CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 31-337
Cost Disclosure, Performance Reporting and Client Statements – Frequently Asked Questions and Additional Guidance as of February 27, 2014

Background

Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP** or the **CP**) implementing phase 2 of the client relationship model came into force on July 15, 2013 (the **CRM2 Amendments**). Staff from the Canadian Securities Administrators (**CSA staff** or **we**) have compiled this list of frequently asked questions we have received to date and provide our response and additional guidance (**FAQs**). In this document, we refer to exempt market dealers as "**EMDs**", portfolio managers as "**PMs**" and investment fund managers as "**IFMs**".

Implementation planning

The CRM2 Amendments are implemented in stages, with new requirements coming into effect on July 15 in each of 2014, 2015 and 2016. We encourage registrants to plan now so that they can be ready to be in compliance with the new requirements. Here are some things firms should consider including in their CRM2 Amendments implementation planning:

- scheduling, developing, testing and implementing systems changes
- updating policies and procedures
- training staff
- updating compliance oversight practices, and
- communicating with clients about the new information that they will be getting

Firms will also need to compile the information that will form the basis for the new reports on investment performance.

FAQs

	NI 31-103 SECTION	QUESTION	ANSWER
1.	**GENERAL QUESTIONS**	When does someone cease to be a client, such that a registrant is no longer required to provide the statements and reports	It is not possible to provide a bright line test for determining when a client relationship has ended that will apply in all cases. We expect firms to exercise reasonable professional judgement, erring in favour of providing client

	NI 31-103 SECTION	QUESTION	ANSWER
		contemplated in the CRM2 Amendments?	reporting where there is doubt as to whether there is still a client relationship. Some principles that apply to the exercise of that judgement are: • A person remains a client of a registered dealer or adviser for so long as the dealer or adviser holds securities owned by the person, or the circumstances described in subsection 14.14.1(1) [*additional statements*] apply. • A firm should consider the totality of its dealings with a client and the client's expectations of ongoing services from the firm. • Whether a client relationship is ongoing or not depends on the particular facts and circumstances of the relationship. Note that a registered dealer or adviser may not avoid the client reporting requirements in NI 31-103 by selectively choosing to cease to be the dealer of record for some of a client's securities. For example, a dealer may not tell the IFM of a client's mutual funds that it is no longer the dealer of record for some of the client's securities (unless those securities have been transferred to an account of the client at another dealer or an adviser), and at the same time, keep an account for the client. See also the guidance in cell 21 [re s.14.15 security holder statements], below.
2.		Do EMDs have the same client statement and annual report requirements under the CRM2 Amendments as advisers and other dealers?	Most of the CRM2 Amendments do not distinguish between categories of registered advisers and dealers. All firms must review the requirements in section 14.14 [*account statements*] and section 14.14.1 [*additional statements*] to determine if they are required to deliver account and/or additional statements. Firms also need to consider the totality of their

	NI 31-103 SECTION	QUESTION	ANSWER
			dealings with a client and the client's expectation of ongoing services of the firm. An EMD, that does not hold a client's securities, and where the circumstances of subsection 14.14.1(1) do not apply to those securities, should consider the totality of its relationship with the client: • Is it doing only one exempt market transaction or does it plan to do other transactions with the client? • Is the client expecting that the firm will continue to provide services? • Is the firm also engaged with the client in a different capacity, for example, as a registered adviser managing the client's other investments? These factors are not exhaustive. There may be other relevant factors. We expect the EMD to exercise its reasonable professional judgement. Where there is only one transaction and the factors suggest there is no ongoing relationship with the client, the EMD would be required to deliver: • one account statement with transactional information under subsection 14.14(4) (see further guidance in cell 16 [re s.14.14 account statements], below); • no annual report on charges and other compensation; and • no annual investment performance report.
3.		Do disclosure and reporting requirements in CRM2 Amendments apply to other investments that may not be securities, such as segregated funds?	The jurisdiction of the Canadian Securities Administrators (**CSA**) limits the CRM2 Amendments to securities (including exchange contracts in Alberta, British Columbia, New Brunswick and Saskatchewan). If an investment is not a security or an exchange

