

APPENDIX A

Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions*

The proposed amendments in sections 3(g), 7, 8(a), 9(c), 10, 12, 13, 14 and 17 of the amending instrument below are proposed to come into force at dates later than the implementation date for the other proposed amendments. Please refer to section 18. This text box does not form part of the amending instrument.

1. ***National Instrument 31-103 Registration Requirements and Exemptions is amended by this Instrument.***
2. ***Section 1.1 is amended by***
 - (a) ***adding the following after the definition of “Canadian Financial Institution”:***

“charges” include operating charges and transaction charges;

“compound percentage returns” means cumulative gains and losses over time expressed as a percentage;
 - (b) ***adding the following after the definition of “mutual fund dealer”:***

“net amount invested” means the sum of all contributions of cash or securities into an account, not including income generated by investments in the account if that income is reinvested, less all withdrawals of cash or securities out of the account, except charges paid out of the account;

“operating charges” means any amounts charged in respect of the operation of an investment account of a client, including service charges, administration fees, safekeeping fees, management fees, performance fees;

“original cost” means the total amount paid for a security, including any commissions or other charges related to purchasing the security; ***and***
 - (c) ***adding the following after the definition of “subsidiary”:***

“transaction charges” means any amounts charged in respect of a purchase or sale of securities, including commissions, sales charges, transaction fees;
3. ***Subsection 14.2 (2) is amended***

- (a) *in paragraph (b) by replacing “discussion that identifies” with “general description of” and by replacing “a client” with “the client”;*
 - (b) *in paragraph (c) by adding “general” before “description”;*
 - (c) *by replacing paragraph (f) with the following:*
 - (f) disclosure of all operating charges the client may pay related to the account;
 - (d) *by replacing paragraph (g) with the following:*
 - (g) a general description of the types of transaction charges the client may pay;
 - (e) *in paragraph (h) by adding “general” before “description”, by replacing “the compensation” with “any compensation” and by adding “by any other party” before “in relation to”;*
 - (f) *in paragraph (j) by adding “[dispute resolution service]” after “13.16” and replacing “registered firm’s expense” with “firm’s expense”;*
 - (g) *in paragraph (l) by replacing “.” with “;” at the end of the paragraph; and*
 - (h) *by adding the following after paragraph (l):*
 - (m) a general description of investment performance benchmarks and the factors that should be considered by a client when comparing actual returns in the client’s account to benchmark returns, and any options for benchmark information that are made available to clients by the registered firm.
4. *Subsection 14.2(3) is amended:*
- (a) *by deleting the words “to a client” after “must deliver”; and*
 - (b) *by adding “, paragraphs (2)(a), 2(c) to (k) and (2)(m) to the client in writing, and the information in paragraphs 2(b) and 2(l) either orally or in writing,” after the words “subsection (1)”.*
5. *Section 14.2 is amended by adding the following after subsection (3):*
- (3.1) Before a registered firm makes a recommendation to or accepts an instruction from a client to purchase or sell a security in an account other than a managed account, the firm must disclose to the client

- (a) the charges the client will be required to pay in respect of the purchase or sale, and
- (b) in the case of a purchase, any deferred charges that the client might be required to pay on the subsequent sale of the security, or any trailing commissions that the firm may receive in respect of the security.

6. ***Subsection 14.2(4) is amended by deleting “to” after “significant change” and adding “in respect of” before “information”.***

7. ***Section 14.2 is amended by adding the following after subsection (4):***

(4.1) A registered firm must deliver the following information to a client every 12 months with or in the account statement that is accompanied by or includes the report containing the account performance information required under section 14.15 [*account performance reporting*]:

- (a) the registered firm’s current operating charges which may be applicable to the account;
- (b) the total amount of each type of operating charge related to the account paid by the client during the 12 month period covered by the account statement, and the aggregate amount of such charges;
- (c) the total amount of each type of transaction charge related to securities in the account paid by the client during the 12 month period covered by the account statement, and the aggregate amount of such charges;
- (d) if the price paid or received by the client in respect of purchases or sales of fixed income securities in the account during the 12 month period covered by the account statement included any dealer compensation, and the compensation was not disclosed to the client, the following notification or a notification substantially similar to the following:

“For some of the fixed income securities purchased or sold in your account during the period covered by this report, dealer charges were added to the price in the case of a purchase or deducted from the price in the case of a sale”;

- (e) the aggregate amount of any fees paid to the registered firm by any person or company in relation to the client during the 12 month period covered by the account statement;

- (f) an identification of any securities in the account that may be subject to deferred sales charges;
- (g) if the registered firm received trailing commissions on investment funds held by the client during the 12 month period covered by the account statement, the following notification or a notification substantially similar to the following:

“We received \$ ● in trailing commissions on the investment funds you held during the period.

