

Note: [31 Dec 2021] – Changes to 31-103CP. Refer to Annex E of the CSA Notice announcing amendments to NI 31-103 dated 15 Jul 2021

**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 sections 13.2.01 and 13.19

Appendix G provides guidance on the terms “financial exploitation”, “temporary hold”, “trusted contact person” and “vulnerable client”..

3. *Division 1 of Part 13 is changed by adding the following, immediately before section 13.2.1:*

“13.2.01 Know your client – trusted contact person

Appendix G sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients’ mental capacity to make decisions involving financial matters.” *immediately after the sentence* “In those circumstances, registrants should consider restricting activities in the client’s account to liquidating trades, transfers or disbursements.”.

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 sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. It also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients’ mental capacity to make decisions involving financial matters..

5. ***The Companion Policy is changed by adding the following appendix:***

Appendix G - Part 13 - Addressing Issues of Financial Exploitation and Concerns About Clients' Mental Capacity

This appendix sets out how we interpret the requirements under sections 13.2.01 and 13.19 relating to trusted contact persons and temporary holds. This appendix also provides general commentary and guidance surrounding issues of financial exploitation of vulnerable clients, and concerns about clients' mental capacity to make decisions involving financial matters.

1. Financial exploitation

Financial exploitation of a client may be committed by any person or company. Examples of warning signs of financial exploitation of a client may 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 the registrant having difficulty communicating directly with the client without the involvement 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 a power of attorney (POA) or a will, 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 the registrant (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 customarily been well informed in this area,
- increasing isolation from family or friends, or
- signs of physical neglect or abuse.

One warning sign alone may not be indicative of financial exploitation. Additionally, the warning signs listed above are not exhaustive; a registrant may notice other signs that are not listed above.

2. *Vulnerable client*

Vulnerable clients are those clients that might have an illness, impairment, disability or aging process limitation that places them at risk of financial exploitation. 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 such vulnerabilities could make clients more susceptible to financial exploitation. 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 the vulnerable client, such as a family member, friend, neighbour or another trusted individual such as an attorney under a POA, service provider or caregiver.

3. *Mental capacity*

Registrants can be in a unique position to notice the warning signs that a client lacks mental capacity to make decisions involving financial matters because of the interactions they have with the client, and the knowledge they acquire through the client relationship.

We acknowledge that registrants do not have the expertise to assess and determine whether clients lack mental capacity, and we do not expect registrants to make such a determination. However, where a registrant detects signs that a client lacks mental capacity to make decisions involving financial matters, the registrant may wish to take certain actions. For example, the registrant may wish to contact a trusted contact person or, in the case of a registered firm having formed a reasonable belief that the client lacks mental capacity to make decisions involving financial matters, place a temporary hold.

When considering whether one or more warning signs that a client lacks mental capacity to make decisions involving financial matters is present, registrants might consider, among others things, the client's ability to understand information that is relevant to their decision making and appreciate the reasonably foreseeable consequence of making or failing to make a decision. Examples of warning signs that a client lacks mental capacity to make decisions involving financial matters may include:

- memory loss, such as forgetting previously given instructions or repeating questions,
- increased difficulty completing forms or understanding disclosure documents,
- increased difficulty making decisions involving financial matters or 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, including expressing their will, intent or wishes, or

- increased passivity, anxiety, aggression or other changes in mood or personality, or an uncharacteristically unkempt appearance.

We acknowledge that one sign alone may not be indicative of a client's lack of mental capacity and that signs may arise subtly and over time. The warning signs listed above are not exhaustive; a registrant may notice other signs that are not listed above. It is also important to note that mental capacity can fluctuate over time, is contextual and depends on the type of decision to be made.

4. Trusted contact person

Purpose of the trusted contact person

Subsection 13.2.01(1) requires registrants to take reasonable steps to obtain the name and contact information of a trusted contact person or "TCP" with whom they may communicate in specific circumstances in accordance with the client's written consent. Although this requirement only applies with respect to clients who are individuals, a registrant is not precluded from asking for TCP information from a non-individual client that, for example, is closely held and is part of an individual's personal investment plan.

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 a client's mental capacity. A TCP could also be utilized by the registrant to confirm or make inquiries about the name and contact information of a legal representative of the client, including a legal guardian of the client, an executor of an estate under which the client is a beneficiary, or a trustee of a trust under which the client is a beneficiary.

A client may name more than one TCP on their account.

While there is no requirement for the TCP to be at or over the age of majority, registrants should encourage their clients to name as the TCP an individual who is trusted, is mature and has the ability to communicate and engage in potentially difficult conversations with the registrant about the client's personal situation.

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 be named as a TCP, but clients should be encouraged to select an individual who is not involved in making decisions with respect to the client's account. A TCP should not be the client's dealing representative or advising representative on the account.

Obtaining trusted contact person information and consent

There is no prescribed form for obtaining TCP information. Registrants may wish to develop a stand-alone form or incorporate the information into an existing form such as an

account application form. The stand-alone form or relevant sections of an existing 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 with the client,
- a signature box to document the client's consent to contact the TCP,
- a statement that confirms the 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 as part of the know your client or "KYC" process. 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), and asking the client to provide the name and contact information of a TCP. 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. Registered firms are reminded of the requirement to maintain records which demonstrate compliance with section 13.2.01, document correspondence with clients, and document compliance, training and supervision actions taken by the firm, under paragraphs 11.5(2)(l), (n) and (o), respectively.

Updating trusted contact person information

Under subsection 13.2.01(2), registrants are required to take reasonable steps to keep the TCP information current. Registrants are expected to update the TCP information as part of the process to update KYC information. In a situation where a client may have previously refused to provide TCP information, at each update, registrants should ask such clients if they would like to provide the information.

