribuerait à faire en sorte que les éléments constitutifs de la vulnérabilité soient reconnus quel que soit le forum où la vulnérabilité est présente. De même, la définition permettrait aux instances décisionnelles d'avoir des balises pour identifier ce facteur aggravant. Enfin, cette définition pourrait être utilisée par les intermédiaires dans le cadre de leurs propres initiatives destinées à prévenir les abus des investisseurs vulnérables.

En terminant, je souhaite remercier les ACVM pour l'opportunité offerte de fournir des commentaires relativement à cette importante initiative réglementaire.

Veuillez agréer, Me Lebel, mes salutations distinguées.

Me Stéphane Rousseau, Ad. E.
Professeur titulaire de la Chaire en gouvernance et droit des affaires
Université de Montréal

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4 Stéphane ROUSSEAU et Damien HALLÉ-HANNAN, *Investisseurs vulnérables et application des lois: analyse de la jurisprudence disciplinaire des organismes d'autoréglementation*, Montréal, Observatoire du droit des marchés financiers, 2020 <https://www.droitdesaffaires.ca/publications/investisseurs-vulnerables-et-application-des-lois-analyse-de-la-jurisprudence-disciplinaire-des-organismes-dautoreglementation/>.

5 *Ibid.*, p. 98-99.

UNIVERSITÉ LAVAL

Chaire de recherche Antoine-Turmel
sur la protection juridique des aînés

Consultation des Autorités canadiennes en valeurs mobilières

Projet de modification visant à rehausser la protection des clients âgés et vulnérables

Projet de *Règlement modifiant le Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*

Projet de modification de l'*Instruction générale relative au Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*

Mémoire de la Chaire de recherche Antoine-Turmel sur la protection juridique des aînés

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Sommaire

1. Mise en contexte

- Les personnes qui œuvrent dans l'industrie des services financiers, tels les courtiers en placement et les courtiers en épargne collective (« les sociétés inscrites ») et leurs représentants ou conseillers financiers, peuvent être témoins de situations potentielles d'exploitation financière ou de diminution des facultés mentales de leurs clients âgés ou en situation de vulnérabilité.

- Comme envisagé par les Autorités canadiennes en valeurs mobilières (« ACVM »), il est important d'aiguiller les sociétés inscrites et leurs représentants sur les mesures à prendre en vue d'assurer la protection du patrimoine financier de leurs clients qui peuvent être victimes d'exploitation financière ou dont la diminution des facultés mentales peut les empêcher de prendre des décisions financières libres et éclairées.

2. Mesures de protection envisagées par les ACVM

- Les mesures préconisées par les ACVM nous apparaissent opportunes, soit la désignation par les clients d'une personne de confiance avec qui la personne inscrite pourrait communiquer, de même que la possibilité pour la société inscrite ou son représentant d'effectuer un blocage temporaire des transactions dans le compte du client dans les situations problématiques visées par le *Règlement*.

- Selon le *Règlement* proposé, la personne de confiance doit être une personne physique majeure dans le territoire de la résidence du client. Si le territoire visé fait référence à la province où réside le client, cette limite territoriale nous apparaît trop restrictive.

- **Recommandation :** donner une plus grande latitude dans le choix de la personne de confiance.

- **Recommandation :** dans le *Règlement*, prévoir la désignation d'une seconde personne de confiance en prévision du décès ou de l'inaptitude de la première, ou advenant que celle-ci soit la personne qui exploite le client.

- **Recommandation :** dans une annexe à l'*Instruction générale*, inclure un modèle d'autorisation à communiquer avec la personne de confiance, comme le présente le *Guide pratique pour l'industrie des services financiers - Protéger un client en situation de vulnérabilité* (« *Guide pratique* ») préparé par l'Autorité des marchés financiers.

3. Enjeux de la mise en œuvre des mesures de protection

- Tout en étant favorables aux mesures de protection proposées par les ACVM, il convient de tenir compte des difficultés ou des enjeux auxquelles les sociétés et leurs représentants peuvent être confrontés dans la mise en œuvre de ces mesures.

A. Détection des indices d'exploitation financière ou de diminution des facultés mentales du client

- Pour les conseillers, il peut s'avérer difficile d'évaluer si les instructions du client en situation de vulnérabilité sont données de façon libre et éclairée ou si, au contraire, celles-ci résultent de pressions, de menaces ou de manipulations de la part d'une personne, tel un membre de la famille du client, qui profite de la vulnérabilité de son parent pour l'exploiter financièrement.

- Une problématique peut également apparaître lorsqu'un client manifeste des troubles cognitifs de manière épisodique, sans pour autant être déclaré inapte juridiquement. En ce domaine, il existe plusieurs « zones grises » dont les conséquences sur la capacité de prendre une décision financière libre et éclairée sont difficiles à évaluer.

- Dans les relations avec les clients âgés, le phénomène de l'âgisme constitue un enjeu de taille dont les manifestations risquent de porter atteinte aux droits à la dignité, à la liberté et à la vie privée des clients.

B. Obligations en matière de protection des renseignements personnels

- Un des enjeux importants de la mise en œuvre des mesures de protection a trait à l'obligation imposée aux sociétés inscrites et à leurs représentants de respecter la confidentialité des renseignements personnels de leurs clients.

- La législation québécoise actuelle permet de déroger à cette obligation de confidentialité, mais cette dérogation de portée trop restreinte permet difficilement de lutter efficacement contre l'exploitation financière des clients en situation de vulnérabilité.

- **Recommandation :** adopter une disposition législative de portée plus étendue permettant de déroger à l'obligation de confidentialité afin de soutenir et de sécuriser les acteurs du secteur financier dans leurs démarches de détection et de prévention des situations d'exploitation des personnes vulnérables.

C. Immunité de poursuite des personnes inscrites

- En raison de leur obligation de confidentialité, les sociétés inscrites et leurs représentants risquent de s'abstenir d'intervenir dans les situations d'exploitation financière ou de diminution des facultés mentales de leurs clients par crainte de poursuites judiciaires ou disciplinaires.

- **Recommandation :** adopter une disposition législative afin de protéger les sociétés inscrites et leurs représentants contre les poursuites judiciaires et disciplinaires en cas de divulgation de renseignements personnels faite de bonne foi.

4. Adoption de politiques et de procédures écrites

- Sur le plan individuel, les conseillers financiers peuvent être mal outillés pour faire face aux situations problématiques visées par le *Règlement*, lesquelles soulèvent des enjeux importants de nature économique, sociale, éthique et juridique.

- Sur le plan organisationnel, il est essentiel que les sociétés inscrites mettent en place des politiques et des procédures afin d'encourager et de soutenir les conseillers financiers dans leurs actions auprès des clients.

- Dans les textes réglementaires soumis, les ACVM suggèrent l'adoption de politiques et procédures, mais celles-ci traitent principalement de la désignation de la personne de confiance et de l'imposition de la procédure de blocage temporaire.

- **Recommandation :** étendre la portée des politiques et des procédures afin de couvrir l'ensemble des bonnes pratiques axées sur le bien-être financier des clients en situation de vulnérabilité, comme le suggèrent le *Guide pratique* préparé par l'Autorité des marchés financiers, de même que l'Avis du personnel des ACVM intitulé *Pratiques recommandées d'interaction avec les clients âgés ou vulnérables*.

- **Recommandation :** prévoir dans les politiques que la décision de divulguer ou non une situation problématique ou d'imposer un blocage temporaire relève de la société inscrite plutôt que du conseiller financier.

5. Concepts-clés dans les textes réglementaires

- **Recommandation :** revoir la portée des définitions des concepts-clés « client vulnérable », « exploitation financière » et « facultés mentales » afin que celles-ci soient suffisamment souples pour s'harmoniser avec le vocabulaire utilisé dans la législation québécoise actuelle, mais surtout pour éviter qu'elles restreignent l'effectivité des protections prévues par la loi.

