

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
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
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
2640, boulevard Laurier, bureau 400
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.

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,

A handwritten signature in black ink, appearing to read 'Manny DaSilva', written in a cursive style.

Manny DaSilva,
Chair, Association of Canadian Compliance Professionals

A handwritten signature in black ink, appearing to read 'Gary Legault', written in a cursive style.

Gary Legault
Vice Chair, Association of Canadian Compliance Professionals