Contacting the trusted contact person and other parties

When concerns about financial exploitation or mental capacity to make decisions involving financial matters 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 their TCP that they have been named

and explain that the TCP will only be contacted in specific circumstances in accordance with the client's written consent.

If the client's consent has been obtained, a registrant might contact a TCP if the registrant notices signs of financial exploitation or if the client exhibits signs that they lack mental capacity to make decisions involving financial matters. Examples of warning signs of financial exploitation and a lack of mental capacity are discussed in sections 1 and 3 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, such as the police, the public guardian and trustee or an alternative TCP, if named. 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, an attorney under a POA or any other legal representative.

When contacting a TCP, registrants should be mindful of privacy obligations under applicable 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) that they might otherwise consult with in instances where the registrant suspects financial exploitation or has concerns about a client's mental capacity to make decisions involving financial matters.

Policies and procedures

We expect registered firms to have written policies and procedures in respect of TCPs. These policies and procedures should address:

- how to collect and document TCP information and keep this information up-to-date,
- how to obtain the written consent of a client to contact their TCP, and document any restrictions on contacting the TCP and what type of information can be shared,
- the specific circumstances in which a registrant may wish to contact a TCP,
- how to document discussions with a TCP, and
- circumstances where a decision to contact a TCP must be escalated for review (for example, to the CCO or to authorized and qualified supervisory, compliance or legal staff), and how to document this review.

Having written policies and procedures that address situations that may result in contacting a TCP or placing a temporary hold under section 13.19 will help the registered firm demonstrate that it has a system of controls and supervision in accordance with section 11.1.

5. *Temporary Holds*

General principles

Registered firms and individuals can be in a unique position to notice signs of financial exploitation, vulnerability and a lack of 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 a registered firm reasonably believes that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that a client lacks mental capacity to make decisions involving financial matters, there is nothing in securities legislation that prevents the firm or its registered 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. Before a temporary hold is placed, the registered firm must reasonably believe that either financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or the client does not have the mental capacity to make decisions involving financial matters. Decisions to place temporary holds should be made by the CCO or authorized and qualified supervisory, compliance or legal staff.

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.

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 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 transaction, 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.

A temporary hold contemplated under section 13.19 is not intended to be available where a registrant has 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 registrant must comply with the requirements set out in subsection 13.3(2.1).

A client may provide an instruction to take an investment action which would not, in the registrant's view, meet the criteria for suitability determination and which may otherwise be considered a poor financial decision; however, these facts alone do not necessarily mean that financial exploitation of a vulnerable client has occurred, is occurring, has been attempted or will be attempted, or that the client lacks mental capacity to make decisions involving financial matters.

Conditions for temporary hold

Section 13.19 contains the steps that a registered firm must take if it or its registered individuals 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 in respect of temporary holds. These policies and procedures should:

- set out detailed warning signs of financial exploitation of a vulnerable client, and signs of a lack of mental capacity of a client to make decisions involving financial matters,
- clearly delineate firm and individual responsibilities for addressing concerns of financial exploitation of a vulnerable client or a lack of mental capacity of a client, such as:
 - who at the firm is authorized to place and revoke a temporary hold, 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 of a vulnerable client, or a lack of mental capacity of a client, 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*.

Under paragraph 13.19(3)(a), when documenting the facts and reasons that caused the registered firm or its registered individuals to place and, if applicable, to continue the temporary hold, the firm is expected to include signs of financial exploitation and client vulnerability, or a lack of mental capacity of a client to make decisions involving financial matters, that were observed. As the signs of financial exploitation, vulnerability, and declining mental capacity often appear and change 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 decision to place and, if applicable, to continue the temporary hold.

Under paragraph 13.19(3)(b), the registered firm must, as soon as possible, provide notice of the temporary hold and the reasons for the temporary hold to the client. While firms often opt to send written notice, there may be circumstances where they may also want to attempt to contact the client verbally. 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. 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.

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 after placing the temporary hold, and on a reasonably frequent basis, review the relevant facts to determine if continuing the hold is appropriate. This review should include verifying whether the reasons for placing the temporary hold are still present, and considering any other information that is relevant to determining whether continuing the hold is appropriate. The review may prompt the registered firm to review account activity or initially contact or follow up with other parties who could provide assistance to the client, such as an attorney under a POA, a TCP, or provincial or federal government organizations and services such as the police, public guardian and trustee, which may be conducting their own review, or provincial seniors advocate offices. Firms may also consider 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 another party, the firm should consider whether there may be a risk that the other party is involved in the financial exploitation of the vulnerable client. The review conducted under paragraph 13.19(3)(c) and, if applicable, the reasons for continuing the temporary hold are required to be documented under paragraph 13.19(3)(a).

While there is no requirement for firms to contact a TCP prior to or when a temporary hold is placed, firms may wish to contact a TCP at this point for a number of reasons, if they have not already done so, as outlined in the guidance in section 4 of this appendix. However, before contacting the TCP, firms should assess whether there is a risk that the TCP is a perpetrator of 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.

For clarity, the fact that a client has not named a TCP does not preclude a firm from placing a temporary hold in accordance with section 13.19.

Before contacting any third party with the intent of sharing or obtaining personal information regarding a client, firms should assess their obligations under applicable privacy legislation and client agreements.

Paragraph 13.19(3)(d) requires that every 30 days, the firm either notifies the client of its decision to continue the temporary hold, or revokes the temporary hold. 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 continuing the temporary hold, and be mindful of their obligation to deal fairly, honestly and in good faith with their clients.

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 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. 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 December 31, 2021.