

Take a Deep Breath: Client-Focused Reforms (CFRs) Have Been Finalized

On October 3, the Canadian Securities Administrators (CSA) [finalized](#) their client-focused reforms to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) (CFRs or Amendments). The CFRs are the most sweeping changes to NI 31-103's ongoing registrant obligations since the rule was adopted ten years ago. As we discussed in our [June 2018 bulletin](#) article on the 2018 proposals (Proposals), these reforms represent a fundamental shift toward a best interest standard, without actually imposing an all-encompassing obligation for registrants to act in the best interests of their client.



Implementing the CFRs will require changes to your policies, procedures, compliance training and client-facing documentation, but there's no need to panic. First, although the Amendments are expected to come *into force* on December 31, 2019, **they will not start coming into effect until December 31, 2020**. (See "Implementation Timeline" below.) Second, several of the most controversial proposals have been dropped. We will write about the CFRs in more detail in our upcoming monthly bulletins, but for now here are our initial takeaways:

A. Registrants Got Some of the Changes They Wanted

In response to industry feedback, the CSA modified the Proposals in several key areas:

- **Conflict of Interest Provisions:** A materiality qualifier has been added to the new requirement to address conflicts of interest in the best interests of the client, and guidance on that term has been added to Companion Policy 31-103CP (Policy).
- **Referral Arrangements:** The proposed, prescriptive restrictions on referral arrangements and referral fees (including the prohibition on paying referral fees to non-registrants) have been dropped. (However, the existing requirements, and the new, enhanced conflicts of interest standard, will apply to referral arrangements.)
- **Public Disclosures for Prospective Clients:** The CSA shelved (for now, at least) its plan to require registrants to make publicly available information that a reasonable investor would consider important in deciding to become a client of the firm.
- **Know-Your-Client (KYC):** The CSA revised the proposed requirement for registrants to update KYC information if they "reasonably ought to know of a significant change." Now, the requirement will be triggered when the registrant "becomes aware" of a significant change. (The CSA retained the new, minimum intervals for reviewing clients' KYC information: 12 months for managed accounts, 12 months before making a trade or recommendation for exempt market dealers (EMDs), and 36 months for other cases.)
- **Know-Your-Product (KYP):** The CSA narrowed the scope of and clarified the new KYP requirements for registered firms and individuals. For example, the proposed KYP requirement for securities transferred in (legacy securities) has been removed, and the application of KYP to client-directed trades has been clarified.
- **Suitability:** The Proposals replaced the principles-based approach to suitability in section 13.3 of NI 31-103 with, among other things, a laundry list of prescribed factors to be considered in determining whether an investment action or recommendation was suitable. The final Amendments have

shortened that list and amended the triggers for assessing and reassessing suitability to make them more practicable to apply.

- **Expanded Waivers for Permitted Clients:** The 2018 Proposals did not include any carve-out from the enhanced KYC and suitability requirements for firms that deal with permitted clients who waive those rights in writing. The final Amendments reinstate these carve-outs. In addition, the CFRs will permit advisers to obtain written suitability waivers from permitted clients (other than individuals) in respect of managed accounts.

B. Get Ready to Revise Your Relationship Disclosure Information (RDI)

The Amendments will require some changes to RDI. We've highlighted two, key requirements below.

- **Restricted Offerings:** The Amendments extend the existing requirement to describe products and services so that registered firms will now have to disclose any restrictions, including whether the firm primarily or exclusively offers proprietary products to clients. The CSA considered but rejected submissions to drop this requirement. They did, however, remove the proposed requirement to discuss the impact of restricted offerings, including proprietary products.
- **Costs and Fees:** The final Amendments have kept, with only minor changes, the new requirement for registered firms to explain the impact of charges and fees on a client's investment returns. The requirement has been revised so that it only requires a "general" explanation of "potential" impacts.

C. Scalability

The CSA has embraced "scalability" as a mechanism to address various comments that either: (1) asked for carve-outs from the rules for certain business models or situations; or (2) criticized the proposed amendments as too prescriptive. For example:

- EMDs, portfolio managers (PMs), and scholarship plan dealers (SPDs) will not get their requested exemption from the CFRs.
- Guidance has been incorporated into the Policy about how the KYC, KYP and suitability requirements can be scaled to fit a firm's business model, the types of securities it offers, the nature of its relationships with clients, and the specific circumstances regarding a particular transaction or recommendation.
- The CSA revised its proposed guidance on registered firms' obligations to provide KYP-related compliance training so that NI 31-103CP: (1) recognizes that the scope of a firm's compliance training programme will depend on the nature, size and complexity of its business; and (2) gives firms more flexibility in how they implement, maintain and document their training programs.

D. Implementation Timeline: Think Marathon, Not Sprint

- The CSA expects the Amendments to come into force across Canada on December 31, 2019, but implementation will be phased in over two years:
 - The rule changes relating to conflicts of interest and the associated RDI provisions will take effect on December 31, 2020.
 - The remaining amendments will take effect on December 31, 2021.
- The CSA clarified that it does not expect current registrants to have to update all their existing clients' KYC information or reassess the suitability for their investment as of the effective date of the relevant amendments or immediately after that date. Rather, the CSA expects registrants to continue scheduling reassessments according to current requirements until the effective date and then to reschedule reassessment according to the triggers in the CFRs after that date.

E. We're Here to Help

Giving our clients practical advice on compliance with NI 31-103 is one of AUM Law's core services. We stand ready to help you understand the implications of the CFRs for your business, develop a pragmatic implementation plan, revise your policies and client-facing documentation, and train your staff on the new requirements. Please contact your [usual AUM lawyer](#) for assistance or, if you're not already a client, [request a free consultation](#).

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