



CSA and CCIR Notice of Publication

CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance

and

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

Total Cost Reporting (TCR) for Investment Funds and Segregated Funds

April 20, 2023

Introduction

The Canadian Securities Administrators (the **CSA**) and the Canadian Council of Insurance Regulators (the **CCIR**, together, the **Joint Regulators** or **we**), are adopting enhanced cost disclosure reporting requirements for investment funds and new cost and performance reporting guidance for individual variable insurance contracts or IVICs (referred to here as **Segregated Fund Contracts**), as described below (collectively, the **Total Cost Reporting Enhancements** or **TCR Enhancements**).

The TCR Enhancements have been developed by a joint project committee composed of members from the CSA, CCIR, Canadian Insurance Services Regulatory Organizations (CISRO) and the New Self-Regulatory Organization of Canada (**New SRO**) (the **Project Committee**).

The TCR Enhancements for the securities sector (the **Securities Amendments**) are for amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing*

Registrant Obligations (NI 31-103) and changes to the Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP* or the **Companion Policy**).

The TCR Enhancements for the insurance sector are found in the *Individual Variable Insurance Contract Ongoing Disclosure Guidance* (the **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 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 Securities Amendments are relevant for all registered dealers, advisers and investment fund managers. The Insurance Guidance will apply to all insurers offering Segregated Fund Contracts to their policy holders.

We expect New SRO to amend its member rules, policies and guidance to be materially harmonized with the Securities Amendments.

In some jurisdictions, ministerial approvals are required for the implementation of the Securities Amendments. Provided all ministerial approvals are obtained, they will come into force on January 1st, 2026, subject to the transition period discussed below.

Substance and Purpose

The TCR Enhancements are part of the Joint Regulators' harmonized response to concerns we have identified relating to current cost disclosure requirements for investment funds and segregated funds and product performance reporting requirements for segregated funds.

One important concern which we aim to address 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.

We believe the TCR Enhancements will enhance investor protection by improving investors' and policy holders' awareness of the ongoing embedded fees such as management expense ratios (**MER**) and trading expense ratios (**TER**) that form part of the cost of owning investment funds and segregated funds. The Insurance Guidance will also 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.

The TCR Enhancements 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.

New elements for the securities sector

The Securities Amendments add the following new elements to NI 31-103:

- In the annual report on charges and other compensation (the **ARCC**) under section 14.17 for the account as a whole, for all investment fund securities owned by a client during the year, excluding labour-sponsored investment funds (LSIFs) and prospectus-exempt funds, information relating to:
 - the aggregate amount of fund expenses, in dollars, for all investment funds;
 - the aggregate amount of any direct investment fund charges (e.g., short-term trading fees or redemption fees), in dollars, for all investment funds, and;
 - the fund expense ratio (the **FER**), as a percentage, for each investment fund class or series.
- Additions to the existing requirement for investment fund managers to provide necessary information to the dealers and advisers who distribute their products.
- Provisions relating to the calculation and reporting of this information.

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, will continue to apply.

There are no grandfathering provisions.

Annex A – *Summary of changes to NI 31-103 and 31-103CP* describes the key changes to the NI 31-103 and the Companion Policy in more detail.

New elements for the insurance sector

The Insurance Guidance indicates insurers should provide the following information in statements to investors with respect to the cost of holding segregated fund contracts, in addition to the information already described in the December 2017 CCIR Segregated Funds Working Group Position Paper and the June 2018 appendix amendments (the Segregated Fund Position Paper):

- 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 in the contract 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.

Although the Insurance Guidance itself is not legally binding, insurance regulators in each jurisdiction will implement this initiative in line with their respective regulatory requirements, which will, in some jurisdictions, include legally binding requirements with effective dates which match the Securities Amendments.

Background

The TCR enhancements were developed over the course of an extensive consultation process.

Publication for Comment

We published proposed securities amendments and insurance guidance for comment on April 28, 2022 for a 90-day comment period (the **Proposals**). We received 38 letters for both the insurance and securities sectors. We have considered the comments received and thank all of the commenters for their input.

We have made changes to some of the Proposals. These changes are summarized below and discussed in Annex B – *Summary of comments and responses - Securities*. As these changes are not material, we are not publishing the Proposals for another comment period.

