

ANNEX A

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. **National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.**
2. **Section 1.1 is amended by adding the following definition:**

“third-party compensation” means any monetary or non-monetary benefit provided, or expected to be provided, directly or indirectly to a registrant by a party other than the registrant’s client in connection with the client’s purchase or ownership of a security through the registrant;.
3. **Subsection 3.4(1) is amended by replacing “features and risks of each security the individual recommends.” with “features, returns and risks, and the initial and ongoing costs and the impact of those costs, of each security the individual recommends.”.**
4. **Division 2 of Part 3 is amended by adding the following section:**
 - 3.4.1 **Firm’s obligation to provide training**
 - (1) A registered firm must provide training to its registered individuals on:
 - (a) compliance with securities legislation including, without limitation, the obligations respecting conflicts of interest, the know your client and know your product obligations, and the obligation to make a suitability determination;
 - (b) the structure, features, returns and risk, and the initial and ongoing costs and the impact of those costs, of the securities available through the registered firm for the registered individuals to purchase or sell for, or recommend to, clients.
 - (2) Paragraph (1)(b) does not apply to an investment fund manager in respect of its activities as investment fund manager..
5. **The title of Division 3 of Part 3 is amended by replacing “a self-regulatory organization” with “an SRO”.**
6. **Section 3.16 is amended**
 - (a) **in paragraph (1)(b) by adding “determination” after “suitability”, and**
 - (b) **in paragraph (2)(a) by adding “determination” after “suitability”.**
7. **The title of Part 9 is amended by replacing “a self-regulatory organization” with “an SRO”.**
8. **Subsection 9.3(1) is amended**
 - (a) **in paragraph (j) by adding “determination” after “suitability”, and**
 - (b) **by repealing paragraph (k).**
9. **Subsection 9.3(2) is amended**
 - (a) **in paragraph (e) by adding “determination” after “suitability”, and**
 - (b) **by repealing paragraph (f).**
10. **Subsection 9.4(1) is amended**
 - (a) **in paragraph (i) by adding “determination” after “suitability”, and**
 - (b) **by repealing paragraph (j).**

11. **Subsection 9.4(2) is amended**
- (a) **in paragraph (c) by adding “determination” after “suitability”, and**
 - (b) **by repealing paragraph (d).**
12. **Subsection 9.4(3) is replaced with the following:**
- (3) The exemptions in subsections (1) and (2) do not apply in Québec, except for paragraphs (1)(m), (1)(m.2) to (1)(n.2) and paragraphs (2)(g), (2)(g.2) to (2)(h.2), as applicable, provided the conditions of the exemption are met..
13. **Subsection 9.4(4) is replaced with the following:**
- (4) Subject to subsection (3), the requirements listed in subsection (1), other than paragraph (1)(h), do not apply to a mutual fund dealer registered in Québec to the extent equivalent requirements to those listed in subsection (1) are applicable to the mutual fund dealer under the regulations in Québec..
14. **Subsection 11.5(2) is amended**
- (a) **in paragraph (l) by adding “, 13.2.1 [know your product]” after “13.2 [know your client]”,**
 - (b) **in paragraph (l) by adding “determination” after “suitability”,**
 - (c) **in paragraph (o) by adding “, training” after “compliance”,**
 - (d) **in paragraph (o) by replacing “.” with “,”, and**
 - (e) **by adding the following paragraphs:**
 - (p) demonstrate how the firm has addressed, and plans to address, the conflicts of interest identified under sections 13.4 [a registered firm’s responsibility to identify conflicts of interest] and 13.4.1 [a registered individual’s responsibility to identify conflicts of interest] in the best interest of its clients;
 - (q) document
 - (i) the firm’s sales practices, compensation arrangements and incentive practices, and
 - (ii) other compensation arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit;
 - (r) demonstrate compliance with section 13.18 [misleading communications];
 - (s) demonstrate compliance with section 14.1.2 [duty to provide information]..
15. **The title of Division 1 of Part 13 is amended by replacing “Know your client and suitability” with “Know your client, know your product and suitability determination”.**
16. **Section 13.2 is amended**
- (a) **in subsection (1) by replacing “paragraph 2(b)” with “paragraph (2)(b)”,**
 - (b) **by replacing paragraph (2)(c) with the following:**
 - (c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 [suitability determination] or, if applicable, the suitability requirement imposed by an SRO:
 - (i) the client’s personal circumstances;
 - (ii) the client’s financial circumstances;
 - (iii) the client’s investment needs and objectives;
 - (iv) the client’s investment knowledge;

