



THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FONDS
D'INVESTISSEMENT
DU CANADA

IFIC Submission

Proposed National Instrument 13-103
[*System Replacement Rule*] and Proposed
Repeal and Replacement of Multilateral
Instrument 13-102 *System Fees for
SEDAR and NRD*

July 29, 2019





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Delivered By Email: consultation-en-cours@lautorite.qc.ca, comments@osc.gov.on.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 4e étage
C.P. 246, Place Victoria
Montréal, Québec H4Z 1G3

Dear Sirs and Madames:

RE: Proposed National Instrument 13-103 [System Replacement Rule] and Proposed Repeal and Replacement of Multilateral Instrument 13-102 System Fees for SEDAR and NRD

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on proposed National Instrument 13-103 [System Replacement Rule] (**System Rule**) and the proposed repeal and replacement of Multilateral Instrument 13-102 System Fees for SEDAR and NRD (**Fee Rule**), which lay the groundwork for a new integrated national information and filing system.

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of IFIC members.

Our members look forward to the implementation of a new integrated national information and filing system. In building the renewed system, we strongly encourage the Canadian Securities Administrators

(CSA) to collaborate with industry stakeholders and build functionality that gives market participants access to their own data.

Early engagement with industry stakeholders can assist the CSA in creating a renewed system that is responsive to the needs of both the regulators and market participants. Industry stakeholders can add significant value at each stage, beginning at the systems specifications and development stages of the National Systems Renewal Program (NSRP) through to user functionality testing prior to launch. Collaboration with industry stakeholders is also necessary in testing the security of the renewed system with respect to privacy and cybersecurity considerations. In this regard, we note the recent collaboration with industry undertaken by the Ombudsman for Banking Services and Investments in validating and security testing its new Firm Portal.

The involvement of users to develop the business requirements and specifications to replace the National Registration Database (NRD) is especially critical. NRD is the most important system for registrants and improvements in its functionality would create a system that results in the efficient exchange of information between regulators and market participants.

Although it is a different area of focus than the NSRP, the [Digital Experience Transformation](#) recently initiated by the Financial Industry Regulatory Authority (FINRA) is another good example of collaboration between industry and a regulator. FINRA has invited brokerage firms to help design the future of compliance reporting and management with a goal of simplifying and integrating firms' digital interactions with FINRA. Brokerage firms are key participants in guiding this initiative to help ensure the technology enhances compliance and management reporting for firms rather than increasing the regulatory burden.

We encourage the CSA to include, as part of the renewed system, the enhanced use of technology to facilitate an efficient exchange of information between regulators and market participants. The renewed system should permit integration with existing workflow processes within market participants through application programming interfaces (APIs) or other similar technologies that make the two-way exchange of information seamless for both the CSA and market participants.

An efficient exchange of information between regulators and market participants can reduce or eliminate the need for multiple regulatory requests for the same data. Regulators can leverage the data readily available within the renewed system to conduct compliance examinations and thematic sweeps. At the same time, the renewed system can provide market participants with ongoing access to their own data to use in their business operations and compliance supervision activities. One example would be adding functionality to enable the retrieval of registered firm filings and outside business activity filings made through NRD. Similarly, individual registrants should have ongoing view-only access to their current registration filing information to determine whether any updates or changes are necessary.

Regulatory Harmonization

We support the inclusion of exempt distributions filings as part of the renewed system. This will provide regulators, the industry and investors with a single view of the Canadian exempt market. The resulting elimination of the separate filing systems and requirements for British Columbia and Ontario is a welcome outcome.

IFIC would also like to take this opportunity to urge the CSA to harmonize the approach of CSA members in determining the filing and fee requirements in respect of Form 45-106F1 (see CSA Staff Notice 45-325 *Filing Requirements and Fee Payable for Exempt Distributions Involving Fully Managed Accounts*). The differing approaches amongst CSA members in determining the filing and fee payment requirements for exempt distributions to fully managed accounts continues to cause confusion and imposes an unnecessary regulatory burden on industry members. We strongly urge the CSA to adopt a harmonized approach to the filing and fee payment requirements for Form 45-106F1 in advance of the January 30, 2020 filing deadline for those investment fund issuers that file in reliance on the filing exemption in section 6.2(2) of National Instrument 45-106 *Prospectus Exemptions*.

