

APPENDIX B

Blackline of Proposed Amendments to

National Instrument 31-103

Registration Requirements, Exemptions and Ongoing Registrant Obligations

This Appendix shows the proposed amendments to NI 31-103 against the relevant portions of the consolidation of NI 31-103 published on April 15, 2011.

1.1 Definitions of terms used throughout this Instrument

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"charges" include operating charges and transaction charges;

"compound percentage returns" means cumulative gains and losses over time expressed as a percentage;

"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;

"transaction charges" means any amounts charged in respect of a purchase or sale of securities, including commissions, sales charges, transaction fees;

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14.2 Relationship disclosure information

(1) A registered firm must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant.

(2) The information required to be delivered under subsection (1) includes all of the following:

- (a) a description of the nature or type of the client's account;
- (b) a ~~discussion that identifies~~general description of the products or services the registered firm offers to ~~at~~the client;
- (c) a general description of the types of risks that a client should consider when making an investment decision;
- (d) a description of the risks to a client of using borrowed money to finance a purchase of a security;

- (e) a description of the conflicts of interest that the registered firm is required to disclose to a client under securities legislation;
- (f) disclosure of all ~~costs to a~~operating charges the client ~~for the operation of an~~may pay related to the account;
- (g) a general description of the ~~costs at~~types of transaction charges the client ~~will pay in making, holding and selling investments~~may pay;
- (h) a general description of ~~the any~~ compensation paid to the registered firm by any other party in relation to the different types of products that a client may purchase through the registered firm;
- (i) a description of the content and frequency of reporting for each account or portfolio of a client;
- (j) if section 13.16 [dispute resolution service] applies to the registered firm, disclosure that independent dispute resolution or mediation services are available at the ~~registered~~ firm's expense, to resolve any dispute that might arise between the client and the firm about any trading or advising activity of the firm or one of its representatives;
- (k) a statement that the registered firm has an obligation to assess whether a purchase or sale of a security is suitable for a client prior to executing the transaction or at any other time;
- (l) the information a registered firm must collect about the client under section 13.2 [know your client];
- (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.

(3) A registered firm must deliver ~~to a client~~ the information in subsection (1), 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, before the firm first

- (a) purchases or sells a security for the client, or
- (b) advises the client to purchase, sell or hold a security.

(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.

(4) If there is a significant change ~~to~~ in respect of the information delivered to a client under subsection (1), the registered firm must take reasonable steps to notify the client of the change in a timely manner and, if possible, before the firm next

- (a) purchases or sells a security for the client, or
- (b) advises the client to purchase, sell or hold a security.

(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."

(5) This section does not apply if the client is a registered firm, a Canadian financial institution or a Schedule III bank.

(6) This section does not apply to a registrant in respect of a permitted client if

- (a) the permitted client has waived, in writing, the requirements under this section, and
- (b) the registrant does not act as an adviser in respect of a managed account of the permitted client.

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14.12 Content and delivery of trade confirmation

(1) A registered dealer that has acted on behalf of a client in connection with a purchase or sale of a security must promptly deliver to the client or, if the client consents in writing, to a registered adviser acting for the client, a written confirmation of the transaction, setting out the following:

- (a) the quantity and description of the security purchased or sold;
- (b) the price per security paid or received by the client;
- (b.1) in the case of a purchase of a fixed income security, the security's yield;
- (c) the commission, sales charge, service charge, deferred sales charge and any other amount charged in respect of the transaction;
- (d) whether the registered dealer acted as principal or agent;
- (e) the date and the name of the marketplace, if any, on which the transaction took place, or if applicable, a statement that the transaction took place on more than one marketplace or over more than one day;
- (f) the name of the dealing representative, if any, in the transaction;
- (g) the settlement date of the transaction;
- (h) if applicable, that the security is a security of the ~~registrant~~registered dealer, a security of a related issuer of the ~~registrant~~registered dealer or, if the transaction occurred during the security's distribution, a security of a connected issuer of the registered dealer;
- (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.

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14.14 Account statements

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(4) ~~A~~An account statement delivered under subsection (1), (2), (3), or (3.1) must include all of the following information for each transaction made for the client or security holder during the period covered by the statement:

- (a) the date of the transaction;
- (b) the type of transaction;
- (c) the name of the security;
- (d) the number of securities;
- (e) the price per security;
- (f) the total value of the transaction.

(5) ~~A~~An account statement delivered under subsection (1), (2), (3), or (3.1) must include all of the following information about the client's or security holder's account as at the end of the period for which the statement is made:

- (a) the name and quantity of each security in the account;
- (b) the market value of each security in the account;
- (c) the total market value of each security position in the account;
- (d) any cash balance in the account;
- (e) the total market value of all ~~cash and~~ securities and cash in the account.

(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).

(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.

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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.

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 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].

(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.

(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 subsection 14.15(1) 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.

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.

Coming into force provisions, as provided in the proposed amending instrument in Appendix A:

- (1) Except as otherwise provided in this part, these amendments come into force on [implementation date].
- (2) Paragraph 14.2(2)(m) [*deliver information about benchmarks*] comes into force on [date that is one year after implementation date].
- (3) Subsection 14.2(4.1) [*deliver prescribed information about charges to a client every 12 months*] comes into force on [date that is two years after implementation date].
- (4) Paragraph 14.12(1)(b.1) [*yield for fixed income securities*] comes into force on [date that is two years after implementation date].
- (5) Subsection 14.14(5.2) [*original cost information*] comes into force on [date that is two years after implementation date].
- (6) Subsection 14.15 [*performance report*] comes into force on [date that is two years after implementation date].
- (7) Paragraph 14.16(3)(b) [*compound percentage returns for past three years*] comes into force on [date that is three years after implementation date].
- (8) Paragraph 14.16(3)(c) [*compound percentage returns for past five years*] comes into force on [date that is five years after implementation date].
- (9) Paragraph 14.16(3)(d) [*compound percentage returns for past ten years*] comes into force on [date that is ten years after implementation date].
- (10) Subsection 14.17 [*written agreement for any benchmark information provided to the client*] comes into force on [date that is two years after implementation date].