	NI 31-103 SECTION	QUESTION	ANSWER
			contract in Alberta, British Columbia, New Brunswick and Saskatchewan within the meaning of those terms in securities legislation, a registered firm will not be subject to any requirement in NI 31-103 for reporting on that investment. Nonetheless, we encourage registrants to provide their clients with information that meets the standards set in the CRM2 Amendments in respect of all of their investments. This will enable investors to better understand the relative costs of different investments and their performance. Note that requirements imposed by self-regulatory organizations may extend to such investments.
4.		Where should switch fees and short-term trading fees be reported?	Switch fees charged by a registered dealer or adviser are considered a transaction charge (see the discussion of the definition of “transaction charge” in the CP. They must be disclosed before the trade (s. 14.2.1), in a trade confirmation (s.14.12(1)(c)) and in the annual report on charges and other compensation (s.14.17(1)(c)). Short-term trading fees paid to an investment fund must be disclosed in a trade confirmation (s.14.12(1)(c)) but are not included in the requirements for the annual report on charges and other compensation.
	Division 1 Investment fund managers		

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<tr><td></td><td>14.1
Application of this Part to investment fund managers</td><td>–</td><td>–</td></tr>
<tr><td>5.</td><td>14.1.1
Duty to provide information</td><td>The requirement in section 14.1.1 for investment fund managers to provide a dealer/adviser with the information on trailing commissions that is required by the dealer/adviser in order to comply with 14.17(1)(h) comes into effect on July 15, 2016. Do the CSA expect investment fund managers to be ready on July 15, 2016 to deliver information for the preceding year?</td><td>Dealers and advisers may have various reporting cycles, on a calendar basis or otherwise. We expect investment fund managers to work with dealers and advisers, so that the new required information about charges will be included in clients’ reports on charges and other compensation for the period that includes July 15, 2016.

For greater certainty, this encompasses reports for the periods January 1, 2016 to December 31, 2016 and July 16, 2015 to July 15, 2016. The latest possible 12-month period will be July 15, 2016 to July 14, 2017.

These are the first reports for different year-ends:

<table>
<tr><th>First day of reporting period</th><th>Last day of reporting period (year-end)</th></tr>
<tr><td>August 1, 2015</td><td>July 31, 2016</td></tr>
<tr><td>September 1, 2015</td><td>August 31, 2016</td></tr>
<tr><td>October 1, 2015</td><td>September 30, 2016</td></tr>
<tr><td>November 1, 2015</td><td>October 31, 2016</td></tr>
<tr><td>December 1, 2015</td><td>November 30, 2016</td></tr>
<tr><td>January 1, 2016</td><td>December 31, 2016</td></tr>
<tr><td>February 1, 2016</td><td>January 31, 2017</td></tr>
<tr><td>March 1, 2016</td><td>February 28, 2017</td></tr>
<tr><td>April 1, 2016</td><td>March 31, 2017</td></tr>
<tr><td>May 1, 2016</td><td>April 30, 2017</td></tr>
<tr><td>June 1, 2016</td><td>May 31, 2017</td></tr>
<tr><td>July 1, 2016</td><td>June 30, 2017</td></tr>
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	Division 2 Disclosure to clients		
6.	**14.2 Relationship disclosure information**	Before July 15, 2013, there was an exemption in former subsection 14.2(6) from section 14.2 in respect of a permitted client if (a) the client had waived it in writing, and (b) the registrant did not act as an adviser in respect of a managed account of the client. Under the CRM2 Amendments, the exemption was changed to a permitted client that is not an individual. Is the registrant now required to deliver relationship disclosure information to an individual permitted client who had previously waived the section?	Yes. If the individual permitted client had previously waived relationship disclosure information, in light of the CRM2 Amendments, a registered firm must deliver relationship disclosure to all individuals, whether or not they are permitted clients. We expect registered firms to act reasonably as to when they next deliver the relationship disclosure information. If there is a significant change in respect of the relationship disclosure information, then the registered firm should act right away. Otherwise, we would expect the relationship disclosure information to be updated the next time the firm is updating client information (for advisers) or before doing a transaction (for dealers).
7.		If an individual permitted client has waived the suitability requirement under subsection 13.3(4), how will a firm meet the requirement in paragraph 14.2(2)(k) to deliver a statement that the 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?	When there is no obligation to make a suitability determination because of the application of subsection 13.3(4), the firm will have met the requirement in paragraph 14.2(2)(k) by simply informing the client that the firm has no suitability obligation because the client has waived the requirement.