- **Recommandation :** faire référence à des « décisions financières libres et éclairées » afin de préciser la nature de la décision prise.

Introduction

L'équipe de la Chaire de recherche Antoine-Turmel sur la protection juridique des aînés de l'Université Laval se réjouit de participer à la consultation des Autorités canadiennes en valeurs mobilières (« ACVM ») sur les projets de modification visant à rehausser la protection des clients âgés et vulnérables[1]. Plus particulièrement, ces autorités soumettent un projet de *Règlement modifiant le Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites* (ci-après « projet de *Règlement* ») [2] et un projet de modification de l'*Instruction générale relative au Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites* (ci-après « *Instruction générale* ») [3] (désignés collectivement « projets de modification » ou « textes réglementaires »).

La mission de la Chaire Antoine-Turmel est de promouvoir et de soutenir la recherche, la formation et la diffusion des connaissances sur le droit des aînés[4]. Il s'agit de l'unique chaire canadienne dont l'élément central est la protection des personnes âgées dans une perspective juridique. Les travaux de la Chaire sont réalisés en collaboration avec des experts d'autres disciplines afin de favoriser une appréhension globale des questions entourant les droits des aînés. L'un des objectifs spécifiques de la Chaire consiste à contribuer à une réflexion continue et cohérente à propos de la protection des droits des aînés.

∗ Les auteures remercient Brigitte Boutin, présidente du Comité consultatif des consommateurs de produits et utilisateurs de services financiers, pour ses commentaires et suggestions. Les auteures remercient également Simone Pilote, étudiante au baccalauréat en droit, pour sa précieuse collaboration à la recherche.

1 CSA/ACVM, *Avis de consultation des ACVM – Projets de modification visant à rehausser la protection des personnes âgées et vulnérables*, 5 mars 2020 (ci-après « *Avis de consultation* »), voir la version intégrée dans le Bulletin de l'Autorité des marchés financiers du 18 juin 2020, vol. 17, no. 24, p. 59-69, en ligne : https://lautorite.qc.ca/fileadmin/lautorite/bulletin/2020/vol17no24/vol17no24_3-2.pdf.

2 AUTORITE DES MARCHES FINANCIERS, Projet de *Règlement modifiant le Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*, intégré dans le Bulletin de l'Autorité des marchés financiers du 18 juin 2020, vol. 17, no. 24, p. 70-72, en ligne : https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/31-103/2020-03-05/2020mars05-31-103-cons-fr.pdf.

3 AUTORITE DES MARCHES FINANCIERS, Projet de modification de l'*Instruction générale relative au Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*, en ligne : https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/31-103/2020-03-05/2020mars05-31-103-ig-cons-fr.pdf.

4 Voir le site web de la Chaire de recherche Antoine-Turmel sur la protection juridique des aînés : http://www.chaire-droits-aines.ulaval.ca/.

D'emblée, nous accueillons favorablement ces projets de modification qui ont pour but « d'améliorer la protection des investisseurs en abordant les enjeux liés à l'exploitation financière et à la diminution des facultés mentales chez les clients âgés et vulnérables »[5]. Dans le présent mémoire, nous souhaitons alimenter la réflexion sur ces enjeux et soumettre des propositions en vue de bonifier les textes réglementaires envisagés. Dans cette optique, à la suite d'une mise en contexte de la problématique soumise (1), nous traiterons des questions suivantes, soit les mesures de protection envisagées par les ACVM (2), les enjeux de la mise en œuvre des mesures de protection (3), l'adoption de politiques et de procédures écrites (4) et enfin, les concepts-clés dans les textes réglementaires (5).

1. Mise en contexte[6]

Le vieillissement de la population est devenu un phénomène marquant qui soulève des préoccupations importantes de nature économique, sociale, éthique et juridique. Ce vieillissement de la population s'explique par l'augmentation de l'espérance de vie conjuguée à une faible fécondité, de même que par l'avancée en âge des baby-boomers qui joignent le groupe des aînés. Au Canada, les individus de 65 ans et plus représentaient, en 1984, 10 % de la population canadienne, comparativement à 17,2 % en 2018[7]. Au Québec, les personnes de 65 ans et plus représentaient 18,8 % de la population en 2018[8].

Tout en reconnaissant la difficulté de déterminer l'âge auquel une personne est considérée comme une « personne âgée », on observe que la vulnérabilité des personnes est susceptible d'augmenter avec l'âge et que, lorsque la vulnérabilité d'une personne s'accroît, le risque d'exploitation financière ou matérielle augmente. La faiblesse, la maladie, les déficiences physiques, psychologiques ou intellectuelles, l'isolement social, la faible scolarisation ou l'analphabétisme, le niveau de crédulité ou de naïveté, la

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5 *Avis de consultation*, préc. note 1, p. 59.

6 Cette première partie se fonde notamment sur les études suivantes : Raymonde CRETE et Christine MORIN, « La protection juridique des personnes aînées contre l'exploitation financière », (2016) 46 (hors série) *Revue générale de droit* 5 ; Raymonde CRETE et Marie-Hélène DUFOUR, « L'exploitation financière des personnes aînées : une mise en contexte, (2016) 46 (hors série) *Revue générale de droit* 13.

7 STATISTIQUE CANADA, *Projections démographiques pour le Canada, les provinces et les territoires, 2009-2036*, Statistiques Canada, juillet 2020, p. 16, en ligne : https://www150.statcan.gc.ca/n1/fr/pub/91-520-x/91-520-x2019001-fra.pdf?st=6xox7lEH.

8 STATISTIQUE CANADA, *Projections démographiques pour le Canada, les provinces et les territoires, 2009-2036*, Statistiques Canada, juillet 2020, p. 34, en ligne : https://www150.statcan.gc.ca/n1/fr/pub/91-520-x/91-520-x2019001-fra.pdf?st=6xox7lEH.

cohabitation avec un proche ayant des problèmes d'alcoolisme, de toxicomanie, de jeu compulsif ou de santé mentale de même que l'état de dépendance envers autrui sont autant de facteurs qui contribuent à accroître la vulnérabilité de la personne âgée et, du même coup, le risque d'exploitation financière ou matérielle. De plus, en raison de l'importance des actifs accumulés au fil des ans (immeubles, placements, biens de valeur, etc.), les personnes âgées ou « en situation de vulnérabilité » (ci-après « personnes vulnérables » ou « clients vulnérables »)[9] peuvent devenir des cibles de choix pour différentes personnes qui cherchent à profiter de leur situation de vulnérabilité pour obtenir des avantages pécuniaires portant, du même coup, atteinte aux ressources patrimoniales de ces personnes.

L'exploitation financière ou matérielle des personnes âgées ou vulnérables, aussi nommée maltraitance financière ou matérielle, est un problème complexe et multifactoriel qui préoccupe bon nombre d'acteurs à travers le monde, car il s'agit de l'une des formes de maltraitance les plus répandues. La revue de la littérature sur le sujet révèle également que les auteurs de l'exploitation financière envers une personne aînée sont le plus souvent des personnes évoluant dans un rapport de confiance avec cette personne, tels un parent, un ami, un voisin ou un proche aidant. Ce phénomène couvre toute forme d'appropriation, de contrôle ou d'affectation, illicite ou indue, de biens matériels ou immatériels et qui porte atteinte aux droits ou aux intérêts de la personne aînée.

