

ANNEX A

SUMMARY OF CHANGES TO THE INSTRUMENT

This annex summarizes the changes that the Amendments will make to the current versions of the Rule and Companion Policy. In addition to the changes summarized in this annex, the Amendments also include technical drafting changes and clarifications.

Exemptions

The following exemptions will continue in effect or have been expanded:

- certain KYC requirements and the suitability determination obligation do not apply in respect of certain permitted clients if they have consented;
- suitability and related KYC requirements do not apply to registrants dealing with clients in the context of order-execution-only services (which are subject to IIROC member rules), or to trades directed by portfolio managers;
- investment fund managers are exempted from the following provisions, unless they are acting under an additional registration in a dealer or adviser category
 - KYC,
 - KYP, and
 - suitability determination;
- conflicts of interest obligations set out in sections 13.4 and 13.4.1 do not apply to investment fund managers in respect of investment funds that are subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

Custody obligations for mutual fund dealers registered in Québec – Part 9 *[Membership in an SRO]*

For clarity, we are adding provisions to section 9.4 to the effect that mutual fund dealers registered in Québec that are MFDA members may rely on certain of the exemptions for MFDA members in subsections 9.4(1) and (2) relating to custody of assets, provided the registered firm complies with the corresponding MFDA provisions.

Internal controls and systems – Part 11

The Amendments include changes to the requirements for training and record-keeping corresponding to the new and enhanced requirements in respect of KYC, KYP, suitability determinations and conflicts of interest.

- Section 11.1 [*Compliance system and training*] is expanded to require registered firms to provide training to their registered individuals on compliance with securities legislation, including
 - the KYC, KYP and suitability determination obligations, and
 - conflicts of interest requirements.

- Section 11.5 [*General requirements for records*] is expanded to include requirements for
 - demonstrating compliance with KYP requirements,
 - demonstrating how the firm has addressed, or plans to address, conflicts of interest identified under subsections 13.4 and 13.4.1 in the best interest of its clients,
 - documenting
 - the firm's sales practices, compensation arrangements and incentive practices, and
 - other compensation arrangements and incentive practices which may benefit the firm, its registered individuals or any affiliate or associate of the firm, and
 - demonstrating compliance with requirements relating to misleading communications.

We have added some guidance in the Companion Policy setting out our expectations concerning firms' training programs, particularly with respect to the addressing of conflicts of interest in the best interests of their clients, as well as guidance concerning policies and procedures relating to the new record-keeping requirements.

KYC – section 13.2

The Amendments expand the KYC requirements in section 13.2 [*Know your client*] to support the enhanced suitability determination requirement by clarifying the content and scope of the KYC process.

- 13.2(2)(c) – expands the list of KYC information that must be collected by registrants in order for them to understand their clients well enough to meet their suitability determination obligations. The additional information required includes the client's
 - personal circumstances (not limited to financial circumstances),
 - investment knowledge,
 - risk profile (guidance clarifies that this includes both the client's risk tolerance and their risk capacity), and
 - investment time horizon.
- 13.2(3.1) – new subsection requiring registrants to take reasonable steps to obtain clients' confirmation of the accuracy of their KYC information.
- 13.2(4) – expands requirement to keep KYC information current to expressly require updating the client's information if the registrant become aware of a significant change.
- 13.2(4.1) – new subsection specifying minimum intervals when a client's KYC information must be reviewed:
 - 12 months for managed accounts;

- 12 months before making a trade or recommendation for exempt market dealers;
- 36 months for other cases.
- New guidance in the Companion Policy discusses, among other things,
 - the ways a registrant may tailor its KYC process to reflect its business model and the nature of its relationships with clients,
 - using technology for the collection of KYC information, and
 - our expectations with respect to the KYC information that must be collected by registrants to meet the requirements in the Rule on an ongoing basis.

KYP – new section 13.2.1

There is currently no explicit Rule requirement concerning KYP, while the Companion Policy currently provides only limited principles-based guidance on our KYP expectations in the context of the proficiency and suitability requirements. The Amendments introduce an express KYP Rule requirement in new section 13.2.1 [*Know your product*]. Like the enhanced KYC requirements, this is intended to support an enhanced suitability determination obligation.

- 13.2.1(1) – obligation of registered firms to take reasonable steps to ensure that the securities that they make available to clients are
 - assessed with regard to their relevant aspects, including for their structure, features, risks, initial and ongoing costs, and the impact of those costs,
 - approved to be made available to clients, and
 - monitored for significant changes.
- 13.2.1(2) – obligations of registered individuals to take reasonable steps to understand the securities that they purchase, sell or recommend to a client, including the impact of the initial and ongoing costs associated with acquiring and holding each security, sufficient to enable them to make a suitability determination.
- 13.2.1(3) – registered individuals must only purchase or recommend securities approved by their firm to be made available to clients.

The Companion Policy codifies our KYP expectations of firms and registrants as set out in previous CSA and SRO guidance. It also sets out our views on how firms can tailor their processes for meeting the KYP obligation depending on

- a firm's business model,
- a security's type,
- whether other registrants are also involved in a security's distribution to the client, and
- whether a security is being transferred in.

Suitability determination – section 13.3

The Amendments enhance the suitability determination obligation in section 13.3 [*Suitability determination*] with, among other things, a new core requirement that registrants must put their clients' interests first when making a suitability determination.

