

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)(1.1), 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 •.