Concrètement, l'exploitation financière peut se traduire par le fait, pour la personne qui exploite, d'encaisser des chèques ou de faire des retraits bancaires pour conserver l'ensemble ou une partie de l'argent sans l'autorisation de la personne vulnérable. Ceux qui gèrent les biens de cette personne, notamment sur la base d'un mandat de protection, d'une procuration générale ou d'une procuration bancaire peuvent aussi détourner à leur profit les biens dont ils assument la gestion. Même après la mise en place de mesures ou l'ouverture d'un régime de protection, une personne vulnérable n'est pas totalement protégée et peut être exploitée, notamment par son représentant légal (tuteur, curateur ou mandataire) qui utilise de façon inappropriée les pouvoirs lui ayant été confiés ou qui abuse

[9] Pour les raisons explicitées dans la partie 5 du présent mémoire, nous privilégions la désignation suivante « personnes en situation de vulnérabilité », plutôt que l'expression « personnes vulnérables » ou « clients vulnérables ». Par contre, pour alléger le texte, nous utilisons les termes « personnes vulnérables » ou « clients vulnérables », qui sont également employés dans les textes réglementaires soumis par les ACVM.

de sa position de force pour l'exploiter financièrement ou pour lui refuser les soins requis par son état. L'administrateur du bien d'autrui ou le mandataire se trouve dans une position lui permettant de s'approprier plus ou moins facilement les biens dont il a l'administration.

L'exploitation financière se traduit également par des pressions ou toute autre forme de manipulation pour convaincre la personne vulnérable de prêter, de donner de l'argent ou d'autres biens, de vendre sa maison ou de déménager, de faire un testament ou de signer une procuration ou d'y apporter des changements, de signer des documents légaux ou financiers ou d'acheter certains biens qu'elle ne désire pas.

Les conséquences de cette forme d'exploitation sont elles aussi variées et potentiellement dévastatrices. L'exploitation financière peut en effet entraîner des pertes financières considérables allant jusqu'aux économies d'une vie, de même que des préjudices portant atteinte à la santé physique et psychologique de la personne.

Dans des situations semblables, les personnes qui œuvrent dans l'industrie des services financiers, tels les courtiers en placement et les courtiers en épargne collective (ci-après « sociétés inscrites » ou « sociétés ») et leurs représentants (ci-après « représentants », « personnes physiques inscrites » ou « conseillers financiers ») qui offrent des services de conseils financiers, de gestion de portefeuille et de négociation en valeurs mobilières (désignées collectivement : « personnes inscrites »), peuvent devenir des témoins privilégiés de situations potentielles d'exploitation et être appelées à jouer un rôle important en vue de prévenir ou de faire cesser ces situations problématiques.

Comme envisagé par les ACVM dans les textes réglementaires soumis, il est essentiel d'aiguiller les sociétés inscrites et leurs représentants sur les mesures à prendre en vue d'assurer la protection du patrimoine financier du client qui peut être victime d'exploitation financière ou dont les facultés mentales peuvent diminuer et l'empêcher de prendre des décisions financières libres et éclairées.

2. Mesures de protection envisagées par les ACVM

Les mesures préconisées par les ACVM nous apparaissent opportunes, soit la désignation d'une personne de confiance, de même que la possibilité pour la société inscrite ou son représentant d'effectuer un blocage temporaire des transactions dans le compte du client.

Au regard de ces mesures de protection, il convient de souligner que, selon un sondage mené en 2019 par l'Organisme de réglementation du commerce des valeurs mobilières (ci-après « OCRCVM »), 92 % des investisseurs sondés « sont d'accord sur le fait que les sociétés de placement et les conseillers en placement doivent se doter d'outils réglementaires – personne-ressource de confiance ou 'blocage temporaire' – pour protéger les investisseurs qu'ils savent ou pensent vulnérables »[10].

A. Désignation d'une personne de confiance

Les ACVM proposent de modifier l'article 13.2 [Connaissance du client] du *Règlement* par l'addition, dans le paragraphe 2, du sous-paragraphe *e*, qui obligerait la personne inscrite à prendre des mesures raisonnables pour obtenir du client le nom et les coordonnées d'une **personne de confiance** et son consentement écrit à communiquer avec elle dans les situations prévues par le *Règlement*. Elles proposent aussi de donner, dans l'*Instruction générale*, des indications sur leurs attentes en matière de recours à la personne de confiance. Cette obligation ne s'appliquerait pas à la personne inscrite à l'égard d'un client qui n'est pas une personne physique.

Le projet de *Règlement* prévoit que la personne de confiance doit être une personne physique majeure dans le **territoire de la résidence du client**. Doit-on comprendre que le territoire visé fait référence à la province où réside le client? Si tel est le cas, cette limite territoriale nous apparaît trop restrictive et mériterait d'être revue afin de donner une plus grande latitude dans le choix de la personne de confiance.

En vue de bonifier les textes réglementaires soumis, les ACVM pourraient aussi inclure, dans une annexe à l'*Instruction générale*, un modèle d'autorisation à communiquer avec la personne de confiance, comme le présente le *Guide pratique pour l'industrie des services financiers - Protéger un client en situation de vulnérabilité* (ci-après « *Guide pratique* ») publié par l'Autorité des marchés financiers[11]. Les sociétés et leurs

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[10] OCRCVM, *Connaissances et attitudes à l'égard des dispositions visant à protéger les investisseurs vulnérables ainsi que les sociétés de placement et les conseillers - Présentation des constatations clés*, mai 2019, en ligne : https://www.ocrcvm.ca/investors/Documents/VulnerableInvestors20190531_FR.pdf.

[11] AUTORITÉ DES MARCHÉS FINANCIERS, *Guide pratique pour l'industrie des services financiers - Protéger un client en situation de vulnérabilité*, annexe 1, 2019 (ci-après « *Guide pratique* »), en ligne : https://lautorite.qc.ca/fileadmin/lautorite/grand_public/publications/professionnels/tous-les-pros/guide-bonnes-pratiques-personnes-vulnerables_fr.pdf.

représentants pourraient s'en inspirer pour développer leur propre formulaire de consentement à communiquer avec une personne de confiance.

Les ACVM proposent également de modifier l'article 14.2 [Information sur la relation] du *Règlement* par l'insertion, dans le paragraphe 2, du sous-paragraphe l.1, qui exigerait que l'information transmise au client par la société inscrite comprenne une description des circonstances dans lesquelles elle peut fournir de l'information sur le client ou sur son compte à une personne de confiance.

Sous réserve des difficultés d'application de cette mesure que nous expliciterons dans la partie 3, nous sommes favorables à cette obligation. Grâce à la désignation d'une personne de confiance, les sociétés peuvent obtenir des renseignements essentiels sur le client ou alerter une personne choisie par le client en cas de comportement préoccupant de ce dernier ou d'un de ses proches. Il est entendu que cette personne ne détient pas les pouvoirs attribués au mandataire qui agit dans le cadre d'un mandat de protection ou d'une procuration. La personne de confiance peut être un ami ou un membre de la famille en qui le client a confiance et qui peut « aider la personne inscrite à protéger les intérêts ou actifs financiers du client en réponse à une possible situation d'exploitation financière de ce dernier ou à des préoccupations entourant la diminution de ses facultés mentales »[12]. Il conviendrait de prévoir, dans le *Règlement*, la désignation d'une seconde personne de confiance en prévision du décès ou de l'inaptitude de la première, ou advenant que celle-ci soit la personne qui exploite le client.

B. Procédure de blocage temporaire

Les ACVM proposent de modifier l'article 13.19 [Conditions du blocage temporaire] du *Règlement*, dans la section 8. Cette section précise les mesures à prendre par les sociétés inscrites ou leurs représentants qui imposent un blocage temporaire lorsqu'« il s'agit d'un client vulnérable » et qu'« un cas d'exploitation financière du client est survenu ou survient, ou une tentative d'exploitation financière a eu ou aura lieu ». Ces deux conditions devraient donc être cumulatives pour effectuer un blocage relativement à un cas d'exploitation financière[13]. Selon le règlement proposé, les sociétés inscrites et leurs

[12] L'*Instruction générale*, préc. note 3, p. 3.
[13] Voir le projet de *Règlement*, préc. note 2.

représentants peuvent également imposer un blocage temporaire si « la société estime raisonnablement que, à l'égard d'une instruction qu'il a donnée, le client ne possède pas les facultés mentales pour prendre des décisions financières »[14]. Pour guider les sociétés et leurs représentants dans l'application de ces dispositions, *l'Instruction générale* précise les principes généraux et les conditions du blocage temporaire.