- 13.3(1) – current suitability requirement replaced with new subsection providing that before a registrant opens an account for a client, purchases, sells, deposits, exchanges or transfers securities for a client's account, takes any other investment action for a client, or makes a recommendation or exercises discretion to take any such action, the registrant must determine, on a reasonable basis, that
 - the action is suitable for the client, based on the following factors:
 - KYC information;
 - the registrant's assessment or understanding of the security;
 - the impact of the action on the account, including its concentration and liquidity;
 - the actual and potential impact of costs on the client's returns;
 - a reasonable range of alternatives available through the firm at the time the determination is made; and
 - the action puts the client's interest first.

- 13.3(2) – new subsection prescribing trigger events that will require registrants to review a client's account and the securities in the account in accordance with subsection 13.3(1) and take appropriate action, within a reasonable time, in the following circumstances:
 - a registered individual is designated as responsible for the client's account;
 - the registrant becomes aware of a change in a security in the account, or becomes aware of a change in the client's KYC information, that could result in the security or account not satisfying the suitability determination criteria;
 - the registrant has undertaken a review of the client's KYC information.

- 13.3(2.1) – new subsection replacing the current provision for client-directed trades.

New guidance in the Companion Policy sets out our expectations as to how registrants may meet their enhanced suitability obligations. We clarify that if we review a suitability determination made by a registrant, we will do so without hindsight and on the basis of what a reasonable registrant would have done under the same circumstances.

Waivers – section 13.3.1

New section consolidating exemptions from certain KYC requirements and the suitability determination obligation in respect of certain permitted clients if they consent.

Conflicts of interest – Part 13: Division 2

The Amendments to the conflicts of interest requirements in Part 13: Division 2 [*Conflicts of interest*], among other things, introduce a new requirement that material conflicts must be addressed in the best interest of the client.

- 13.4 [*Identifying, addressing and disclosing material conflicts of interest – registered firm*] – revised and new requirements requiring a registered firm to
 - identify existing and reasonably foreseeable material conflicts of interest between a client and the firm or any individual acting on the firm’s behalf,
 - address all material conflicts of interest in the best interest of the client,
 - avoid material conflicts of interest that cannot be otherwise addressed in the best interest of the client, and
 - provide affected clients with disclosure of material conflicts of interest at account opening or in a timely manner if they are identified later.
- In each case, the disclosure must be prominent, specific and written in plain language, specifying
 - the nature and extent of the conflict of interest,
 - the potential impact on and risk that it may pose to the client, and
 - how it has been, or will be, addressed.
- It is expressly stated that a registrant cannot satisfy its obligations to identify and address material conflicts of interest *solely* by providing disclosure to the client.
- 13.4.1 [*Identifying, reporting and addressing material conflicts of interest – registered individual*] – new and revised sections with similar effect to section 13.4, except that registered individuals must promptly report conflicts of interest to their sponsoring firm (disclosure to the client is the firm’s responsibility).
- 13.12 [*Restriction on borrowing from, or lending to, clients*] – revisions
 - expanding the exemptions from the prohibition on lending money to clients, and
 - adding a new prohibition on borrowing money from clients, subject to certain exemptions.

Expanded guidance in the Companion Policy discusses our expectations of how registrants can implement the conflicts of interest requirements, including examples of controls that registered firms can consider putting in place for these purposes.

Misleading communications – Part 13: Division 7

The Amendments add a new section 13.18 [*Misleading communications*] providing that

- A registrant must not hold themselves out in any manner that could reasonably be expected to deceive or mislead any person or company as to:
 - their proficiency, experience, qualifications or category of registration;
 - the nature of the person’s relationship, or potential relationship, with the registrant;

- the products or services provided, or to be provided by the registrant.
- a registered individual who interacts with clients must not use any of:
 - a title, designation, award, or recognition that is based partly or entirely on that registrant's sales activity or revenue generation;
 - a corporate officer title unless their sponsoring firm has appointed that registrant to that corporate office pursuant to applicable corporate law;
 - a title or designation unless their sponsoring firm has approved the use.

Related guidance is set out in the Companion Policy.

RDI – section 14.2

The Amendments include changes to the requirements in section 14.2 [*Relationship disclosure information*] to maintain consistency with the new and enhanced requirements, and to better implement the principle in subsection 14.2(1) that “A registrant must deliver to a client all information that a reasonable investor would consider important about the client's relationship with the registrant”.

- 14.2(0.1) – new defined term “proprietary product” added to simplify drafting and ensure clarity of regulatory purpose.
- 14.2(2)(b) – current requirement for a general description of the products and services the registered firm offers to the client expanded to include express requirements to include (as may be applicable)
 - restrictions on the client's ability to liquidate or resell a security, and
 - investment fund management expense fees or other ongoing fees the client may incur.
- 14.2(2)(b.1) – new requirement for a general description of any limits on the selection of the products or services the registrant will offer to the client, including
 - whether the firm will primarily or exclusively use proprietary products in the client's account, and
 - whether there will be any other limits on the selection of the products or services.
- 14.2(2)(k) – current requirement for disclosure of the obligation to make suitability determinations revised to make it conform with the enhanced suitability determination Amendments.
- 14.2(2)(l) – drafting revision to remove ambiguity and clarify regulatory intent consistent with existing guidance in the Companion Policy.
- 14.2(2)(o) – new requirement to provide a general explanation of the potential impact of each of
 - operating charges,

- transaction charges,
 - investment fund management expense fees, and
 - other ongoing fees the client may incur.
- 14.2.1 [*Pre-trade disclosure of charges*] – requirement for pre-trade disclosure expanded to expressly require investment fund management expense fees or other ongoing fees that the client may incur, building on existing Companion Policy guidance regarding pre-trade disclosure regarding mutual funds and the information included in the fund facts document required to be delivered at point-of-sale.

Related guidance is included in the Companion Policy.