



CSA and CCIR Joint Notice and Request for Comment

Proposed Amendments to

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

and to

Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

and Proposed

CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance

Total Cost Reporting for Investment Funds and Segregated Funds

April 28, 2022

Introduction

The Canadian Securities Administrators (the **CSA**) and the Canadian Council of Insurance Regulators (the **CCIR**, together, the **Joint Regulators** or **we**), are publishing, for a 90-day comment period, proposed enhanced cost disclosure reporting requirements for investment funds and new cost and performance reporting requirements for individual variable insurance contracts or IVICs (referred to here as **Segregated Fund Contracts**), as described below (collectively, the **Proposals**).

The Proposals have been developed by a joint project committee composed of members from the CSA, CCIR, Canadian Insurance Services Regulatory Organizations (CISRO), Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (together referred to as the **SROs**) (the **Project Committee**). The Proposals follow on work securities regulators began after the completion of the Client Relationship Model, Phase 2 (**CRM2**) project in 2016 and recommendations published by the CCIR in a December

2017 position paper on segregated funds, as revised in June 2018 (**CCIR Segregated Funds Position Paper**).

The Proposals for the securities sector (the **Proposed Securities Amendments**) are for amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103** or the **Instrument**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP** or the **Companion Policy**).

The Proposals for the insurance sector are for an *Individual Variable Insurance Contract Ongoing Disclosure Guidance* (the **Proposed Insurance Guidance**) – an enhanced disclosure framework for Segregated Fund Contracts. The CCIR expects each of its member jurisdictions will adopt the framework by local guidance or, in certain jurisdictions, regulation. In addition to including cost and performance reporting guidance, the Proposed Insurance Guidance also includes additional ongoing performance disclosure guidance designed to bring the insurance sector into closer harmony with the securities sector, as well as guidance with respect to ongoing disclosure with respect to Segregated Fund Contract guarantees.

The Proposed Securities Amendments would apply to all registered dealers, advisers and investment fund managers. The Proposed Insurance Guidance would apply to all insurers offering Segregated Fund Contracts to their policy holders.

This notice contains the following annexes:

- Annex A – Specific questions regarding the Proposed Securities Amendments
- Annex B – Specific questions regarding the Proposed Insurance Guidance
- Annex C – Proposed Amendments to NI 31-103
- Annex D – Proposed changes to 31-103CP
- Annex E – Blackline showing changes to NI 31-103 under the Proposed Amendments
- Annex F – Blackline showing changes to 31-103CP under the Proposed Amendments
- Annex G – Sample prototype statement and report for the securities sector
- Annex H – Sample prototype report for the insurance sector
- Annex I – Local matters
- Annex J – Proposed Insurance Guidance
- Annex K – Segregated funds and investment funds: differences between products, distribution channels and regulation

This notice will be available on the following websites of CSA jurisdictions:

www.lautorite.qc.ca
www.asc.ca
www.besc.bc.ca
www.fcnb.ca
nssc.novascotia.ca
www.osc.ca

www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

This notice will also be available on the CCIR website: <https://www.ccir-ccrra.org>.

Substance and Purpose

The Proposals are part of the Joint Regulators' harmonized response to concerns we have identified relating to current cost disclosure and product performance reporting requirements for investment funds and segregated funds. The Proposed Insurance Guidance also addresses concerns about ongoing disclosure regarding Segregated Fund Contract guarantees. We seek to enhance investor protection by improving investors' and policy holders' awareness of the ongoing embedded fees such as management fund expense ratios (**MER**) and trading expense ratios (**TER**) that form part of the cost of owning investment funds and segregated funds. The Proposed Insurance Guidance also seeks to enhance policy holder protection by improving policy holders' awareness of their rights to guarantees under their Segregated Fund Contracts and how their actions might affect their guarantees.

One important concern is that there are currently no requirements for securities industry registrants or insurers to provide ongoing reporting to investors and policy holders on the amount of such costs after the initial sale of the investment product, in a form which is specific to the individual's holdings and easily understandable. While fund facts and ETF facts documents required to be delivered at the point of sale for some investment funds contain certain disclosure concerning the ongoing costs of ownership of those funds, those documents are not tailored to the individual's holdings or required to be delivered on an ongoing basis and this requirement only applies to a subset of investment funds¹.

Research carried out by the Ontario Securities Commission's (OSC) Investor Office and the Behavioural Insights Team)² in connection with the adoption of CRM2 shows that Canadian investors presented with a sample annual charges and compensation report, assumed that it included embedded fees associated with investment funds, when it does not include such fees.³

We believe it is important that investors and policyholders be aware of all of the costs associated with the investment funds and segregated funds they hold, as these fees can impact their returns and have a compounding effect over time. Furthermore, transparency about costs may encourage more competition, which would benefit investors and policyholders.

The Proposals would require disclosure of the ongoing costs of owning Segregated Fund Contracts and investment funds, both as a percentage, for each fund or segregated fund, and as an aggregate amount, in dollars, for all investment funds or investments in a Segregated Fund Contract held during the year.