Encore une fois, sous réserve des difficultés que peut soulever l'application de cette mesure de protection, nous sommes favorables à ces nouvelles dispositions réglementaires. Dans une situation d'exploitation financière ou de diminution des facultés mentales du client, il est essentiel de protéger le patrimoine de ce dernier, et ce, de façon urgente.

3. Enjeux de la mise en œuvre des mesures de protection

Tout en étant favorables aux mesures de protection décrites précédemment, il est important de tenir compte des difficultés auxquelles les sociétés et leurs représentants sont susceptibles d'être confrontés au moment où ils seront appelés à mettre en application ces mesures[15].

A. Détection des indices d'exploitation financière ou de diminution des facultés mentales du client

Aux fins de l'application des mesures de protection proposées, les sociétés inscrites et leurs représentants seront appelés à détecter des indices d'exploitation financière ou de diminution des facultés mentales du client. Cette tâche risque de s'avérer délicate et difficile. À titre d'exemple, lorsqu'un client demande au conseiller de vendre des valeurs mobilières afin de lui permettre de faire un don important en faveur d'un de ses enfants majeurs, la question est de savoir s'il s'agit d'une décision financière prise de façon libre et éclairée ou si, au contraire, celle-ci est le résultat de pressions, de menaces ou de manipulations de la part d'un enfant qui exploite. Par ailleurs, notons qu'un conseiller peut difficilement empêcher un client de prendre une décision discutable, déraisonnable ou

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[14] Le projet de *Règlement*, préc. note 2, art. 4 qui modifie l'art. 13.19. 2) du *Règlement 31-103.*

[15] Cette partie se fonde notamment sur les études suivantes : Raymonde CRETE et Marie-Hélène DUFOUR, « L'exploitation financière des personnes aînées : une mise en contexte », (2016) 46 (hors série) *Revue générale de droit* 13; Raymonde CRETE et Marie-Hélène DUFOUR, « L'exploitation des personnes aînées : pour un élargissement des dérogations au secret professionnel », (2016) 46 (hors série) *R.G.D.* 397 ; Marie BEAULIEU, Roxanne LEBOEUF et Raymonde CRETE, « La maltraitance matérielle ou financière des personnes aînées – un état des connaissances », dans Raymonde CRETE, Ivan TCHOTOURIAN et Marie BEAULIEU (dir.), *L'exploitation financière des personnes aînées: prévention, résolution et sanction, coll.* « CÉDÉ », Cowansville, Éditions Yvon Blais, 2014, p. 3.

néfaste à ses intérêts, si ce dernier est considéré apte et qu'il agit en toute connaissance de cause.

On peut également anticiper des difficultés lorsque le client manifeste des troubles cognitifs. Dans ce contexte, le conseiller financier sera, à nouveau, appelé à se demander si le client donne un consentement libre et éclairé lorsque le conseiller reçoit une instruction de vendre des titres pour avantager un des membres de la famille du client. En ce domaine, il existe plusieurs « zones grises », notamment lorsque le client présente des problèmes cognitifs de manière épisodique qui, selon les circonstances, peuvent l'empêcher de donner un consentement valide. Dans les relations avec les clients âgés, il est aussi important de rappeler que le phénomène de l'âgisme constitue un enjeu de taille dont les manifestations risquent de porter atteinte aux droits à la dignité, à la liberté et à la vie privée de ces clients. L'âgisme implique des attitudes ou des comportements qui, implicitement ou explicitement, déprécient les personnes en raison de leur âge et qui, ultimement, font en sorte qu'on refuse parfois de reconnaître leurs droits en raison de préjugés liés à la sénescence. L'âgisme peut ainsi mener à une forme de discrimination fondée sur l'âge qui contrevient au droit à l'égalité. Bien entendu, une personne apte doit pouvoir prendre ses propres décisions, et ce, quel que soit son âge.

Une situation difficile peut également survenir lorsqu'un mandataire, qu'il s'agisse d'un membre de la famille d'un client ou d'une autre personne qu'il a désignée, administre le patrimoine de ce dernier en vertu d'un mandat de protection ou d'une procuration. Selon l'étendue des pouvoirs conférés au mandataire, celui-ci est présumé avoir l'autorisation expresse d'effectuer toutes les transactions permises[16]. Partant, si le mandataire demande au conseiller d'effectuer une vente importante de titres dans le compte du client-mandant, comment le conseiller financier pourra-t-il établir si cette transaction constitue ou non un abus de la part du mandataire? Si le mandataire n'est pas digne de confiance, le mandat ou la procuration peut en fait constituer une « autorisation de voler » (« *licence to steal* »)[17]. En cas d'exploitation financière potentielle de la part du mandataire, le conseiller peut

[16] Donna J. RABINER, David BROWN et Janet O'KEEFE, « Financial exploitation of older persons: challenges and opportunities to identify, prevent, and address it in the United States », (2006) 18:2 *Journal of Aging and Social Policy* 47, 58.

[17] *Id.* à la p. 57.

également se demander s'il doit informer ce mandataire de son intention de communiquer avec la personne de confiance ou d'imposer un blocage des transactions dans le compte du client.

Lorsque le mandataire est un membre de la famille de la personne âgée, ce qui est fréquemment le cas, il peut être tenté de priver le parent de son patrimoine ou d'une partie de celui-ci afin de profiter dès maintenant de l'héritage qu'il anticipe de recevoir. Le conseiller peut aussi être témoin d'un conflit entre les enfants du client dont certains peuvent contester la gestion du patrimoine par le mandataire, alors que ce dernier agit pourtant de bonne foi et de manière raisonnable. Dans des circonstances semblables, il peut s'avérer difficile, pour le conseiller financier, de départager les bonnes et les mauvaises intentions du mandataire. En l'absence de mesures de soutien mises en place par la société, ce dernier risque de se sentir démuni pour faire face à ces situations au cas par cas.

Sur le plan organisationnel, la prise en compte de ces enjeux met ainsi en relief la nécessité pour les sociétés inscrites d'adopter des mesures pour soutenir les conseillers financiers dans leurs actions en vue de protéger les clients vulnérables. Comme explicité plus loin dans la partie 4, les textes réglementaires proposés par les ACVM devraient prévoir la mise en place de ces mesures de soutien, notamment pour assurer la formation des conseillers et pour désigner une personne-ressource au sein de l'entreprise qui serait apte à répondre aux questions de ces derniers et à évaluer la nécessité d'une intervention.

B. Obligations en matière de protection des renseignements personnels

Outre les difficultés présentées ci-dessus au regard de l'appréciation concrète de la situation du client, les sociétés et leurs représentants sont susceptibles de se retrouver devant un dilemme entre leur désir de protéger un client et leur obligation de confidentialité.

1) Réticence ou refus du client

Un des enjeux importants de la lutte à l'exploitation financière documentés dans la littérature a trait aux obligations en matière de protection des renseignements personnels. Au Québec, la *Loi sur la protection des renseignements personnels dans le secteur privé* interdit à toute personne qui exploite une entreprise de « communiquer à un tiers les renseignements personnels contenus dans un dossier qu'il détient sur autrui ni les utiliser à

des fins non pertinentes à l'objet du dossier, à moins que la personne concernée n'y consente ou que la présente loi ne le prévoie »[18].