8.		If a firm is exempt from certain know your client (KYC) obligations under subsection 13.2(6), how will it meet the requirement in paragraph 14.2(2)(l) to deliver the information a registered firm must collect about the client under section 13.2?	The firm will meet the requirement in paragraph 14.2(2)(l) by delivering the information collected under the KYC obligation in section 13.2. If a firm is exempted from collecting certain KYC information, then the firm is not obligated to deliver that information under paragraph 14.2(2)(l).
9.		Will the CSA be providing additional guidance on benchmarks? Are benchmarks optional? If a firm decides to provide benchmarks, what is the expected frequency?	Other than a general discussion as part of the relationship disclosure information requirement in paragraph 14.2(2)(m), there is no requirement for registered firms to provide benchmark information to clients and for greater certainty, we have provided guidance under sections 14.2 [*relationship disclosure information*] and 14.19 [*content of investment performance report*] of the CP. Since benchmarks are optional, we did not prescribe any periods or other specifications for provision of benchmark information. However, we have provided guidance on the provision of benchmarks in section 14.19 of the CP, including, importantly, that benchmark information be not misleading. We are not providing specific guidance on benchmarks beyond that already set out in the CP. We expect firms to use their professional judgement when determining which benchmarks are relevant to a client's investments and explain to clients the use of benchmarks in terms they will understand.

10.		When does the guidance on the use of benchmarks set out under section 14.19 [*content of investment performance report*] in the CP come into effect?	The guidance in section 14.19 of the CP is relevant to the use of benchmarks today and is consistent with previously published guidance.
11.	**14.2.1 Pre-trade disclosure of charges**	Can registrants use the Fund Facts document to satisfy the requirements in section 14.2.1 [*pre-trade disclosure of charges*]? The question arises because 31-103CP suggests a mutual fund's management fee should be discussed in the pre-trade disclosure of charges, but the Fund Facts document is not required to include the management fee in all cases (only in the case of a new fund for which the management expense ratio (**MER**) is not available).	If a registrant delivers the Fund Facts document at the point of sale and explains the specific costs of the transaction to the client, then the registrant may use it further to satisfy the requirements of section 14.2.1 for the disclosure of charges related to the transaction. Since the management fee generally constitutes most of the MER of a mutual fund, we think this would be in line with the guidance in the CP.
	Division 5 Reporting to clients		
12.	**14.11.1 Determining market value**	Why use last bid/ask price instead of closing price? Is it not misleading sometimes; for example, when there are large bid-ask deviations?	We chose last bid/ask price because not all securities are actively traded on a market and there have been consistent problems with firms using stale data based on old closing prices. That said, we recognize that no one measure will always work best, so the requirement is for the firm to report the amount it reasonably believes to be the market value, after making any adjustments it considers necessary to accurately reflect the market value.

13.		What if the net asset value (**NAV**) of an investment fund which is not listed on an exchange is not available on a daily basis?	The most recent NAV provided by the investment fund manager should be used. If a registered dealer or adviser reasonably believes the NAV for an investment fund is stale or otherwise inaccurate, it may include an explanatory note to that effect in the statement provided to its client.
14.	**14.12 Content and delivery of trade confirmation**	The prescribed notification under subparagraph 14.12(1)(c.1)(ii) says remuneration "has" been added or deducted from the price of the security. Can "has been" replaced with "may have been" where the firm will have difficulty determining which trades had dealer firm remuneration added and which did not?	Yes. Since the requirement is to provide a notification that is "substantially" in the form prescribed, a firm can modify the prescribed text to use "may have" instead of "has been", provided the firm has made reasonable efforts to determine whether it can make the more definitive statement to the client.
15.	**14.14 Account statements**	Is there any additional guidance on providing electronic statements?	National Policy 11-201 *Electronic Delivery of Documents* provides guidance to securities industry participants who want to use electronic delivery to fulfill delivery requirements in securities legislation. Monthly and/or quarterly statements, as applicable can be delivered electronically. All of the content required under section 14.14 and, where applicable, section 14.14.1 must be provided at the required intervals. However, if a firm chooses to provide electronic access to account information on a more frequent basis than required in sections 14.14 and 14.14.1, that *supplemental* access does not have to conform with the requirements of those sections.