- (v) the client's risk profile;
- (vi) the client's investment time horizon, and,

(c) by adding the following subsection:

- (3.1) A registrant must take reasonable steps to obtain a client's confirmation of the accuracy of the information collected under subsection (2), including any significant changes to the information.,

(d) by adding the following subsection:

- (4.1) Without limiting subsection (4),
- (a) a registrant must review the information collected under this section
 - (i) if the registrant knows, or reasonably ought to know, of a significant change in the client's information collected under this section,
 - (ii) no less than once every 12 months for managed accounts,
 - (iii) if the registrant is an exempt market dealer, within 12 months before making a trade for, or recommendation to, the client,
 - (iv) in any other case, no less than once every 36 months,
 - (b) a registrant must update the information required under this section if, following the review of information under paragraph (4.1)(a), there has been a change in the information.,

(e) in subsection (6) by replacing "does" with "and subsection (4.1) do",

(f) in paragraph (6)(a) by adding "[suitability determination]" after "(2)", and

(g) by replacing paragraph (6)(b) with the following:

- (b) the account of the permitted client to which the waiver applies is not a managed account..

17. Division 1 of Part 13 is amended by adding the following section:

13.2.1 Know your product

- (1) A registered firm must not make a security available to clients unless the firm
- (a) takes reasonable steps to understand the security, including all of the following:
 - (i) the structure, features, returns and risks of the security;
 - (ii) the initial and ongoing costs of the security and the impact of those costs;
 - (iii) how the security compares to similar securities available in the market;
 - (b) approves the security to be made available to clients, and
 - (c) monitors and reassesses the security, including monitoring for significant changes to the security.
- (2) A registered firm must maintain an offering of securities and services that is consistent with how the firm holds itself out.
- (3) A registered individual must not purchase or sell a security for, or recommend a security to, a client unless the registered individual takes reasonable steps to understand
- (a) at a general level, the securities that are available through the registered firm for the registered individual to purchase or sell for, or recommend to, clients and how those securities compare;
 - (b) the security, including
 - (i) the structure, features, returns and risks of the security, and

- (ii) the initial and ongoing costs of the security and the impact of those costs.
- (4) A registered individual must not purchase a security for, or recommend a security to, a client unless the registered individual's sponsoring firm has approved that security to be made available to clients.
- (5) A registered firm must ensure that its registered individuals have the necessary information about each security approved by the registered firm to be made available to clients to enable the registered individuals to comply with subsection (3).
- (6) In the case of a security transferred by a client from another registered firm that is accepted by the registered firm or of a client-directed trade of a security, the requirements of subsections (1) and (3) apply to a registered firm or registered individual, as the case may be, only insofar as, under those requirements,
 - (a) the firm must not permit the security to be transferred into the client's account or the trade in the security to be made unless the firm
 - (i) takes reasonable steps to understand the structure, features, returns and risks of the security,
 - (ii) takes reasonable steps to understand the initial and ongoing costs of the security and the impact of those costs, and
 - (iii) monitors and reassesses the security, including monitoring for significant changes to the security; and
 - (b) the individual must not permit the security to be transferred into the client's account or the trade in the security to be made unless the individual takes reasonable steps to understand
 - (i) the structure, features, returns and risks of the security; and
 - (ii) the initial and ongoing costs of the security and the impact of those costs.
- (7) This section does not apply to a registered dealer in respect of a security if either of the following applies:
 - (a) it makes the security available to a client only through an order-execution only service;
 - (b) it purchases or sells the security for a client only as directed by a registered adviser acting for the client..