Or, le respect de cette obligation peut devenir problématique dans la relation entre un conseiller financier et son client en cas d'exploitation financière ou de diminution des facultés mentales de ce dernier. En tenant compte de la survenance anticipée de ces situations, il est opportun, comme le prévoit le projet de *Règlement* soumis par les ACVM, d'obliger le conseiller à prendre des mesures raisonnables pour obtenir du client le nom et les coordonnées d'une personne de confiance et son consentement écrit à communiquer avec elle si les situations problématiques préalablement identifiées surviennent. Dans l'hypothèse où ces mesures sont prises au moment de l'ouverture du compte ou, ultérieurement, lors d'une mise à jour des informations recueillies dans le compte, on peut présumer qu'à cette étape, le consentement du client est libre et éclairé.

Toutefois, après un certain nombre d'années, la question est de savoir si le conseiller financier pourra effectivement communiquer avec la personne de confiance dans l'hypothèse où l'une des situations problématiques survient. Dans l'une ou l'autre de ces situations, l*'Instruction générale* proposée par les ACVM prévoit que le conseiller sera appelé à communiquer avec le client « pour lui parler de ses préoccupations entourant son compte ou son bien-être avant de communiquer avec qui que ce soit d'autre, dont la personne de confiance »[19]. À cette étape, le conseiller doit s'assurer du consentement du client avant de communiquer avec un tiers intéressé. Le conseiller devra lui fournir l'information tant sur les renseignements qu'il souhaite divulguer que sur ses motivations l'incitant à obtenir ce consentement.

Par contre, au terme de cet entretien avec le client, il est possible que ce dernier soit réticent ou qu'il refuse que le conseiller communique avec la personne de confiance ou avec une autre personne. Lorsqu'une personne âgée plus vulnérable est victime d'exploitation financière, la littérature révèle que cette personne refuse souvent, pour diverses raisons, de donner son consentement pour permettre aux personnes de signaler ou de dénoncer la situation problématique. La réticence ou le refus de la personne âgée peut découler de sa

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[18] *Loi sur la protection des renseignements personnels dans le secteur privé*, RLRQ, chapitre P-39.1, art. 13.
[19] L'*Instruction générale*, préc. note 3, p. 4.

relation de dépendance envers la personne qui exploite (qui peut être un parent ou un proche aidant) ainsi que de la manipulation exercée par cette dernière. La personne âgée peut avoir peur des menaces ou des représailles et craindre de briser les liens avec l'auteur de l'exploitation ou sa famille. Elle peut être déchirée entre ses besoins matériels et ses besoins affectifs et elle peut choisir de « payer » de peur d'être abandonnée. Elle peut également éprouver des sentiments de honte, de culpabilité et d'humiliation. Les problèmes cognitifs de la personne vulnérable peuvent enfin rendre plus difficiles les démarches en vue de signaler une situation préoccupante.

Dans ces circonstances particulières où divers facteurs de vulnérabilité affectent une personne dans sa prise de décision, il pourra s'avérer difficile pour le conseiller financier d'obtenir son consentement pour lui permettre de divulguer certaines informations à la personne de confiance. En cas de refus du client à consentir, le conseiller pourra se demander si ce refus est libre et éclairé, auquel cas il doit respecter cette décision, ou s'il devrait néanmoins protéger le client ou, du moins, tenter de l'aider, même contre son gré. Autrement dit, s'il est nécessaire, pour le conseiller, de parvenir à un équilibre entre la protection du client vulnérable et la préservation de ses volontés et de son autonomie, il est également essentiel de tenir compte des facteurs pouvant empêcher l'expression de cette autonomie. Il faut éviter que le respect de l'autonomie de la personne ne se transforme en un prétexte justifiant l'indifférence face à la condition des personnes âgées plus vulnérables.

2) Dérogation à l'obligation de confidentialité

En cas de refus d'une personne de consentir à la divulgation de renseignements personnels à son sujet, la législation québécoise et canadienne permet de déroger à l'obligation de confidentialité en certaines circonstances particulières. Au Québec, la *Loi sur la protection des renseignements personnels dans le secteur privé* (LPRP), à son article 18.1, prévoit qu'« une personne qui exploite une entreprise peut […] communiquer un renseignement personnel contenu dans un dossier qu'elle détient sur autrui, sans le consentement des personnes concernées, en vue de prévenir un acte de violence, dont un suicide, lorsqu'il existe un motif raisonnable de croire qu'un risque sérieux de mort ou de blessures graves menace une personne ou un groupe de personnes identifiable et que la nature de la menace

inspire un sentiment d'urgence »[20]. Le dernier alinéa de cet article prévoit que les termes « blessures graves » visent « toute blessure physique ou psychologique qui nuit d'une manière importante à l'intégrité physique, à la santé ou au bien-être d'une personne ou d'un groupe de personnes identifiable ».

Or, en raison de sa portée restreinte, cette dérogation prévue dans la loi québécoise qui vise à prévenir un acte de violence susceptible de causer la mort ou des blessures graves risque de trouver difficilement application dans un contexte d'exploitation financière. En effet, cette forme d'exploitation est rarement définie ou comprise comme un « acte de violence » et elle ne cause pas nécessairement des blessures physiques ou psychologiques graves.

Sur la base d'une dérogation semblable, le conseiller financier qui communiquerait des informations sur son client à une personne de confiance en vue de prévenir une situation d'exploitation financière ne saurait être assuré d'être exonéré de toute responsabilité par un tribunal ou par un organisme d'autoréglementation de nature disciplinaire. En outre, la dérogation prévue dans la LPRP est sans doute inapplicable dans le contexte d'une diminution des facultés mentales du client vulnérable. En d'autres termes, cette dérogation permet difficilement de sécuriser les conseillers financiers qui s'interrogent sur la possibilité de divulguer des renseignements personnels en vue d'assurer la protection de leurs clients en situation de vulnérabilité.

En raison de la portée trop restreinte de la dérogation actuelle prévue dans la LPRP, une intervention législative nous apparaît souhaitable afin de lutter contre l'exploitation des personnes vulnérables, notamment en réformant et en définissant plus clairement les balises et les circonstances dans lesquelles les prestataires de services, tels les entreprises et les membres de leur personnel offrant des services financiers, peuvent être relevés de leur obligation de confidentialité dans un tel contexte. Nous préconisons une législation susceptible de soutenir et de sécuriser les acteurs du secteur financier dans leurs démarches de détection et de prévention des situations d'exploitation des personnes vulnérables.

[20] *Loi sur la protection des renseignements personnels dans le secteur privé*, RLRQ, chapitre P-39.1, art. 18.1.

Dans cette optique, le législateur québécois pourrait envisager l'adoption d'une modification législative à la LPRP afin de permettre aux entreprises du secteur privé de déroger aux obligations de confidentialité dans les circonstances suivantes :

> Une personne qui exploite une entreprise peut communiquer un renseignement personnel contenu dans un dossier qu'elle détient sur autrui, sans le consentement des personnes concernées, lorsqu'elle a un motif raisonnable de croire qu'une situation réelle ou appréhendée d'exploitation d'une personne en situation de vulnérabilité cause ou causera à cette personne un préjudice grave de nature physique, psychologique ou matérielle et s'il juge cette communication nécessaire pour empêcher cette situation.[21]

À titre comparatif, dans la législation fédérale actuelle, la *Loi sur les renseignements personnels et les documents électroniques* (LPRPDE) prévoit une disposition spécifique afin de mieux protéger une victime d'exploitation financière[22]. Le nouvel article 7(3)(d.3) autorise une organisation, telle une banque canadienne, à communiquer des renseignements personnels sans le consentement de l'intéressé à une institution gouvernementale, à son plus proche parent ou à son représentant autorisé si elle a des motifs raisonnables de croire que cet intéressé est ou pourrait être « victime d'exploitation financière ».

