

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

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments (the **Amendments**) to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103** or the **Rule**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP** or the **Companion Policy**, together the **Instrument**). The Amendments relate to the provisions of the Instrument relating to business operations and client relationships and will enhance protection of older and vulnerable clients by providing registrants with tools and guidance to address issues of financial exploitation and diminished mental capacity.

The CSA worked together with the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together referred to as the self-regulatory organizations or the **SROs**) to develop the Amendments. The Amendments will apply to all registered firms, including members of IIROC and MFDA. IIROC and the MFDA plan to implement corresponding amendments to the IIROC Rules and the MFDA Rules, respectively. Subject to the necessary approvals, these SRO rule amendments will come into effect on December 31, 2021.

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

This notice contains the following annexes:

- Annex A – Summary of Comments and CSA Responses
- Annex B – List of Commenters
- Annex C – Amendments to NI 31-103
- Annex D – Blackline showing changes to NI 31-103
- Annex E – Changes to 31-103CP
- Annex F – Adoption of the Amendments

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

www.albertasecurities.com

www.lautorite.qc.ca

www.besc.bc.ca

www.fcaa.gov.sk.ca

www.fcnb.ca

www.mbsecurities.ca

www.nssc.novascotia.ca

www.osc.ca

Substance and Purpose

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

Trusted Contact Person

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

Temporary Holds

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

- where a registered firm reasonably believes that a vulnerable client is being financially exploited, or
- where a registered firm reasonably believes that the client does not have the mental capacity to make decisions involving financial matters.

Background

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

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

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

The CSA recognizes that older clients are not a homogenous group and that not all older clients are vulnerable or unable to protect their own interests. The CSA also recognizes that not all vulnerable clients are older clients. Vulnerability can affect a client of any age, take many forms, and can be temporary, sporadic or permanent in nature.

Relevant Publications

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

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

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

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

3 CSA Notice and Request for Comment, *Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations to Enhance Protection of Older and Vulnerable Clients* (2020), 43 OSCB 1967.

being misused to exploit a client. Such training will assist firms in meeting their obligations set out in subsection 11.1(2) of the Rule.

The Autorité des marchés financiers also refers registrants operating in Quebec to Bill 101, An Act to strengthen the fight against maltreatment of seniors and other persons of full age in vulnerable situations as well as the monitoring of the quality of health services and social services⁴ that was introduced in Québec on June 9, 2021. The amendments introduced by this bill will impact the financial sector and therefore the registrants operating in Quebec. Accordingly, once the bill is assented to, the Autorité des marchés financiers will propose further amendments to NI 31-103 in order to harmonize the definition of “vulnerable client” with the definition of “person in a vulnerable situation” found in this Act.

Summary of Written Comments Received by the CSA

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

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

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

Summary of Changes

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

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

Definitions

- The Amendments do not include a definition of “mental capacity”. In lieu of a definition in the Rule, the Companion Policy includes additional guidance on factors a registrant might consider in identifying warning signs that a client lacks mental capacity to make decisions involving financial matters.

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

- A definition of “trusted contact person” has been added as “an individual identified by a client to a registrant whom the registrant may contact in accordance with the client’s written consent.”
- We added guidance to clarify that the examples in the Companion Policy of warning signs that a client is being financially exploited, and signs of a lack of mental capacity of a client to make decisions involving financial matters, are not exhaustive. The guidance also provides that one sign alone may not be indicative of financial exploitation or a lack of mental capacity of a client to make decisions involving financial matters.

Trusted Contact Person

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

Temporary Holds

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

Consequential Amendment

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

Transition

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

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

Questions

Please refer your questions to any of the following:

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

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