18. The heading to section 13.3 is amended by adding "determination" after "Suitability".

19. Section 13.3 is amended

(a) by replacing subsections (1) and (2) with the following:

- (1) Before a registrant acts by opening an account for a client, purchasing, selling, depositing, exchanging or transferring securities for a client's account, taking any other investment action for a client or making a recommendation or decision to take any such action, the registrant must determine, on a reasonable basis, that the action satisfies the following criteria:
 - (a) the action is suitable for the client, based on the following factors:
 - (i) the client's information collected in accordance with section 13.2 [*know your client*];
 - (ii) the registrant's understanding of the security required in accordance with section 13.2.1 [*know your product*];
 - (iii) the features and associated costs of the account type made available to the client;
 - (iv) the impact of the action on the client's account, including considering the account's concentration and liquidity;
 - (v) the overall concentration and liquidity across all of the client's accounts at the firm;
 - (vi) the potential and actual impact of costs on the client's returns;

- (vii) a consideration of a reasonable range of alternative actions available to the registrant through the registered firm at the time the determination is made;
 - (viii) any other factor that is relevant under the circumstances, and
 - (b) the action puts the client's interest first.
- (2) A registrant must review the client's account and the securities in the client's account to determine whether the criteria in subsection (1) are met, and take appropriate action as necessary, promptly after any of the following occurs:
- (a) a new registered individual is designated as responsible for the client's account;
 - (b) there is a change in a security in the client's account that may result in the security or account not meeting the criteria in subsection (1);
 - (c) there is a change in the client's information collected in accordance with subsection 13.2(2) that may result in a security or the client's account not meeting the criteria in subsection (1);
 - (d) the registrant has reviewed the client's information in accordance with subsection 13.2(4) or (4.1);
 - (e) the registrant becomes aware that a security or the client's account does not meet the criteria in subsection (1).
- (2.1) Despite subsection (1), if a registrant receives an instruction from a client to take an action which would not meet the criteria in subsection (1), the registrant may carry out the client's instruction if the registrant has
- (a) informed the client of the basis for the determination that the action would not meet the criteria in subsection (1),
 - (b) recommended to the client an alternative action that meets the criteria in subsection (1), and
 - (c) received written or electronically recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in paragraph (a)., **and**
- (b) **by replacing paragraph (4)(b) with the following:**
- (b) the account of the permitted client to which the waiver applies is not a managed account..

20. The heading to section 13.4 is amended by replacing "Identifying and responding to" with "A registered firm's responsibility to identify".

21. Section 13.4 is amended

(a) **by replacing subsection (1) with the following:**

- (1) A registered firm must take reasonable steps to identify existing conflicts of interest, and conflicts of interest that are reasonably foreseeable, between
 - (a) the firm, including each individual acting on the firm's behalf, and
 - (b) the client., **and**

(b) **by repealing subsections (2) to (4).**

22. Division 2 of Part 13 is amended by adding the following sections:

13.4.1 A registered individual's responsibility to identify conflicts of interest

- (1) A registered individual must take reasonable steps to identify existing conflicts of interest, and conflicts of interest that are reasonably foreseeable, between the registered individual and the client.
- (2) If a registered individual identifies a conflict of interest under subsection (1), the registered individual must promptly report that conflict of interest to the registered individual's sponsoring firm.

13.4.2 A registered firm's responsibility to address conflicts of interest

- (1) A registered firm must address, in the best interest of a client, all conflicts of interest between itself, including each individual acting on its behalf, and the client.
- (2) A registered firm must avoid any conflict of interest between the firm, including each individual acting on its behalf, and a client if the conflict is not, or cannot be, addressed in the best interest of the client.