Copies of the comment letters were posted on the following websites:

- the Alberta Securities Commission at www.albertasecurities.com
- the Autorité des marchés financiers at www.lautorite.qc.ca
- the Ontario Securities Commission at www.osc.gov.on.ca
- the Canadian Council of Insurance Regulators at www.ccir-ccrra.org

Other Consultations

The TCR Enhancements follow on work securities regulators began after the completion of the Client Relationship Model, Phase 2 project in 2016 and the Segregated Fund Position Paper, as well as extensive consultations with investor advocates and market participants, including at the June 2021 and June 2022 meetings of the Joint Forum of Financial Market Regulators.¹

Following the end of the comment period, the Project Committee created a joint working group and held technical consultations with industry stakeholders and service providers in order to discuss potential issues related to the proposed transition date and implementation issues (the **Additional Consultations**).

Summary of Changes to the Proposals

¹ <https://www.securities-administrators.ca/news/joint-forum-of-financial-market-regulators-receive-early-feedback-regarding-total-cost-reporting-and-climate-change/>; <https://www.securities-administrators.ca/news/joint-forum-of-financial-market-regulators-engages-with-industry-and-investor-groups-on-investment-fee-transparency/>

In developing the TCR Enhancements, we carefully reviewed the comments that we received on the Proposals. We found some of the comments recommending changes to be persuasive and revised the Proposals accordingly. We have sought to adequately balance the regulatory burden imposed, while maximizing investors' awareness and understanding of their costs of investing. We have summarized the most notable changes below.

Securities sector

Fund expense ratio

We have moved the requirement to report the fund expense ratio for each investment fund from the quarterly or monthly account statements to the ARCC. We believe that consolidating all information related to costs in a single annual report will facilitate investor understanding of this information.

Application of Securities Amendments

We have excluded prospectus-exempt and LSIFs from the scope of the Securities Amendments due to the differences between how those products operate as compared to funds included within the scope of the TCR Enhancements and considering the potential implementation issues which may be related to their inclusion. The Securities Amendments apply to all other investment funds, including scholarship plans.

Newly-established funds

We have added new provisions specifying in which circumstances cost information about newly-established funds may be excluded, considering that this information may not be available for those funds. In the case where such information is excluded, a notification must be included in the report.

Due diligence

We have clarified that we do not expect dealers and advisers to routinely undertake a due diligence review of the information provided to them by investment fund managers, outside of certain exceptional circumstances outlined in NI 31-103 and the Companion Policy. In the case where such exceptional circumstances arise, dealers and advisers will continue to be required to make reasonable efforts to obtain the required information, subject to considerations about the materiality and costs of doing so.

Use of approximations

We added guidance that encourages the use of exact information. However, we continue to allow IFMs to use reasonable approximations, recognizing that there can be circumstances in which exact information will be unavailable or that the costs of obtaining it may outweigh the potential improvement over an approximation.

We have removed the requirement that approximations be based on information found in a fund's most recently disclosed fund facts document, ETF facts document, prospectus or management report of fund performance in order to grant registered firms additional flexibility in using approximations and to minimize the regulatory burden imposed. However, we have also provided guidance in the Companion Policy which notes that those documents can generally be relied on for these purposes.

We have also allowed dealers and advisers to use reasonable approximations when making reasonable efforts to obtain or determine cost information, in the case where the exceptional circumstance referred to above apply.

Despite the allowance for registered firms to use reasonable approximations, we have added guidance which encourages investment fund managers to provide exact information, whenever available, considering that doing so would enhance investor understanding of their costs of investing.

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

Calculation methods

We have modified how cost information such as fund expenses and direct investment fund charges are required to be calculated, in order to clarify how each type of fee should be accounted for.

We have also specified that the actual fees paid by the investor, including any performance fees and deducting any fee waivers, rebates or absorptions, should be reported. We have however indicated through guidance that the additional disclosure of any waivers, rebates or absorptions as a separate line item will be allowed.

We have also adjusted the formula which must be used when calculating fund expenses in order that it more accurately reflects the costs actually incurred by each client. The revised formula is based on the more accurate calculation of the fund expenses for each day for which a fund was owned by an investor. We continue however to allow registered firms to provide a reasonable approximation of this amount.