We appreciate the CSA's adoption of the existing principal jurisdiction analysis in Multilateral Instrument 11-102 *Passport System* in the Systems Rule.

Financial Accountability and Transparency

The Fee Rule estimates that costs to market participants who use the renewed system will be reduced overall by about 7%. However, fees for investment fund managers are estimated to increase by approximately 8%, due mainly to the new \$40 fee proposed for Ontario and British Columbia exempt distribution filings in the renewed system (see Annex B to Fee Rule). It is difficult for the industry to lower investment product costs for investors if regulatory costs continue to increase. Such increased costs must ultimately be passed on to investors. We urge the CSA to be mindful of the impact of fee increases on the costs of products and services to investors.

The proposed fee model is designed to reflect the costs of using the renewed system and allow for future enhancements. We encourage the CSA to provide regular reports on system fees, finances, operations and progress updates to users of the renewed system.

Specific Comments on the System Rule

We offer two specific comments on the System Rule.

First, we note that the Companion Policy to the System Rule states that there are limited circumstances in which the CSA will consider changing the access status of a document from public to private in the renewed system without a formal request for confidentiality. This includes instances in which a person or company that is entitled to file a redacted version of a material contract or agreement "transmits a non-redacted version of the document as a result of technical software errors in electronic redaction software." We believe this is too restrictive as it would not permit the change of access status where information is mistakenly filed without redaction. We recommend that the provision be amended to permit a change of access status to private when there has been any mistake in filing a properly redacted version.

Second, we note that section 4(3) of the System Rule NI 13-103 requires that, where information in a profile becomes inaccurate, the profile must be updated at the earlier of: (1) the next time a document is transmitted through the system; or (2) 10 days after the date on which the information becomes inaccurate. In order to reduce the potential burden imposed by this obligation, we recommend that the CSA consider a more nuanced approach by assessing the relative importance of the information within the profile. Profile information that is more critical should be updated within 10 days, while less critical information can be updated when a document is next transmitted through the renewed system.

CSA Systems Governance

While the CSA has not specifically requested input on the governance of the NSRP, IFIC takes this opportunity to urge the CSA to consider an alternative model for the governance of technology projects. While the CSA has done well to build and maintain the current systems, these large-scale national technology projects are not core to the CSA's mandate. The CSA does not have the specialized, dedicated technology resources to continue to review and evolve the systems on a timely basis. The NSRP is a good example. The CSA announced the initiation of this project in its business plan for 2016-2019, however the first deliverable is anticipated to launch in 2021. This is not a criticism of the work of CSA staff tasked with the management of these systems and the renewal project. Rather, it is a recognition of the difficulty, under the current governance model, of reliably delivering high value and high cost technology projects.

As an alternative to the current governance model, we suggest transferring the assets into an independent not-for-profit corporation that is accountable to an independent board with technology expertise and is representative of all industry stakeholders. With appropriate oversight and accountability, this model could deliver better and more timely technology outcomes at a lower cost.

Conclusion

The potential benefits of the NSRP to regulators, market participants and investors are clear and significant. For regulators, a single structured database presents the opportunity to streamline internal workflow processes, break down silos, develop analytics to optimize organizational performance, and identify compliance review priorities. For market participants, the opportunity to easily access the information and data they are required to file would reduce the need for multiple manual data entries, streamline their own internal work processes, and improve compliance by enabling firms to leverage this data in their business operations and compliance supervision activities.

Through close collaboration with industry stakeholders, the renewed system is more likely to result in a system that is useful to both regulators and market participants. A renewed system that facilitates the efficient, two-way exchange of information and provides market participants with ongoing access to their data will ease the regulatory burden.

We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at mupadhyaya@ific.ca or by phone 416-309-2314.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



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