13.4.3 A registered individual's responsibility to address conflicts of interest

- (1) A registered individual must address, in the best interest of a client, all conflicts of interest between the individual and the client.
- (2) A registered individual must avoid any conflict of interest between the registered individual and a client if the conflict is not, or cannot be, addressed in the best interest of the client.
- (3) A registered individual must not engage in any dealing or advising activity in connection with a conflict of interest identified by the registered individual under subsection 13.4.1(1) [a *registered individual's responsibility to identify conflicts of interest*], unless
 - (a) the conflict has been addressed in the best interest of the client, and
 - (b) the registered individual's sponsoring firm has given the registered individual its consent to proceed with the activity.

13.4.4 Conflicts of interest that must be avoided

- (1) A registrant must not borrow money, arrange a guarantee in relation to money the registrant has borrowed, or borrow securities or any other assets, from a client, unless either of the following applies:
 - (a) in the case of borrowed money, the client is a financial institution whose business includes lending money to the public, and the loan to the registrant is in the normal course of the financial institution's business;
 - (b) if the registrant is a registered individual, all of the following apply:
 - (i) the client is a related person, as defined by the *Income Tax Act* (Canada), of the registered individual;
 - (ii) the registered individual provides prior written notice to his or her sponsoring firm;
 - (iii) the registered individual obtains the prior written approval of his or her sponsoring firm to carry out the otherwise prohibited transaction.
- (2) Despite any other provision of this Instrument, a registrant must not lend money, provide a guarantee in relation to a loan of money, extend credit, provide margin or lend securities or any other asset, to a client, unless any of the following apply:
 - (a) the activity is permitted under rules of an SRO applicable to the registrant;
 - (b) the registrant is an investment fund manager lending money on a short term basis to an investment fund that it manages, if the loan is for the purpose of funding redemptions of its securities or meeting expenses incurred by the investment fund in the normal course of its business;
 - (c) if the registrant is a registered individual, all of the following apply:
 - (i) the client is a related person, as defined by the *Income Tax Act* (Canada), of the registered individual;
 - (ii) the registered individual provides prior written notice to his or her sponsoring firm;
 - (iii) the registered individual obtains the prior written approval of his or her sponsoring firm to carry out the otherwise prohibited transaction.
- (3) A registrant must not act under a power of attorney from a client, act as a trustee with respect to a trust in which a client is the settlor or beneficiary, or act as a trustee or executor in respect of the estate of a client, or

otherwise have full or partial control or authority over the assets of a client, unless either of the following applies:

- (a) the activity is permitted under rules of an SRO applicable to the registrant;
- (b) if the registrant is a registered individual, all of the following apply:
 - (i) the client is a related person, as defined by the *Income Tax Act* (Canada), of the registered individual;
 - (ii) the registered individual provides prior written notice to his or her sponsoring firm;
 - (iii) the registered individual obtains the prior written approval of his or her sponsoring firm to carry out the otherwise prohibited appointment.
- (4) Despite subsection (3), a registered adviser and its advising representatives may have full or partial control or authority over the assets of a client if those assets are held in a managed account.

13.4.5 Conflicts of interest disclosure

- (1) A registered firm must disclose in writing a conflict of interest identified under subsections 13.4(1) [*a registered firm's responsibility to identify conflicts of interest*] and 13.4.1(2) [*a registered individual's responsibility to identify conflicts of interest*] to a client whose interests are affected by such conflict where a reasonable client would expect to be informed of such conflict.
- (2) Without limiting subsection (1), the information delivered to a client under that subsection must include a description of each of the following:
 - (a) the nature and extent of the conflict of interest;
 - (b) the potential impact on and risk that the conflict of interest may pose to the client;
 - (c) how the conflict of interest has been, or will be, addressed.
- (3) The disclosure required under subsection (1) must be prominent, specific and written in plain language.
- (4) A registered firm must disclose a conflict of interest to a client under subsection (1):
 - (a) before opening an account for the client if the conflict might be present throughout the relationship between the registered firm and the client; and
 - (b) when the conflict of interest first arises or, in the case of a transaction that presents a conflict of interest, before entering into the transaction with the client.
- (5) A registered firm must not rely solely on disclosure to address, in the best interest of the client, conflicts of interest identified under subsections 13.4(1) [*a registered firm's responsibility to identify conflicts of interest*] and 13.4.1(2) [*a registered individual's responsibility to identify conflicts of interest*].