La communication est permise à la condition qu'elle soit faite à des fins liées à la prévention de l'exploitation ou à une enquête y ayant trait et s'il est raisonnable de s'attendre à ce que la communication effectuée avec le consentement de l'intéressé compromette la capacité de prévenir l'exploitation ou d'enquêter sur celle-ci. Cette mesure constitue une exception au principe de la Loi énoncé à l'article 4.3 de l'Annexe 1, qui prévoit que « [t]oute personne doit être informée de toute collecte, utilisation ou communication de renseignements personnels qui la concernent et y consentir, à moins qu'il ne soit pas approprié de le faire ». Toutefois, une étude sur les investisseurs

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[21] Cette proposition s'inspire d'une disposition similaire proposée par les auteures Crête et Dufour au regard de la dérogation au secret professionnel. Voir Raymonde CRÊTE et Marie-Hélène DUFOUR, « L'exploitation des personnes aînées : pour un élargissement des dérogations au secret professionnel », (2016) 46 *R.G.D.* 397, 454, 455.

[22] *Loi sur la protection des renseignements personnels et les documents électroniques*, L.C. 2000, ch. 5 ; *Loi sur la protection des renseignements personnels dans le secteur privé*, RLRQ, c. P-39.1.

vulnérables menée par la Fondation canadienne pour l'avancement des droits des investisseurs (FAIR Canada) et le Canadian Centre for Elder Law conclut que la portée de cette disposition demeure ambiguë et qu'elle est peu utilisée par les institutions financières[23].

Au niveau provincial, la législation de la Saskatchewan contient une mesure applicable de manière spécifique aux institutions financières en vue de contrer l'exploitation financière d'une personne majeure vulnérable[24]. En vertu du *Public Guardian and Trustee Act*, lorsqu'une institution financière soupçonne l'existence d'un abus financier envers cette dernière[25], cette institution peut bloquer le compte du client pour un maximum de cinq jours, sauf pour permettre certains paiements qu'elle juge appropriés[26]. Elle doit également aviser le *Public guardian and trustee*, soit l'organisme équivalant au Curateur public au Québec[27]. Enfin, les institutions financières agissant en vertu de cet article de la loi sont présumées agir en conformité à toute autre loi[28]. Notons toutefois que, mis à part l'avis donné au *Public guardian and trustee,* cette loi de la Saskatchewan ne permet pas expressément de communiquer des renseignements personnels sans le consentement de l'intéressé à une autre personne, tel un membre de sa famille.

C. Immunité de poursuite des personnes inscrites

En raison de leur obligation de confidentialité, les sociétés inscrites et leurs représentants risquent de s'abstenir d'intervenir dans les situations d'exploitation financière ou de diminution des facultés mentales de leurs clients par crainte de poursuites judiciaires ou disciplinaires. Comme le révèle une étude empirique menée par des chercheurs québécois auprès de certains professionnels (notaires, comptables, avocats, intervenants sociaux, médecins et conseillers financiers), nombre d'entre eux n'osent pas signaler les situations d'exploitation financière en raison de la portée restreinte des dérogations aux obligations

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23 FAIR CANADA et CANADIAN CENTRE FOR ELDER LAW, *Rapport sur les investisseurs vulnérables : maltraitance envers les personnes âgées, exploitation financière, abus d'influence et aptitudes mentales diminuées,* Ontario, novembre 2017, p. 35-37, en ligne : http://faircanada.ca/wp-content/uploads/2018/03/171115-Vulnerable-Investor-Paper-FINAL-FR.pdf.

24 *Public Guardian and Trustee Act*, S.S. 1983, c. P-36.3.

25 *Id.*, art. 40.5.

26 *Id.*, art. 40.5(2) (4).

27 *Id.*, art. 40.5(3).

28 *Id.*, art. 40.5(5).

de confidentialité et de l'incertitude entourant l'application de ces dérogations[29]. Lorsqu'ils sont témoins d'une situation réelle ou appréhendée d'exploitation financière, ces professionnels sont confrontés à un dilemme si la personne exploitée manifeste une réticence ou refuse de donner son consentement à la transmission de renseignements confidentiels dans le but de prévenir ou de faire cesser la situation d'exploitation. La décision d'agir ou de ne pas agir en vue de protéger la victime potentielle se prend au prix d'un délicat calcul « coûts-avantages », en tenant compte des conséquences éventuelles du signalement de la situation.

En complément à la proposition soumise précédemment d'élargir la portée de la dérogation aux obligations de confidentialité, nous sommes d'avis qu'il conviendrait d'adopter une disposition législative afin de protéger les sociétés inscrites et leurs représentants contre les poursuites judiciaires et disciplinaires en cas de divulgation de renseignements personnels. Cette protection s'appliquerait dans la mesure où ces personnes agissent de bonne foi en vue de protéger un client dans les situations problématiques visées. Les sociétés inscrites et leurs conseillers financiers pourraient bénéficier de cette immunité juridique lorsqu'ils divulguent des renseignements personnels à la personne de confiance ou lorsqu'ils imposent un blocage temporaire[30]. Selon un sondage de l'OCRCVM, 86 % des investisseurs sont en faveur d'une règle d'exonération « qui protégerait les sociétés de placement et les conseillers en placement des conséquences juridiques des mesures prises pour empêcher les clients vulnérables de prendre de mauvaises décisions ou d'être exploités par des tiers »[31].

Au Québec, la *Loi visant à lutter contre la maltraitance envers les aînés et toute autre personne majeure en situation de vulnérabilité*[32] prévoit une immunité pour les personnes ayant fait un signalement au commissaire local aux plaintes ou collaboré à l'examen d'un signalement[33]. Néanmoins, la portée de cette loi demeure restreinte. En effet, celle-ci établit

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29 Catherine ROSSI, Jennifer GRENIER, Raymonde CRETE et Alexandre STYLIOS, « L'exploitation financière des personnes aînées au Québec : le point de vue des professionnels » (2016) 46 (hors série) *Revue générale de droit* 99, 110-111.

30 Sur ce point, voir également : FAIR CANADA et CANADIAN CENTRE FOR ELDER LAW, préc. note 23.

31 OCRCVM, *Connaissances et attitudes à l'égard des dispositions visant à protéger les investisseurs vulnérables ainsi que les sociétés de placement et les conseillers*, préc. note 10, à la page 6.

32 RLRQ, c. L-6.3.

33 *Id.*, art. 12.

des mesures de lutte contre la maltraitance uniquement à l'égard des personnes qui reçoivent des services de santé et des services sociaux dans un établissement ou à domicile[34]. Le mécanisme prévu par cette loi ne s'applique pas pour protéger les personnes en situation de vulnérabilité qui vivent à domicile et qui ne reçoivent pas de services de santé ou de services sociaux. Pourtant, il importe de rappeler que la majorité des personnes aînées vit à domicile, soit dans une proportion de 86,3 %, et que plusieurs d'entre elles ne reçoivent pas les services visés par cette loi[35]. De plus, les dernières études pancanadiennes rapportent que de 4 % à 7 % des personnes âgées vivant à domicile sont aux prises avec au moins un type de maltraitance infligée par leurs proches[36]. Sur la base de cette seule loi, un conseiller financier qui divulguerait des renseignements personnels, notamment à la personne de confiance, ne pourrait donc pas bénéficier d'une immunité de poursuite.

À titre comparatif, aux États-Unis, la législation fédérale et étatique contient plusieurs mesures destinées à détecter et à prévenir les situations d'exploitation financière des personnes vulnérables, notamment des dispositions prévoyant une immunité de poursuite pour les institutions financières et leurs employés qui signalent ce type de situations. Au palier fédéral, la loi *Economic Growth, Regulatory Relief, and Consumer Protection Act*, qui est entrée en vigueur en 2018, accorde une immunité de poursuite civile et administrative au personnel des institutions bancaires, des entreprises offrant des services de conseils en placement et de courtage en valeurs mobilières de même que des sociétés d'assurance et des agents de transfert, lorsqu'un employé signale de bonne foi et avec diligence une situation d'exploitation financière à l'égard d'une personne âgée d'au moins 65 ans[37]. L'immunité est également accordée à l'institution financière en cas de signalement fait par l'un de ses employés[38].