¹ Other continuous disclosure documents prepared by investment funds, such as annual statements or management reports of fund performance, are not prepared by all investment funds, present information in a form which may be complex for retail investors to understand and do not allow investors to understand their total costs of investing, as they present information which is specific to a single issuer or group of issuers.

² Behavioural Insights Team is a social purpose company part-owned by the U.K. Government.

³ See OSC Staff Notice 11-787 [Improving Fee Disclosure Through Behavioural Insights](#), August 19, 2019, p. 11.

The Proposals are as consistent as possible between the securities and insurance sectors with respect to disclosure of the ongoing costs of owning Segregated Fund Contracts and investment funds, taking into account the material differences among those products and in the ways the two sectors and their regulatory regimes operate. Differences include who provides cost disclosure to clients, how often account statements are typically sent, distribution channels and product features, as indicated in the table in Annex K.

Summary of Proposals

Securities sector

The Proposed Securities Amendments would add the following new elements to client reporting under NI 31-103:

- in the account statement (s.14.14) or additional statement (s.14.14.1) as appropriate, the fund expense ratio, stated as a percentage for each investment fund held by the client; and
- in the annual report on charges and other compensation (s.14.17) for the account as a whole:
 - the aggregate amount of fund expenses, in dollars, for all investment funds held during the year; and
 - the aggregate amount of any direct investment fund charges (e.g., short-term trading fees or redemption fees), in dollars.

Fund expenses would be calculated by reference to the fund expense ratio, which would be defined as the sum of the MER and the TER. This definition is consistent with how that term is used in the context of a mutual fund's fund facts document and with how the term "ETF expenses" is used in the ETF Facts document.⁴ The methodology for determining the information included in the reports would be prescribed in order to ensure comparability for investors and a level playing field for registrants. Explanatory notes, substantially in a prescribed form tested with investors, would be included as appropriate.

The Proposed Securities Amendments would apply to all registrants to which the requirements to deliver an account statement, additional statement or annual cost and compensation report currently apply,⁵ in respect of all investment funds owned by their clients, including scholarship plans, labour sponsored funds, foreign funds, mutual funds, non-redeemable investment funds, prospectus-exempt investment funds and exchange-traded funds.

Existing exemptions for statements and reports provided to non-individual permitted clients (including, for example, many different institutional investors), pursuant to subsections 14.14.1(6) and 14.17(5) of NI 31-103, would continue to apply. SRO rules would be amended to be uniform in substance with final amendments to NI 31-103.

⁴ See item 1.3 of Part II of Form 81-101F3 in *National instrument 81-101 Mutual Fund Prospectus Disclosure*.

⁵ See sections 14.14, 14.14.1 and 14.17 of NI 31-103.

Registered investment fund managers would be required to provide the registered dealers and registered advisers with certain information that the dealers and advisers would require in order to prepare the enhanced statements and reports for their clients.

The Proposed Securities Amendments would allow investment fund managers to rely on publicly available information disclosed in an investment fund's most recently published fund facts document, ETF facts document, prospectus or management report of fund performance, unless this information is outdated, or the investment fund manager reasonably believes that doing so would cause the information reported in the statement or report to be misleading.

If advisers or dealers are unable to rely on information provided by investment fund managers or believe that doing so would cause the information reported in the statement or report to be misleading, they would be required to rely on the most recent publicly available information in the relevant fund facts document, ETF facts document, prospectus or management report of fund performance, and if they cannot do so, would be required to make reasonable efforts to obtain that information by other means.

We believe this approach would adequately balance the need for investors to receive information about the ongoing costs of owning investments funds, while avoiding imposing an undue regulatory burden on registrants.

Insurance sector

The Proposed Insurance Guidance would express the CCIR's expectation that insurers would provide certain information to clients who own Segregated Fund Contracts at least once each year. The full list of these elements of disclosure is found in Annex J.

With respect to costs of holding Segregated Fund Contracts, these elements include:

- the fund expense ratio, stated as a percentage for each segregated fund held by the client within their Segregated Fund Contract during the statement period; and
- for the Segregated Fund Contract as a whole:
 - the aggregate amount of fund expenses, in dollars, for all segregated funds held during the statement period;
 - the aggregate cost of insurance guarantees under the Segregated Fund Contract, in dollars, for the statement period; and
 - the aggregate amount of all other expenses under the Segregated Fund Contract, in dollars, for the statement period.

The statement period would be no more than one year.

The fund expense ratio would be defined as the sum of the MER and the TER. The methodology for determining the information included in the statements would be prescribed in order to ensure comparability for investors and a level playing field for insurers and agents. Explanatory notes, substantially in a prescribed form tested with investors, would be included as appropriate.