13.4.6 Investment fund managers

Sections 13.4 to 13.4.5 do not apply to an investment fund manager in respect of an investment fund that is subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

23. Section 13.7 is amended

- (a) **by replacing “pay” with “provide” in the definition of “referral arrangement”,**
- (b) **by replacing “compensation” with “monetary or non-monetary benefit” in the definition of “referral fee”, and**
- (c) **by replacing “paid” with “provided” in the definition of “referral fee”.**

24. Section 13.8 is replaced with the following:

13.8 Permitted referral arrangements

- (1) A registered firm, or an individual acting on its behalf, must not provide a referral fee to another person or company unless all of the following apply:
 - (a) the person or company receiving the referral fee is a registered individual or a registered firm;
 - (b) the referral fee complies with section 13.8.1 [*limitation on referral fees*];
 - (c) before a client is referred to the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firms;
 - (d) the registered firm records all referral fees;
 - (e) the registered firm ensures that the information required under subsection 13.10(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the party receiving the referral opens an account for the client or provides services to the client.
- (2) A registered firm, or an individual acting on its behalf must not accept a referral fee from another person or company unless all of the following apply:
 - (a) the referral fee complies with section 13.8.1 [*limitation on referral fees*];
 - (b) before a client is referred by the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firm and the person or company receiving the referral of the client;
 - (c) the registered firm records all referral fees;
 - (d) the registered firm ensures that the information prescribed by subsection 13.10(1) [*disclosing referral arrangements to clients*] is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

13.8.1 Limitation on referral fees

A registrant must not provide or receive a referral fee if one or more of the following applies:

- (a) the referral fee constitutes a series of payments that continue longer than 36 months from the date of the referral;
- (b) the referral fee constitutes a series of payments that together exceed 25% of the fees or commissions collected from the client by the party who received the referral;
- (c) the referral fee results in an increase in the amount of fees or commissions that would otherwise be paid by a client to the party who received the referral for the same product or service..

25. Subsection 13.10(1) is amended

- (a) **by replacing** “The written disclosure of the referral arrangement required by paragraph 13.8(c) [*permitted referral arrangements*] must include” **with** “For the purposes of paragraphs 13.8(1)(e) and (2)(d) [*permitted referral arrangements*], the information required by this subsection is all of”,
- (b) **in paragraph (a) by replacing** “paragraph 13.8(a);” **with** “paragraphs 13.8(1)(c) and (2)(b) [*permitted referral arrangements*], as applicable;”, **and**
- (c) **in paragraph (f) by deleting** “if a referral is made to a registrant,”.

26. Section 13.11 is repealed.

27. Section 13.12 is repealed.

28. Paragraph 13.17(1)(a) is replaced with the following:

- (a) division 2 [*conflicts of interest*] of Part 13, except section 13.5 [*restrictions on certain managed account transactions*] and section 13.6 [*disclosure when recommending related or connected securities*];.