Au niveau étatique, en 2016, l'association qui regroupe des autorités en valeurs mobilières aux États-Unis, au Canada et au Mexique, la *North American Securities Administrators Association* (« NASAA ») a préparé une législation modèle intitulée *An Act to Protect*

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34 *Id.*, art. 3.

35 MINISTERE DE LA FAMILLE, *Plan d'action gouvernemental pour contrer la maltraitance envers les personnes aînées 2017-2022, Document de consultation, Appel de mémoires*, Québec, Gouvernement du Québec, 2016, p. 18.

36 *Id.*, p. 23.

37 *Economic Growth, Regulatory Relief, and Consumer Protection Act*, Public Law, 115-174, art. 303.

38 *Ibid.*

Vulnerable Adults from Financial Exploitation (« *NASAA Model Act* ») en vue de prévenir les situations d'exploitation financière à l'égard des personnes vulnérables. Cette législation modèle prévoit également une immunité de poursuite civile et administrative pour les entreprises et leurs représentants qui offrent des services de conseils en placement, de gestion de portefeuille et de courtage en valeurs mobilières en cas de signalement ou de gel des transactions[39]. Jusqu'à maintenant 27 États américains ont adopté cette législation modèle[40].

Cet aperçu de la législation américaine offre ainsi une piste de réflexion intéressante dans le cadre du processus de consultation entamé par les ACVM. Comme nous le préconisons, une dérogation plus étendue aux obligations de confidentialité de même qu'une protection juridique contre les poursuites permettraient de sécuriser et d'encourager les sociétés et les représentants à prendre des mesures de soutien et de protection en éliminant la crainte pour ces personnes d'être exposées à des poursuites en cas de divulgation de renseignements personnels au sujet d'un client vulnérable.

4. Adoption de politiques et de procédures écrites

Comme mentionné précédemment dans la partie 3, la détection des indices d'exploitation financière et de diminution des facultés mentales parmi la clientèle des sociétés inscrites de même que les actions visant à protéger les clients vulnérables présentent des défis importants pour ces sociétés et leurs représentants.

Sur le plan individuel, les conseillers financiers peuvent être mal outillés pour faire face à ces situations délicates qui soulèvent des enjeux de nature économique, sociale, éthique et juridique. Dans un contexte semblable, les conseillers peuvent se sentir démunis s'ils sont appelés à intervenir au cas par cas, sans pouvoir compter sur le soutien organisationnel de l'entreprise au sein de laquelle ils évoluent. Comme le révèle l'étude empirique citée précédemment, les actions visant à contrer l'exploitation financière d'une personne âgée

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39 *NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation*, 22 janv. 2016, en ligne : http://serveourseniors.org/wp-content/uploads/2015/11/NASAA-Model-Seniors-Act-adopted-Jan-22-2016.pdf.

40 NASAA, *State Enactment*, en ligne : https://www.nasaa.org/industry-resources/senior-issues/model-act-to-protect-vulnerable-adults-from-financial-exploitation/.

plus vulnérable peuvent s'avérer une tâche ingrate, difficile et complexe qui peut inciter les professionnels à ne rien faire ou à faire le minimum afin de se dédouaner[41].

Sur le plan organisationnel, il est donc essentiel que les sociétés inscrites mettent en place des politiques et des procédures afin d'encourager et de soutenir les représentants dans leurs actions auprès des clients. À cet égard, nous remarquons que, dans les textes réglementaires soumis par les ACVM, seule *l'Instruction générale* (et non le projet de *Règlement*) recommande la mise en place de politiques et de procédures qui traitent principalement de la désignation de la personne de confiance et de la consignation des discussions avec cette personne de même que des actions menant à l'imposition d'un blocage temporaire[42].

À ce sujet, les politiques pourraient prévoir qu'en cas d'exploitation financière ou de diminution des facultés mentales d'un client, il appartient à la société inscrite de décider de divulguer ou non la situation problématique ou d'imposer un blocage. À notre avis, l'attribution de cette responsabilité à la société aurait pour effet d'assurer la cohérence au sein de l'entreprise dans la mise en place des mesures de protection et de diminuer la surcharge de travail et le stress que peuvent éprouver les conseillers confrontés à ces situations.

Tout en reconnaissant la pertinence de la recommandation des ACVM qui suggèrent l'adoption de ces politiques et de procédures écrites au regard des deux mesures de protection décrites précédemment, nous croyons qu'il serait important d'en élargir la portée afin de couvrir l'ensemble des bonnes pratiques axées sur le bien-être financier des clients en situation de vulnérabilité. Dans cette optique, le *Guide pratique* préparé par l'Autorité des marchés financiers[43] de même que l'Avis du personnel des ACVM intitulé *Pratiques recommandées d'interaction avec les clients âgés ou vulnérables*[44] présentent plusieurs

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41 C. ROSSI *et al.*, « L'exploitation financière des personnes aînées au Québec : le point de vue des professionnels », préc. note 29, p. 131 et ss.

42 Projet de modification de *l'Instruction générale relative au règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*, préc. note 3, p. 4, 6.

43 Préc. note 11.

44 CSA/ACVM, *Avis 31-354 du personnel des ACVM – Pratiques recommandées d'interaction avec les clients âgés ou vulnérables*, 21 juin 2019, en ligne : https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2019/2019juin21-31-354-avis-acvm-fr.pdf.

éléments qui peuvent servir de sources d'inspiration afin de bonifier le contenu de *l'Instruction générale*.

Les pratiques suggérées dans ces documents traitent notamment de la désignation d'une personne-ressource au sein de l'entreprise pour, entre autres, assurer la formation du personnel concernant les problématiques touchant les personnes vulnérables et offrir le soutien nécessaire pour l'application des mesures de protection à l'égard de ces personnes. Ces documents énumèrent également, de façon non exhaustive, plusieurs indices qui peuvent aider les sociétés et leurs représentants à identifier et à repérer les cas éventuels d'exploitation financière et de diminution des facultés mentales. Ils traitent aussi de la surveillance des comptes des clients vulnérables, des procurations et du signalement des situations problématiques.

5. Concepts-clés dans les textes réglementaires

Dans les textes réglementaires soumis par les ACVM, le vocabulaire utilisé devrait idéalement s'arrimer avec celui de la législation québécoise actuelle qui a pour but de protéger les personnes âgées et les personnes en situation de vulnérabilité contre la maltraitance ou contre l'exploitation. Par ailleurs, nous sommes conscientes que les ACVM déploient des efforts importants pour assurer l'harmonisation de la réglementation en valeurs mobilières applicable à l'ensemble des provinces et des territoires canadiens.

Tout en reconnaissant ces efforts d'harmonisation à l'échelle pancanadienne, nous soumettons, dans les lignes qui suivent, quelques suggestions en vue de bonifier les définitions proposées afin d'éviter qu'elles restreignent l'effectivité des protections prévues par la loi.

Nous attirons votre attention sur certains concepts-clés qui sont définis dans le projet de modifications au R*èglement 31-103*, soit : « client vulnérable », « exploitation financière », « facultés mentales » et « décisions financières ».

- Client vulnérable

Dans un premier temps, nous nous interrogeons sur le vocable « client vulnérable ». Le projet de modification le définit comme suit : « tout client d'une société inscrite ou d'une personne physique inscrite qui peut être atteint d'une limitation liée au vieillissement,

d'une maladie, d'une déficience ou d'une incapacité qui le met à risque d'exploitation financière »[45].