16.		How do the account statement and additional statement requirements in sections 14.14 and 14.14.1 apply where a registered firm does not (a) hold or control a client's securities in nominee name, nor (b) meet criteria set out in subsection 14.14.1(1)?	Under subsection 14.14(4), the registrant will be required to provide the client with an account statement that sets out transaction information for the reporting period in which a transaction occurred. The account balance information required under subsection 14.14(5) will not be required. There will be no requirement to provide an additional statement under section 14.14.1.
17.		If securities are transferred to a managed account for passive holding, is the PM responsible for reporting on these "legacy" securities?	Yes, if securities are in an account managed by a PM, that PM is responsible for reporting on them. See also cell 18, immediately below, concerning statements sent by a custodian.
18.	**14.14.1 Additional statements**	Are statements sent by a custodian acceptable to meet the additional statement requirement?	The requirement to deliver additional statements comes into effect on July 15, 2015. The CSA is considering guidance on PMs' client statement delivery responsibilities where a custodian also provides statements to the same client.
19.	**14.14.2 Position cost information**	How should short positions be reported?	If using book cost, a short security position should be reported as the total amount received for the security, net of any transaction charges related to the sale, adjusted for any distributions, returns of capital and corporate reorganizations. If using original cost, a short security position should be reported as the total amount received for the security, net of any transaction charges related to the sale.

20.	**14.14.2 Position cost information**	Does “within 10 days after” in paragraph 14.14.2(4)(c) mean within 10 business days or 10 calendar days?	References to “days” in the CRM2 Amendments are to calendar days.
21.	**14.15 Security holder statements**	Is there any guidance regarding the requirement to send a statement for ‘orphaned accounts’?	The requirement for an IFM to send a security holder statement to an account without a dealer of record – an orphaned account – is not new. This is an accommodation of the temporary and very limited circumstance that arises where there ceases to be a registered dealer or adviser serving the client. See also the guidance in cell 1 [re ceasing to be a client], above. The CRM2 Amendments in section 14.15 expand the existing requirements for the information that IFMs must send to security holders to include some of the information registered dealers and advisers will be required to deliver to their clients, such as position cost information.
	14.16 Scholarship plan dealer statements	–	–
22.	**14.17 Report on charges and other compensation**	The requirement to provide an annual report on charges and other compensation comes into effect on July 15, 2016. For what period will the first annual report be required?	Firms may have various reporting cycles, on a calendar year basis or otherwise. If July 15, 2016 falls within the start and end dates of a 12-month period, an annual report will be required for that period. So if a firm reports or wishes to report on a calendar year basis, the first annual report will be required for a period from January 1, 2016 to December 31, 2016. If a firm reports or wishes to report for a period ending July 15, then the first annual reports will be required for the period beginning July 16, 2015.

23.		If there are no charges or other compensation to be disclosed, is a nil report still required to be delivered?	No, nil reports on charges and other compensation are not required.
24.		Are the charges levied within an investment fund held by an investor (e.g. management fees) included in operating charges? Do PMs who manage their clients' money through pooled funds have to "look through" to those fees?	No. We would expect this information to be disclosed as part of the relationship disclosure information delivered at account opening or when the investment is made. But, a firm is not required to include the fund management fee in its annual report on charges and other compensation. The definition of operating charge is specific to the account and is not a product related fee. Operating charges (and transaction charges) include only charges paid to the registered firm by the client. Nonetheless, if such fees are a significant part of the portfolio manager's compensation model – say if a portfolio manager used in-house funds as the primary investment vehicle for its clients and took much of its compensation in fund management fees instead of the traditional fee based on clients' assets under management – we would expect that the firm would communicate to its clients about the way it is being compensated, consistent with the duty of fairness, honesty and good faith.
25.		If a client leaves the firm and transfers out in the middle of the year, does the firm have an obligation to send an annual report on charges and other compensation?	Once the client relationship has ended, there is no longer an obligation to send an annual report on charges and other compensation. We do, however, encourage firms to provide departing clients with information on charges and other compensation received during the year-to-date.