The remaining elements of the ongoing disclosure would reflect the expectations set out in the CCIR Segregated Funds Position Paper, except as follows:

- insurers would be expected to report the total deposits, withdrawals and the change in value of segregated funds since the Segregated Fund Contract began and since the start of the previous statement period.
 - In contrast, the CCIR Segregated Funds Position Paper recommended reporting the aggregated dollar value change in net asset value of the Segregated Fund Contract.
- with respect to the amount the client would receive upon redeeming the entire Segregated Fund Contract, insurers would be expected to:
 - include a notice, substantially in a prescribed form, that explains the total net asset value for the contract is not necessarily the amount the client would receive if they ended their contract, and explains how the client could obtain more details about the amount of money they would receive, and
 - if the costs incurred at the redemption would be significant, include a notice, substantially in a prescribed form, that explains these costs.
- insurers would be expected to indicate whether a deferred sales charge may apply to each segregated fund; and
- when a Segregated Fund Contract provides a guaranteed income payment, insurers would be expected to state how long the guaranteed payment would be payable.

Insurance regulators in each jurisdiction will implement this initiative in line with their respective regulatory requirements.

Prior Consultations

In developing the Proposals, the Joint Regulators conducted extensive consultations with investor advocates and market participants, notably at a meeting of the Joint Forum of Financial Market Regulators⁶ held on June 10, 2021, as well as through informal technical consultations with industry associations and service providers.

Prior to beginning the joint project, CCIR consulted with stakeholders with respect to disclosure of fees and performance through an Issues Paper released for public consultation in May 2016 and discussion directly with stakeholders. These consultations led to the 2017/2018 CCIR Segregated Funds Position Paper, which set out CCIR's expectations regarding cost disclosure. CCIR continued related research, including through investor focus groups, between the release of the Position Paper and the start of the joint project.

⁶ <https://www.securities-administrators.ca/news/joint-forum-of-financial-market-regulators-engages-with-industry-and-investor-groups-on-investment-fee-transparency/>

The Project Committee also worked with OSC Investor Office Research and Behavioural Insights Team (**IORBIT**), drawing in part on earlier research commissioned by the MFDA, to design seven prototype disclosure documents for the securities sector, which differed both in terms of substantive content and presentation. Four prototypes were developed for the insurance sector. IORBIT then tested the prototypes to determine which ones would be most effective in maximizing investor or policyholder's comprehension of cost information. The Proposed Amendments reflect the findings from IORBIT's research. The final prototypes are included in Annex G and H as illustrative examples, showing what statements and reports could look like if the Proposed Amendments were adopted, with the new information highlighted.⁷

Transition

We recognize that developing and implementing system enhancements to implement the Proposals will require a significant investment of time and resources by industry stakeholders. However, we firmly believe that providing both investors and policyholders with essential information about the ongoing embedded costs of investment funds and segregated funds at the earliest possible date is a priority. We therefore intend to adopt a short transition period for both the securities sector and the insurance sector.

We are proposing that both sectors move forward in lockstep, with final amendments coming into effect at the same time in September 2024, as further detailed below, assuming that final publication would occur and ministerial approvals be obtained during the second quarter of 2023. This would represent a transition period of approximately 18 months. Registrants and insurers would be required to deliver statements and reports compliant with the Proposals as of the first reporting periods that fall entirely after this date.

In practical terms, this means that

- for the securities sector, investors would receive the first quarterly account statements containing the newly required information for the reporting period ending in December 2024, and the first annual reports containing the newly required information for the reporting period ending in December 2025; and
- for the insurance sector, policyholders would receive an annual report containing the newly required information for the reporting period ending in December 2025, and a half-yearly statement containing the newly required information for the reporting period ending in June 2025, in the case where such statements are delivered.

We are proposing this approach considering the importance of this initiative for investors and policyholders and the fact that pre-consultations with industry stakeholders and investor advocacy groups have taken place and will continue. We strongly encourage registrants and insurers to begin reviewing their systems and conduct advanced planning as soon as possible in order to have all of the resources necessary for implementation in place on time, following the final publication and

⁷ The final prototype cost and compensation report developed for the securities sector will also be included as an appendix to 31-103CP.

ministerial approvals. If you have comments on this transition period proposal, please provide detailed discussion of the comments in your submission.

Request for Comments

We welcome your comments on the Proposals and questions in Annexes A and B.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments with respect to the Proposed Securities Amendments will be posted on the websites of each of the OSC at www.osc.ca, the Alberta Securities Commission at www.albertasecurities.com and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Similarly, all comments with respect to the CCIR Guidance may be posted on the CCIR website.

Deadline for Comments

Please submit your comments in writing on or before July 27, 2022. If you are not sending your comments by email, please send a CD containing the submissions in Microsoft Word format.

Comments on Proposed Securities Amendments:

Address your submission to the CSA jurisdictions as follows:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Deliver your comments only to the addresses listed below. Your comments will be distributed to the remaining CSA jurisdictions.

M^e Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs

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Comments on Proposed Insurance Guidance:

Address and deliver your comments to:

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Your comments will be delivered to member jurisdictions of the CCIR.

Questions

If you have any questions, please contact the staff members listed below.

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