29. Part 13 is amended by adding the following division:

13.18 Misleading communications

- (1) A registered individual must not hold himself or herself out, and a registered firm must not hold itself or its registered individuals out, in a manner that could reasonably be expected to deceive or mislead a person as to any of the following matters:
 - (a) the proficiency, experience, or qualifications of the registrant;
 - (b) the nature of the person's relationship, or potential relationship, with the registrant;
 - (c) the products or services provided, or to be provided, by the registrant.
- (2) Without limiting subsection (1), a registered individual must not use any of the following:
 - (a) a title, designation, award, or recognition that is based partly or entirely on that registered individual's sales activity or revenue generation;
 - (b) a corporate officer title unless their sponsoring firm has appointed that registered individual to that corporate office pursuant to applicable corporate law;
 - (c) a title or designation, unless the individual's sponsoring firm has approved the use by that registered individual of that title or designation..

30. The heading to section 14.1.1 is amended by adding “ – investment fund managers” after “Duty to provide information”.

31. Part 14 is amended by adding the following division:

Division 1.1 Publicly available information

14.1.2 Duty to provide information

- (1) A registered firm must make publicly available information that a reasonable investor would consider important in deciding whether to become a client of the registered firm, including general descriptions of the following:
 - (a) the products and services that it offers and any material limitations on those products and services;
 - (b) the types of account that it offers;
 - (c) the charges and other costs to clients, including any current fee schedule associated with its products, services and accounts;
 - (d) any minimum account sizes or minimum charges that apply to its products, services and accounts;
 - (e) any third-party compensation associated with its products, services and accounts;
 - (f) any restrictions on the clients to whom it makes products, services or accounts available.
- (2) This section does not apply to a registered firm in respect of products and services that are offered exclusively to permitted clients..

32. Section 14.2 is amended

(a) by adding the following subsection:

- (0.1) In this section, “proprietary product” means a security of an issuer if one or more of the following apply:
 - (a) the issuer of the security is a connected issuer of the registered firm;
 - (b) the issuer of the security is a related issuer of the registered firm;
 - (c) the registered firm or an affiliate of the registered firm is the investment fund manager or portfolio manager of the issuer of the security.,

(b) by replacing paragraph (2)(b) with the following:

- (b) a general description of the products and services the registered firm offers to the client, including
 - (i) whether the firm will primarily or exclusively provide proprietary products to the client;
 - (ii) whether there are any other restrictions on the products or services the registrant will provide to the client,;

(c) in paragraph (2)(h) by replacing “compensation” with “third-party compensation that may be”,

(d) in paragraph (2)(h) by deleting “by any other party” before “in relation to”,

(e) in paragraph (2)(h) by replacing “a client may purchase through the registered firm” with “the client may purchase through the firm”,

(f) by replacing paragraph (2)(k) with the following:

- (k) a statement that the registered firm must determine that any investment action it takes, recommends or decides on, for the client is suitable for the client and puts the client’s interests first,;

(g) in paragraph (2)(l) by replacing “a registered firm must collect” with “the registered firm has collected”,

(h) in paragraph (2)(n) by replacing “.” with “;”, and

(i) by adding the following paragraph:

- (o) an explanation of the impact on a client’s investment returns from each of the following:
 - (i) the charges described in paragraphs (f) and (g);
 - (ii) any investment fund management expense fees or other ongoing fees the client may directly or indirectly incur in connection with the securities purchased for the client’s account;
 - (iii) any restrictions on the products or services that the registered firm will provide to the client..

33. The first column of Appendix G is amended by replacing “section 13.3 [suitability]” with “section 13.3 [suitability determination]”.

34. Appendix G is amended by deleting the following row:

section 13.12 [restriction on lending to clients]	1. Dealer Member Rule 17.11; and 2. Dealer Member Rule 100 [Margin Requirements]
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35. The first column of Appendix H is amended by replacing “section 13.3 [suitability]” with “section 13.3 [suitability determination]”.

36. Appendix H is amended by deleting the following row:

section 13.12 [restriction on lending to clients]	1. Rule 3.2.1 [Client Lending and Margin]; and 2. Rule 3.2.3 [Advancing Mutual Fund Redemption Proceeds]
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37. (1) Subject to subsection (2), this Instrument comes into force on •.

(2) [Transition measures to be considered further.]