26.		Does the requirement to disclose the dollar amount of trailing commissions mean separate disclosures for the amount paid to the firm and the amount paid to the registered representative?	The report on charges and other compensation is at the firm level. This means the dollar amount of trailing commissions disclosed in the report is the total amount received in respect of the client's holdings. That amount is not broken down to show how much the firm retained and how much it passed on to the client's dealing or advising representative. The intention is that the client will see the aggregate amount of trailing commission that was generated by their account.
27.		How should typical mutual fund related charges other than trailing commissions be reported in the annual report on charges and other compensation?	If there is an up-front commission charged to the client by the registered dealer or adviser when the securities are purchased, it would be included in the amount reported under paragraph 14.17(1) (c). In the sample annual report in the CP, this appears under "Charges you paid directly to us ... Commissions on purchases of mutual funds with a sales charge". If there is a commission or other payment from the IFM or another party other than the client to the registered dealer or adviser when the securities are purchased, that payment is reported under paragraph 14.17(1) (g). In the sample annual report in Appendix D of the CP, this appears under "Compensation we received through third parties ... Commissions from mutual fund managers on purchases of mutual funds (see Note 1)". If, when the securities are sold by the client (i.e., redeemed back to the issuer), a deferred sales charge is triggered but no commission or other payment goes to the registered dealer or adviser, there is no requirement to include it in the annual report. If, when securities are sold by the client a commission or other payment was received by the registered dealer or adviser, it would be reported under paragraphs 14.17(1)(c) or (g),

			depending whether it was paid by the client or another party. See also the guidance in cell 4 [re switch fees and short-term trading fees]. If a registered dealer or adviser is concerned that clients might assume trailing commissions are charged directly to the client, we would have no objection to the firm including in its annual reports a clear explanation of the charges. For example, note 1 in the sample Report on Charges and Other Compensation in Appendix D of the CP could be expanded along the lines of the second paragraph in note 2.
28.		If a registered dealer or adviser receives referral fees in relation to registerable services to the client during a reporting period and the client has two or more accounts with the firm, how should the firm disclose the referral fees in the annual reports for the client's accounts?	If the referral fees relate only to one of the client's accounts, they would be included in the annual report for that account alone. If the referral fees relate to more than one of the client's accounts, we expect the firm to present disclosure information in a clear and meaningful manner. For example, the firm could report the full amount in the annual report for each account, or report a pro-rated amount in the annual report for each account, but in either case the firm should include an explanatory note so that the client will not be confused as to the total amount of the referral fees received by the firm during the period.
29.	**14.18 Investment performance report**	The requirement to provide an annual investment performance report comes into effect on July 15, 2016. For what period will the first annual report be required?	Firms may have various reporting cycles, on a calendar year basis or otherwise. If July 15, 2016 falls within the start and end dates of a 12-month period, an annual report will be required for that period. So if a firm reports or wishes to report on a calendar year basis, the first annual reports will be required for a period from January 1, 2016 to December 31, 2016. If a firm reports or wishes to report for a period ending July 15, then the first annual reports will be required for the 12-month period beginning July 16, 2015.

