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VIA EMAIL: 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
Corporate Secretary and Executive Director
Legal Affairs Autorité des marchés financiers
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Québec (Québec) G1V 5C1

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