Investment funds pay managers a fee for managing their funds. The managers pay us ongoing trailing commissions from that management fee for the service and advice we provide you. The amount of the trailing commissions depends on the sales charge option you chose when you purchased the fund. As is the case with any investment fund expense, trailing commissions affect you because they reduce the amount of the fund’s return to you.”

8. Subsection 14.12(1) is amended

(a) by adding the following after paragraph (b):

(b.1) in the case of a purchase of a fixed income security, the security’s yield;

(b) in paragraph (c) by adding “, deferred sales charge” after “service charge”;

(c) in paragraph (h) by replacing “ registrant” with “registered dealer” wherever it occurs and by replacing “,” with “;” at the end of the paragraph; and

(d) by adding the following after paragraph (h):

(i) if the price paid or received by the client in respect of the purchase or sale of a fixed income security included any dealer compensation, and the compensation is not otherwise disclosed to the client in the trade confirmation, the following notification or a notification substantially similar to the following:

(i) *“Dealer charges were added to the price of this security”* in the case of a purchase, or

(ii) *“Dealer charges were deducted from the price of this security”* in the case of a sale.

9. Section 14.14 is amended

- (a) in subsections (4) and (5) by replacing “A statement” with “An account statement”;**
- (b) by replacing paragraph (e) of subsection (5) with the following:**

 - (e) the total market value of all securities and cash in the account.
- (c) by adding the following after subsection (5):**

 - (5.1) If a registered firm cannot determine the market value of a security, the firm must disclose that fact in the account statement and exclude the security from the calculation in paragraph 14.14(5)(e). **and**
- (d) by adding the following before subsection (6):**

 - (5.2) An account statement delivered under subsection (1), (2) or, (3) or (3.1) must include the following:

 - (a) for each security position opened in the account after [implementation date], the original cost of the position presented on either an average cost per unit or share basis, or on an aggregate basis, unless the security position was transferred from an account of another registered firm and the original cost of the transferred security position is not available or is known to be inaccurate, in which case the registered firm may

 - (i) use the market value of the security position as at the date of its transfer if that fact is disclosed to the client in the account statement, or
 - (ii) if the market value of the security position as at the date of its transfer cannot be determined, disclose that fact in the account statement;
 - (b) for each security position opened in the account before [implementation date], the original cost of the position presented on either an average cost per unit or share basis, or on an aggregate basis, unless original cost information is not available or is known to be inaccurate, in which case the registered firm may

 - (i) use the market value of the security position as at [implementation date] or an earlier date if the same date and value is used for all clients of the firm holding that

security and that fact is disclosed to the client in the account statement, or

- (ii) if the market value of the security position as of [implementation date] cannot be determined, disclose that fact in the account statement.

10. *The following is added after section 14.14:*

14.15 Performance reports

- (1) A registered firm must deliver a report containing account performance information to a client every 12 months with or in an account statement.
- (2) This section does not apply to an account that has existed for less than a 12 month period.
- (3) This section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.
- (4) This section does not apply to an investment fund manager in respect of its activities as an investment fund manager.
- (5) This section does not apply to a registered firm in respect of a permitted client if the permitted client has waived, in writing, the requirements under this section.

11. *The following is added after section 14.15:*

14.16 Content of performance reports

- (1) The information delivered under section 14.15 must include all of the following:
 - (a) the net amount invested in the client's account or, if the account was opened before [implementation date] and the net amount invested up to [implementation date] is not available, the registered firm may use the market value of all securities and cash in the account as of [implementation date] plus the net amount invested since [implementation date] if the firm discloses in the performance report that it is using market value instead of net amount invested for the period prior to [implementation date];
 - (b) the total market value of all securities and cash in the account as at the end of the 12 month period preceding the date of the performance report;

