Placing a temporary hold

in instances of financial

exploitation or diminished

mental capacity

Note

While the OSC acknowledges that there may be other circumstances under which a registered firm and its registered individuals may want to place a hold on a purchase, sale, transfer or withdrawal, this white label material only addresses temporary holds placed in accordance with section 13.19 of NI 31-103 (referred to herein as “temporary holds”).

A “temporary hold” is a hold that is placed on a purchase or sale of a security on behalf of a client, or on the withdrawal or transfer of either cash or securities from a client’s account. It is a tool that can be used to protect clients and their assets in situations where our firm has reasonable belief of financial exploitation of a vulnerable client or that a client lacks mental capacity to make financial decisions.

## Your role

As [a(n) TITLE], you are in a unique position to identify signs of financial exploitation, vulnerability, or diminished mental capacity because of the interactions you have with your clients and the knowledge you acquire through the client relationship.

[FIRM] may be able to place a temporary hold on purchases, sales, transfers and withdrawals. While decisions to place a hold should be escalated and made by the CCO or authorized and qualified supervisory, compliance or legal staff in accordance with [POLICY], you can help identify situations where this step may be appropriate and where it may protect your client’s assets. Talk to your client about concerns that arise and document your conversations.

Your role and responsibilities when [FIRM] decides to place a temporary hold are outlined at the end of this document.

## In what circumstances may a temporary hold be placed?

A temporary hold may be placed in accordance with [POLICY] if the firm has a reasonable belief that:

* A client does not have the mental capacity to make decisions involving financial matters, or
* Financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted.

As noted, this white label material only addresses temporary holds placed in accordance with section 13.19 of NI 31-103.

## How do I know if a client is vulnerable?

A “vulnerable client” is a client who might have an illness, impairment, disability or aging-process limitation that places them at risk of financial exploitation. 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.

While financial exploitation may be committed by any person or company, vulnerable clients may be especially susceptible to such exploitation by an individual who is close to them, such as a family member, friend, neighbour or another trusted individual such as an attorney under a power of attorney (**POA**), service provider or caregiver.

**How do I identify warning signs of financial exploitation or signs that a client lacks mental capacity to make decisions involving financial matters?**

Please review [White Label Materials: 2. Identifying and responding to signs of financial exploitation] and [White Label Materials: 3. Identifying and responding to signs of diminished mental capacity]. More information can also be found in [FIRM POLICY].

## I’ve identified some warning signs. What do I do?

Respect client autonomy: talk to your client about concerns that arise and document your conversations. Before placing a temporary hold, our firm must reasonably believe that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that a client does not have mental capacity to make decisions involving financial matters. Once the decision to place a temporary hold is made, there are certain regulatory obligations we must meet.

Note

The next sections include prompts for your firm to provide instructions to your representative about their role in the temporary hold process. We have drafted some steps as an example; you should modify or replace these steps to align with your firm’s policies and procedures.

For example, while the examples below assume that the representative has been assigned specific roles in recommending the hold, documenting the reasons for it, escalating the recommendation and notifying the client of the decision, your firm may assign these roles to other individuals or include different steps in the process.

You should review and adapt the language accordingly, ensuring that the instructions align with your firm’s policies and procedures, as well as your obligations under NI 31-103. While our draft steps are informed by the rule and its Companion Policy, you should review both the rule and the Companion Policy to ensure compliance and identify areas where additional information, context or concerns should be considered.

## Your responsibilities under [POLICY] include:

**Review the firm’s policies and procedures on placing a temporary hold:** [FIRM POLICY]

1. Documenting the warning signs observed. As the signs of financial exploitation, vulnerability, and declining mental capacity may appear gradually and change over time, it is important to document those signs and interactions with the client, the client’s representatives, family or other individuals which may eventually lead to the decision to place and, if applicable, to continue the temporary hold (see below).
2. Escalating your concerns by contacting [insert name and contact information of the individual who is authorized to place and revoke a temporary hold, for example, the CCO or authorized and qualified supervisory, compliance or legal staff]. Only this/these individual(s) can approve the placement of a temporary hold.
	* **TIP:** Be specific about the scope of temporary hold that you would recommend. A temporary hold is not intended as a hold on the entire client account, but rather as a temporary hold over a specific purchase, sale, withdrawal or transfer. Transactions unrelated to the suspected 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 purchase, sale, withdrawal or transfer involves all the assets in the account, it may be reasonable to place a temporary hold on the entire account while not limiting the payment of regular expenses.
3. Once [an authorized individual] approves the placement of a hold, providing notice and the reasons for the hold to the client as soon as possible.
	* **TIP:** While written notice is generally preferred, there may be circumstances where contacting the client verbally might be more appropriate. For example, in cases of financial exploitation, 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.
4. Considering whether to contact a third party – such as a trusted contact person, an attorney under a power of attorney, public guardian and trustee, or law enforcement.
	* **TIPS:** Consider also whether there are other trusted friends and family in the client’s network that could assist the client, for example, by accompanying the client to meetings.
	* Before contacting a third party, consider whether there is a risk that the third party is a perpetrator of the exploitation, and whether reaching out to a third party would be consistent with client agreements and our privacy obligations. For more information, including steps that you must take before contacting third parties, please refer to [FIRM POLICY].
5. As soon as possible after placing the temporary hold, and on a reasonably frequent basis, reviewing the relevant facts to help us determine if continuing the hold is appropriate. This review should include:
	* verifying whether the reasons for placing the temporary hold are still present
	* consideration of any other information that is relevant to determining whether continuing the hold is appropriate.
6. At least every 30 days, we must either notify the client of our decision to continue the hold (with reasons) or revoke the hold. Please refer to [FIRM POLICY] for steps to follow when notifying clients of our decision and reasons for continuing or revoking a hold.
	* **TIPS:** If [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 decisions involving financial matters, the temporary hold must end.
	* If ending the temporary hold would result in an investment action that requires a suitability determination, such a determination will be required.
	* [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 purchase, sale, withdrawal or transfer, or alternatively, decides not to accept the client’s instructions.

As always, be mindful of our obligation to deal fairly, honestly and in good faith with our clients.

## [FIRM] has policies and procedures available to assist you with temporary holds, including:

[*List of relevant policies, procedures and contacts at your firm. You may wish to review* [*CSA Staff Notice 31-354 Suggested Practices for Engaging with Older or Vulnerable Clients*](https://www.osc.ca/documents/en/Securities-Category3/csa_20190621_31-354_suggested-practices-for-engaging-with-older-or-vulnerable-clients.pdf) *for examples of policies and procedures that address relevant topics, such as account supervision, handling of powers of attorney and limited trading authorizations, communicating with older or vulnerable clients, and reporting and escalating issues.*]