Notifications

We have revised the required notifications, in collaboration with the OSC Investor Office Research and Behavioural Insights Team (**IORBIT**), with the goal of enhancing investor understanding.

In response to comments regarding the inclusion of third-party charges, we have mandated the inclusion of a notification when certain such charges are deducted, as well as a notification concerning the embedded fees which may be associated with ownership of products which are not included within the scope of the Securities Amendments, such as structured products.

We have also mandated the inclusion of a notification that explains to investors how they can take action with regards to the fee information contained in the report, for example by contacting their advisor to discuss the fees they pay or by considering the impact of those fees on the long-term performance of their portfolio.

ARCC sample document

We have made the required changes to the ARCC sample document, in collaboration with IORBIT, in order to reflect other changes made to the Proposals.

Other

The Securities Amendments also include revisions to the guidance in the Companion Policy which are primarily intended to clarify the interpretation of the new requirements.

Insurance sector

Harmonization

We modified the Insurance Guidance to harmonize with the changes made to the Securities Amendments, as described above, taking into account the material differences among those products and in the ways the two sectors and their regulatory regimes operate. This includes changes such as adding definitions and calculation methodologies for Fund Expenses and Fund Expense Ratios, permitting insurers to use approximations, adding additional notifications and clarifying when cost information about newly-established funds may be excluded.

Insurance Costs

We clarified insurers are only required to disclose the dollar amount of insurance cost as a separate item in a policyholder's annual statement where the insurance cost is not already included in another cost, such as fund expenses.

Legacy Contracts

We added a process for insurers to apply for exemptions from specific expectations in the Insurance Guidance in the unusual cases where costs to policyholders of insurer compliance will exceed the benefits to the policyholders.

We recognize that where certain contracts are no longer being sold and the overall number of policyholders is low, the cost to upgrade systems to comply with the Insurance Guidance might be passed on to only a few policyholders, resulting in a disproportionate impact to individuals who own these older Segregated Fund Contracts. CCIR will only grant exemptions in exceptional circumstances, as described in the Insurance Guidance, in cases where an insurer can demonstrate

to CCIR that complying with an expectation will result in costs to policyholders that would exceed the benefit to the same policyholders.

The changes to the Proposals and our reasons for making them are discussed in more detail in Annex B – *Summary of comments on the Proposals and responses*.

Further Changes

We may consider making proposals for extending the TCR Enhancements to include prospectus-exempt and labour sponsored investment funds at a future date.

Transition

The TCR Enhancements will take effect on January 1, 2026. Both securities registrants and insurers will have to deliver the first annual reports that incorporate the TCR Enhancements for the year ending December 31, 2026.

We have extended the transition period in light of significant implementation issues and concerns identified in the comment letters and the Additional Consultations.

We believe this would result in the shortest possible delay for clients to receive TCR-enhanced reports, while providing industry with a sufficient implementation period.

We therefore:

- encourage registrants and insurers to begin reviewing their systems and conducting advanced planning as soon as possible in order to have all of the resources necessary for implementation in place on time; and
- expect registrants and insurers to complete the implementation of all required changes to their individual systems well in advance of January 1st, 2026, in order to allow sufficient time for testing and the resolution of any unanticipated issues.

The CSA and CCIR will establish an implementation committee with the participation of New SRO to provide guidance, respond to questions and otherwise assist registrants to operationalize the TCR Enhancements within the transition period (the **Implementation Committee**). This could include assisting registrants in determining appropriate standards and timelines for transmission of information and obtaining high-level updates on the timely progress of the implementation of the TCR Enhancements.

List of Annexes

This notice contains the following annexes:

- Annex A - Summary of changes to NI 31-103 and 31-103CP
- Annex B - Summary of comments and responses - Securities
- Annex C - Amendments to NI 31-103

- Annex D - Blackline showing changes to NI 31-103 under the Securities Amendments
- Annex E - Blackline showing changes to 31-103CP
- Annex F - Amendments to 31-103CP
- Annex G - Adoption of the Securities Amendments
- Annex H - Insurance Guidance
- Annex I - Insurance sample annual statement

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

www.lautorite.qc.ca
www.asc.ca
www.bcsc.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-ccra.org>.

Questions

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

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