30.	**14.19 Content of investment performance report**	Can a registered firm send performance reports to its clients more frequently than once per year? If so, must all of its performance reports include all of the content prescribed for annual reports and be formatted in accordance with subsection 14.19(5)?	So long as a performance report that includes the prescribed content is delivered annually, firms are free to send more frequent reports. Such supplemental reports need not include the prescribed content and need not be formatted in accordance with subsection 14.19(5).
31.		If a firm chooses to provide percentage returns calculated using both money-weighted rate of return (MWRR) and time-weighted rate of return (TWRR) methods, what are the requirements for using TWRR?	The CRM2 Amendments do not prescribe periods, accounts or other specifications for the provision of additional percentage return information using TWRR. A firm may show returns using TWRR, as long as the firm also provides the return using MWRR in accordance with the requirements in section 14.19. In such cases, in addition to the general explanation in plain language of what the MWRR calculation method takes into account required under paragraph 14.19(1)(j), the firm should similarly explain the TWRR calculation method in plain language and help clients understand the difference between two sets of performance returns.
32.		Will the CSA publish an approved formula to calculate MWRR?	No. There are different ways of calculating MWRR and the requirement is that firms use a method that is generally accepted in the securities industry. The CSA does not prescribe any method in particular because standards evolve over time. Approximation methods such as Modified Dietz are not acceptable. Approximations can produce misleading results compared to MWRR and advances in computing power make it unnecessary to use them.

33.		Is the XIRR function in Microsoft Excel acceptable for MWRR calculations?	Yes. A registered firm may provide performance reports calculated with the XIRR function of Microsoft Excel. Firms should be aware that some versions of this software may have defects that affect these calculations.
34.		Where a client account predates the requirement to collect client information for performance reporting and the firm has legacy data available only manually, can the firm choose a date that is later than the account opening date as the baseline date for an account's investment performance reports?	The baseline date for an account's investment performance reports must be either (a) the account opening date or (b), if the firm reasonably believes it does not have available all of the information that it would need in order to produce performance reports that cover the whole of the period since the account was opened, July 15, 2015.
35.	**14.20 Delivery of report on charges and other compensation and investment performance report**	Does "within 10 days after" in paragraph 14.20(1)(c) mean within 10 business days or 10 calendar days?	References to "days" in the CRM2 Amendments are to calendar days.

Questions

If you have questions regarding this Notice, please refer them to any of the following:

Christopher Jepson
Senior Legal Counsel
Compliance and Registrant Regulation
Ontario Securities Commission
416-593-2379
cjepson@osc.gov.on.ca

Brian W. Murphy
Deputy Director, Capital Markets
Nova Scotia Securities Commission
902-424-4592
murphybw@gov.ns.ca

Gérard Chagnon
Analyste expert en réglementation
Direction des pratiques de distribution et des OAR
Autorité des marchés financiers
418-525-0337, ext 4815 and
1-877-525-0337
gerard.chagnon@lautorite.qc.ca

Jason Alcorn
Legal Counsel, Securities
Financial and Consumer Services
Commission (NB)
Tel: 506-643-7857
jason.alcorn@fcnb.ca

Kate Holzschuh
Senior Legal Counsel
Capital Markets Regulation
British Columbia Securities Commission
604-899-6628 and
1-800-373-6393
kholzschuh@bcsc.bc.ca

Katharine Tummon
Director
Office of the Superintendent
of Securities, P.E.I.
902-368-4542
kptummon@gov.pe.ca

Navdeep Gill
Manager, Registration
Alberta Securities Commission
403-355-9043
navdeep.gill@asc.ca

Craig Whalen
Manager of Licensing, Registration and
Compliance
Office of the Superintendent of Securities
Government of Newfoundland and
Labrador
709-729-5661
cwhalen@gov.nl.ca

Dean Murrison
Director, Securities Division
Financial and Consumer Affairs Authority of
Saskatchewan
306-787-5842
dean.murrison@gov.sk.ca

Donn MacDougall
Deputy Superintendent, Legal &
Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
867-920-8984
Donald_macdougall@gov.nt.ca

Chris Besko
Deputy Director, Legal Counsel
The Manitoba Securities Commission
204-945-2561 and 1-800-655-5244
(Toll Free (Manitoba only))
chris.besko@gov.mb.ca

Carla Buchanan
Compliance Auditor
The Manitoba Securities Commission
204-945-2561 and 1-800-655-5244
(Toll Free (Manitoba only))
carla.buchanan@gov.mb.ca

Rhonda Horte
Deputy Superintendent
Office of the Yukon Superintendent
of Securities
867-667-5466
rhonda.horte@gov.yk.ca

Louis Arki
Director, Legal Registries
Department of Justice, Government of
Nunavut
867-975-6587
larki@gov.nu.ca