- (c) the change in value of the client’s account during the 12 month period preceding the date of the performance report, calculated by subtracting the total of the market value of all securities and cash in the account at the beginning of the 12 month period plus the net amount invested in the account during the 12 month period, from the market value of all securities and cash in the account as of the end of the 12 month period;
 - (d) the change in value of the client’s account since the account was opened, calculated by comparing the total market value of all securities and cash in the account as of the end of the 12 month period preceding the date of the performance report to
 - (i) the net amount invested in the account since the account was opened, or
 - (ii) if the account was opened before [implementation date] and the actual amount invested is not available, the market value of all securities and cash in the account as of [the implementation date] plus the net amount invested since [implementation date];
 - (e) a definition of “net amount invested” in the document where the information required under paragraphs (a) to (d) is presented;
 - (f) annualized compound percentage returns for the client’s account calculated net of fees, using one of either a time-weighted or dollar-weighted method;
 - (g) notice of the calculation method used under paragraph (f) in the document where the information required in paragraph (f) is presented;
 - (h) a definition of “compound percentage returns” in the document where the information required in paragraph (f) is presented.
- (2) The information delivered under section 14.15 must be presented using both text and tables, charts or graphs, and must be accompanied by notes in the performance report explaining
- (a) the content of the performance report and how a client can use the information to assess the performance of the client’s investments,
 - (b) the changing value of the client’s investments as reflected in the information in the performance report.

(3) The information delivered for the purposes of paragraph 14.16(1)(f) must be provided for the following periods ending on the date of the report:

- (a) the past year;
- (b) the period since the account was opened if the account has been open for more than one year before the date of the report. If the account was opened before [implementation date] and the annualized compound percentage return for the period prior to [implementation date] is not available, the period since [implementation date].

12. Subsection 14.16(3) is replaced with:

(3) The information delivered for the purposes of paragraph 14.16(1)(f) must be provided for each of the following periods ending on the date of the report:

- (a) the past year;
- (b) the past three years;
- (c) the period since the account was opened if the account has been open for more than one year before the date of the report. If the account was opened before [implementation date] and the annualized compound percentage return for the period prior to [implementation date] is not available, the period since [implementation date].

13. Subsection 14.16(3) is replaced with:

(3) The information delivered for the purposes of paragraph 14.16(1)(f) must be provided for each of the following periods ending on the date of the report:

- (a) the past year;
- (b) the past three years;
- (c) the past five years;
- (d) the period since the account was opened if the account has been open for more than one year before the date of the report. If the account was opened before [implementation date] and the annualized compound percentage return for the period prior to

[implementation date] is not available, the period since [implementation date].

14. *Subsection 14.16(3) is replaced with:*

- (3) The information delivered for the purposes of paragraph 14.16(1)(f) must be provided for each of the following periods ending on the date of the report:
 - (a) the past year;
 - (b) the past three years;
 - (c) the past five years;
 - (d) the past ten years;
 - (e) the period since the account was opened if the account has been open for more than one year before the date of the report. If the account was opened before [implementation date] and the annualized compound percentage return for the period prior to [implementation date] is not available, the period since [implementation date].

15. *Section 14.16 is amended by adding the following subsection:*

- (4) If a registered firm delivers account performance information to a client for a period of less than one year, it must not do so on an annualized basis.

16. *Section 14.16 is amended by adding the following subsections:*

- (5) If market value cannot be determined for a security position in the account, the security position must be assigned a value of zero in the calculation of the information delivered under section 14.15 and the reason for doing so must be disclosed to the client.
- (6) If there are no security positions in the account for which market value can be determined, the registered firm is not required to deliver account performance information to the client.
- (7) If the registered firm changes the calculation method used under paragraph 14.16(1)(f), it must, in the performance report where the change is first used, provide notice of the change and explain the reasons for it.

17. *The following is added after section 14.16:*

14.17 Benchmark Information - Before a registered firm delivers investment performance benchmark information to a client, it must set out the benchmarks it will provide in a written agreement between the registered firm and the client.

18. (a) *Subject to paragraph (b), this Instrument comes into force on *, 2011; and*
- (b) *The provisions of this Instrument listed in column 1 of the following table come into force as set out in column 2 of the table:*

1	2
Section(s)	Effective Date
3(h)	One year after the implementation date
7, 8(a), 9(c), 10, and 17	Two years after the implementation date
12	Three years after the implementation date
13	Five years after the implementation date
14	Ten years after the implementation date