Nous sommes d'accord avec la définition proposée dans la mesure où elle ne vise pas uniquement les personnes âgées. Il est vrai que la vulnérabilité peut toucher des clients de tout âge, prendre différentes formes et être temporaire, sporadique ou permanente. Il importe toutefois de rappeler que les clients plus âgés ne sont pas tous vulnérables ou incapables de protéger leurs intérêts.

Nous considérons que le terme « vulnérable » devrait qualifier la situation du client, plutôt que le client lui-même. En effet, plusieurs personnes refusent de se considérer comme étant « vulnérables », puisqu'elles peuvent pallier leurs difficultés avec de l'aide ou de l'assistance. Dans de nombreux cas, une personne n'est pas intrinsèquement vulnérable. Elle se retrouve plutôt dans une situation de vulnérabilité en raison du contexte dans lequel elle évolue.

Sur ce point, soulignons que la *Loi visant à lutter contre la maltraitance envers les aînés et toute autre personne majeure en situation de vulnérabilité* emploie l'expression « personne majeure en situation de vulnérabilité ». Elle la définit comme suit:

> [U]ne personne majeure dont la capacité de demander ou d'obtenir de l'aide est limitée temporairement ou de façon permanente, en raison notamment d'une contrainte, d'une maladie, d'une blessure ou d'un handicap, lesquels peuvent être d'ordre physique, cognitif ou psychologique[46].

De même, le *Guide pratique* de l'Autorité des marchés financiers cité précédemment emploie aussi l'expression « client en situation de vulnérabilité ».[47]

- Exploitation financière

Nous attirons également votre attention sur l'expression « exploitation financière » définie comme suit dans le projet de *Règlement*: « à l'égard d'une personne physique, l'utilisation, le contrôle ou la spoliation de ses actifs financiers par l'exercice d'une influence indue ou une conduite illégale ou fautive »[48].

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45 Le projet de *Règlement*, préc. note 2, art. 1 qui modifie l'art. 1.1 du *Règlement 31-103*.

46 *Loi visant à lutter contre la maltraitance envers les aînés et toute autre personne majeure en situation de vulnérabilité*, RLRQ, c. L-6.3, art. 2.

47 Préc. note 11.

48 Le projet de *Règlement*¸ préc. note 2, art. 1 qui modifie l'art. 1.1 du *Règlement 31-103*.

Il conviendrait, à notre avis, d'ajouter la mention « notamment » dans la définition proposée afin que les exemples donnés ne soient pas jugés limitatifs. Notre proposition est la suivante : « à l'égard d'une personne physique, notamment l'utilisation, le contrôle ou la spoliation de ses actifs financiers par l'exercice d'une influence indue ou une conduite illégale ou fautive ».

La définition proposée dans le projet de modification devrait être suffisamment souple pour s'harmoniser avec le concept d'exploitation prévu à l'article 48 de la *Charte des droits et libertés de la personne*[49] destiné à protéger la personne âgée ou handicapée et avec celui de maltraitance prévu dans la *Loi visant à lutter contre la maltraitance envers les aînés et toute autre personne majeure en situation de vulnérabilité*[50].

- Facultés mentales

L'expression **«** facultés mentales **»** est définie dans le projet de *Règlement* comme « la capacité de comprendre l'information ou de mesurer les conséquences prévisibles d'une décision ou de l'absence de celle-ci »[51]. En tenant compte de l'individualité de chaque client et de sa situation personnelle, il serait opportun de veiller à ce que la définition ne soit pas limitative afin de ne pas priver certaines catégories de personne de protection. Celle-ci pourrait se lire comme suit : « la capacité notamment de comprendre l'information, de mesurer les conséquences prévisibles d'une décision ou de l'absence de celle-ci ou d'exprimer sa volonté »[52].

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49 Depuis 1976, la *Charte des droits et libertés de la personne* protège toute personne âgée ou toute personne handicapée contre toute forme d'exploitation dont financière. Marie-Hélène DUFOUR, « Réflexions autour du premier alinéa de l'article 48 de la Charte québécoise et propositions pour une protection optimale des personnes âgées contre toute forme d'exploitation », dans Christine MORIN (DIR.), *Droit des aînés*, Montréal, Éditions Yvon Blais, 2020, p. 23; Marie-Hélène DUFOUR, « Définitions et manifestations du phénomène d'exploitation financière des personnes âgées », (2014) 44-2 *Revue générale de droit* 235, 241 ; Christine MORIN et Robert SIMARD, « Dialogue sur le rôle social du notaire dans la protection des aînés en situation de vulnérabilité », (2018) 1 *C.P. du N.* 1 ; *Succession de Kalimbet* c. *Obodzinski*, 2020 QCCS 1222, par. 397, 407, 409 et 433.

50 *Loi visant à lutter contre la maltraitance envers les aînés et toute autre personne majeure en situation de vulnérabilité*, préc. note 46, art. 2, maltraitance : « un geste singulier ou répétitif ou un défaut d'action appropriée qui se produit dans une relation où il devrait y avoir de la confiance et qui cause, intentionnellement ou non, du tort ou de la détresse à une personne. »

51 Projet de *Règlement*, préc. note 2, art. 1.

52 Jean-Louis BAUDOUIN et Yves RENAUD, *Code civil du Québec annoté*, 22e éd., Montréal, Wilson & Lafleur, 2019, art. 258.

- Décisions financières

Les textes réglementaires soumis font référence à la situation où « le client ne possède pas les facultés mentales pour prendre des **décisions financières** »[53]. Notons qu'une diminution des facultés mentales n'empêche pas nécessairement une personne de prendre des décisions financières. Elle peut cependant l'empêcher de prendre des décisions « libres et éclairées ». Il serait important, à notre avis, de faire référence à ces qualificatifs pour préciser la nature de la décision prise.

Selon les principes de droit commun prévus au *Code civil du Québec*, pour qu'un consentement soit valable, il doit émaner d'une personne qui, au moment où elle le manifeste, a conscience de ce qu'elle fait et est apte à contracter, à s'obliger à faire ou à ne pas faire quelque chose[54]. Le consentement doit aussi être libre, c'est-à-dire qu'il doit être donné librement et non sous la menace, la crainte ou la contrainte, en plus de devoir être éclairé, c'est-à-dire donné en toute connaissance de cause, renseignements pris et donnés[55].

Conclusion

Nous accueillons favorablement les textes réglementaires soumis par les ACVM. Comme ces autorités le reconnaissent, il importe de soutenir les sociétés inscrites et leurs représentants afin qu'ils soient mieux outillés pour faire face aux enjeux que soulèvent les situations potentielles ou réelles d'exploitation financière et de diminution des facultés mentales d'un client, tout en respectant son autonomie. Nous croyons que la réglementation proposée constitue une étape prometteuse en vue d'assurer le bien-être financier des clients en situation de vulnérabilité. Nous espérons que les commentaires et les recommandations soumis dans le présent mémoire seront utiles à la révision et à la bonification des textes réglementaires. Nous demeurons disponibles pour en discuter à votre convenance.

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53 Projet de *Règlement*, préc. note 2, art. 4 qui modifie l'art. 13.19 du *Règlement*. Voir aussi l'*Instruction générale* (p. 4) qui emploie une formulation similaire : « le client montre des indices de diminution des facultés mentales qu'elle [la personne inscrite] estime susceptibles de nuire à sa capacité de prendre des **décisions financières** (*notre emphase*) ». Voir une formulation similaire aux p. 5 et 7 de l'*Instruction générale*.

54 *Code civil du Québec*, RLRQ c C-1991, art. 1398.

55 Jean-Louis BAUDOUIN et Yves RENAUD, *Code civil du Québec annoté*, préc. note 52, art. 258.

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