Independent Financial Brokers of Canada
740-30 Eglinton Avenue West, Mississauga, ON L5R 3E7

July 6, 2020

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

Delivered to:
The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

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Corporate Secretary and Executive Director
Legal Affairs Autorité des marchés financiers
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Submitted via email**:** comments@osc.gov.on.ca ; consultation-en-cours@lautorite.qc.ca

Subject: 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")

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on the Proposed Amendments to enhance the protection of older and vulnerable clients.

IFB is a national, professional association with approximately 3,500 members. IFB members are provincially licensed financial advisors. The majority are mutual fund registrants and/or life insurance licensees, although many hold other financial licenses or designations, such as the CFP®, which permit them to provide clients with more comprehensive advice and planning. Most IFB members are self-employed owners of small to medium-sized financial practices in their home community.

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IFB supports the professional needs of its members, and the financial industry more broadly, by providing high quality in-person, online, and virtual education, access to a comprehensive professional liability program, and compliance support. An important part of the work IFB does on behalf of its members is to respond to regulatory initiatives and proposals which affect their business or their clients.

Advisors and firms need to be aware of how the provision of financial advice and associated investment strategies may need to change when addressing the needs of older investors, and the steps they can take to protect a client who exhibits signs of diminished capacity, or is at risk of financial exploitation.

IFB welcomes the CSA's initiative to adopt measures that will better position advisors and firms with the tools and guidance they need to respond in circumstances where financial exploitation or diminished mental capacity of older and vulnerable clients is suspected. IFB identified this need over a decade ago and since then has provided educational sessions specifically focused on these complex situations to help advisors understand and deal with such circumstances. In June of this year, IFB offered a session at its Virtual Summit which focused on mental health and the financial advice relationship. It has been our experience that such sessions are well attended and generate much discussion based on these advisors' own experiences with clients, and their desire to help them.

The kinds of personal interaction advisors have with their clients can put them in a unique position to identify possible red flags, but it is important to recognize that they are not trained mental health professionals. Advisors in these difficult situations often face uncertainty between wanting to do the right thing for their client and not knowing the acceptable boundaries of appropriate action, or to whom they should communicate their concerns. There is a clear, and growing, need for better information, tools, and training for advisors and firms in this area. While the CSA has included guidance in the Companion Policy on possible signs, IFB recommends that such training should be mandatory given the risks to registrants and clients if the TCP or a Temporary Hold is acted upon in an inappropriate way.

As a general comment, IFB views it as positive that the CSA's proposals will harmonize the Trusted Contact Person and Temporary Hold provisions across jurisdictions as well as with the existing guidance provided by IIROC and the MFDA. Clients should be able to rely on a similar standard of protection, regardless of their jurisdiction of residence or their advisor's registration category.

IFB suggests the definition of Mental Capacity in Section 1.1 be amended to read: "the ability to understand ***relevant*** information or appreciate the foreseeable consequences of a decision or lack of decision".[1] The requirement to understand <u>any</u> information is too broad and may prevent clients who have not reached this stage from accessing the protections. The ability to understand <u>relevant</u> information (in this case the more complex type of decision-making required for investment and financial planning purposes) lowers this threshold.

Our specific comments on the proposals follow.

[1] (2020) 43OSCB 1974

Trusted Contact Person (TCP)

IFB supports the requirement to request that clients name a Trusted Contact Person (TCP). However, its purpose, and the circumstances under which it may be used, will have to be carefully explained in order to avoid confusing clients. For example, a client may have named a Power of Attorney, yet a TCP is not a power of attorney and cannot make financial decisions. These distinctions will require explanation. Some clients may not have a close friend or relative suitable to act as a TCP so, while naming the same person as a TCP and POA can be discouraged, it should not be prevented. We agree the TCP should not be the registrant (unless it falls under the close relative exemption which exists under IIROC and MFDA rules.)[2]

IFB believes it would be helpful to encourage firms to provide a copy of the client's permission to appoint a TCP directly to the TCP, provided the client agrees. This will ensure the TCP is aware of their designation by the client and what it means. This raises questions, however, around what will happen if the TCP refuses the appointment.

We note that there is no restriction on naming more than one TCP, and while we agree it may be useful to do so, we suggest that when that happens, the client should be asked to rank the TCPs in order of preference. This will prevent the registrant from potentially having to contact all TCPs when needed but provides an alternative in the event the primary TCP cannot be reached or is suspected of being involved in the financial exploitation of the client.

Questions:

1. Should registrants be required to take reasonable steps to obtain the name and contact number 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?

Expanding this requirement beyond individuals is likely to be challenging for registrants given the often-opaque nature of some corporate structures and beneficial ownership. This is a challenge that has often been cited in the context of identifying corporate clients as required under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* in Canada. However, there may be value in having a client name a TCP if they are a sole proprietor or own a small business where the ownership structure is less complex, and bearing in mind there is no obligation for the registrant to verify the TCP information.

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 OEO service context, particularly the requirement to take reasonable steps to obtain TCP information under new paragraph 13.2(2)(e).

[2] IIROC Rule 43.2(5)(i)(b); MFDA Rule 2.3.1

We recognize that OEO firms do not have a traditional, client-facing, advisory role and, therefore, may not be able to detect financial irregularities, or a decline in mental capacity. However, we see no harm in providing the opportunity for clients to name a TCP as part of the client onboarding process.

Temporary Holds

IFB supports the framework outlined by the CSA. We note that FINRA requires a client to be notified of a temporary hold within 2 business days, whereas the CSA is suggesting notice be provided 'as soon as possible'.

Questions:

3. 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?

Subject to our earlier comment, that financial advisors are not mental health professionals, IFB agrees that in either of these cases it could be prudent to place a temporary hold.

4. 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?

IFB supports this provision.

5. Should we prescribe a time limit on temporary holds? Or is the notice requirement proposed by the CSA sufficient to protect investors?

IFB supports the 30-day requirement. However, we suggest the timeline for notification to the client of the hold should be specified, rather than "as soon as possible". There could be an exception for extenuating circumstances that prevent notification to the client within the timeline.

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?

IFB supports the amendments proposed by the CSA. However, we are concerned that, without a specific safe harbour provision, advisors and firms will face uncertainty and hesitate to act out of concern over potential liability and risk of litigation. We encourage the CSA to pursue a safe harbour provision that will shield registrants from such risks, provided they have acted in accordance with the regulatory requirements, in good faith, and have exercised reasonable care in fulfilling their obligations.

Certainly, if these proposed amendments are to be successful, registrants will require targeted training including signs to look for, red flags, and who to go to in their firm for direction. Internal staff at firms (COOs, CCOs, etc.) will also require specific training to be able to respond to an advisor's concerns and invoke any next steps. This groundwork must be laid to prevent undue delay, which could have devastating consequences for the client.

CSA members will need to monitor uptake of the TCP and use of the temporary holds to consider whether any modifications to the proposals are required or additional next steps.

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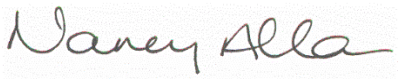
IFB encourages the CSA to work alongside the Canadian Council of Insurance Regulators, its insurance counterpart on this initiative, so that clients who have life insurance and securities investments with the same advisor have similar protection. If an advisor is concerned about financial exploitation or notices diminished capacity, the advisor should have a protocol to follow for that client's account, regardless of the type of investment.

IFB has no objection to these amendments coming into force on the same date as the CFRs.

Thank you for the opportunity to comment. Should you wish to discuss, please contact the undersigned, or Susan Allemang, Director Policy & Regulatory Affairs (email: sallemang@ifbc.ca).

Yours truly,



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