



THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FONDS
D'INVESTISSEMENT
DU CANADA

IFIC Submission

*Re: CSA Proposed Amendments to
NI 33-109 and Related Instruments -
Modernizing Registration Information
Requirements, Clarifying Outside
Activity Reporting & Updating Filing
Deadlines*

May 5, 2021





May 5, 2021

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

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

Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Dear Sirs and Mesdames:

RE: Proposed Amendments to NI 33-109 and Related Instruments - *Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines*

The Investment Funds Institute of Canada (IFIC) appreciates the opportunity to comment on Proposed Amendments to NI 33-109 and Related Instruments - *Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines* (Proposed Amendments).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 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 a broad range of IFIC members.

IFIC supports the CSA's initiative to provide clarity and reduce the regulatory burden on the investment funds industry through proposing to remove or amend a number of registration related obligations. We are confident that some of the Proposed Amendments will to some extent increase clarity and reduce the regulatory burdens faced by the industry, while providing the CSA with the information they need to carry

out their regulatory roles. Many of the specific comments provided below are intended to assist the CSA in enhancing the intended outcomes of the Proposed Amendments, while preserving their regulatory purpose.

We are concerned that two aspects of the Proposed Amendments are unlikely to reduce regulatory burden significantly and could lead to uncertainty and confusion as our members attempt to comply, obviating much of the benefit flowing from the Proposed Amendments. The proposed provisions dealing with outside activities and positions of influence could, despite the CSA's intentions to the contrary, present significant on-going challenges that must be addressed if the Proposed Amendments' objectives are to be met in full. Accordingly, we make recommendations below to address these concerns.

For purposes of organizing our comments we have restated, *verbatim and in italics*, the applicable "Questions for Comment" posed in the CSA's Notice regarding the Proposed Amendments.

Outside Activities

1. *Are there other categories of Outside Activities that should be reportable to regulators? If so please describe what categories of Outside Activities should be reportable to regulators.*

The various categories of outside activities set out in the Proposed Amendments are relatively clear, but two are overly broad, not adequately defined or easily subject to a variety of interpretations without clarification. "Other securities related activities" and "financial or financial-related services" could be clarified by indicating the activities set out on these topics in Form 33-109F4 Item 10 are the only applicable activities captured by these terms. It would enhance the CSA's goal of reducing regulatory burden and the number of associated filings if the Companion Policy stated or described which types of activities would be outside the proposed six categories and would not have to be reported by individual registrants to their sponsoring firms, and in turn, would not be reported to regulators, unless subject to another reporting requirement.

Today, some firms simply report every outside activity, which produces thousands of outside business activity reports to the CSA annually. This practice could continue in the absence of greater clarity as registrants may find it easiest to report outside activities when they are not certain as to whether to do so, as opposed to spending time and money making subjective determinations.

5. *Is 30 hours per month (based upon 7.5 hours per week for four weeks) an appropriate cumulative minimum time threshold for reporting Outside Activities? Please explain your view.*

Certain outside activities must be reported if the aggregate average time spent on these activities is greater than 30 hours per month. Some activities, which are not reportable by their very nature, should not be considered for purposes of measuring hours devoted to outside activities. These include working or volunteering-for non-profit, fraternal or religious organizations, and passive management of investment properties. Given the intent of the 30 hour threshold is to ensure that the individual registrant can provide an appropriate level of service to the firm's clients, it should be the firm that determines whether the hours devoted to outside activities compromise the individual's ability to meet the firm's requirements, the individual's obligations to clients and applicable regulatory requirements. In any event, the work involved in monitoring and reporting outside activities would be significant.

Firms will have to survey their registrants on a weekly or monthly basis and outside activity hours will have to be reported by individuals to their firms. Firms will have to first determine whether the hours reported by each individual registrant exceed the 30 hour maximum on a rolling average basis, and whether they are reportable as outside activity. They would then have to file Form 33-109F5s when the 30 hour limit is exceeded and again when hours drop below this limit.

While recognizing the Proposed Amendments' goal of providing additional clarity, there is nevertheless some ambiguity regarding which outside activities are reportable. This could result in registrants erring on the side of caution and reporting outside activities in quantities that will not significantly reduce the number of Form 33-109F5s filed or provide the type of information being sought for the CSA to carry out its regulatory roles. This could therefore frustrate one of the main intended purposes of the Proposed Amendments.

Positions of Influence

8. *Is "susceptibility" the appropriate term to describe the impact of influence on the individual subject to the influence? If not, please explain why not and propose alternative language.*

As is the case with the concept of influence, we suggest that an objective "reasonableness" standard be applicable to the concept of susceptibility. Nevertheless, the concept of susceptibility will remain highly subjective and fact specific. We have recommended changes to the NI 31-103CP draft amendments below under Positions of Influence, which we believe will help better contextualize and clarify the concepts of susceptibility and position of influence.

9. *Are there any aspects of the new rule on positions of influence that you expect will be difficult to administer? If so, please describe the difficulty.*

The proposed consequential amendments to NI 31-103 will impose restrictions on a registered person who is in a position of influence. New section 13.4.3 provides some context by defining a position of influence as a position which due to its functions or the training or specialized knowledge required would be considered by a "reasonable person" to have influence. Registered representatives who are leaders in religious organizations or other similar organizations, doctors, nurses, professors, teachers, lawyers and notaries are deemed to be in a position of influence and are prohibited from trading for or recommending trades to their clients with whom they have a "relationship" or their spouses, parents, siblings, children or grandparents. There are a number of other positions that, while not deemed to be positions of influence, could be influential positions in light of the nature of their relationships with individuals. One can envision other roles, professions and occupations, such as senior representatives of political, service and trade organizations, therapists, chiropractors, optometrists and accountants, where the determination of influence is highly subjective and fact specific. It would be very helpful to amend NI 31-103CP to clarify that individuals who are associated with charities but are not involved in their money raising efforts, or are members of fraternal organizations or religious congregations, are not to be considered to be in positions of influence solely by these relationships. Further, one could understand regulators in different jurisdictions having differing views as to when a registrant is or is not in a position of influence. Therefore, despite the CSA's efforts to use a principles-based approach to provide flexibility, the concept of position of influence under section 13.4.3 of NI 31-103 and as expressed in NI 31-103CP is somewhat vague, subjective and fact specific.

We recommend that the position of influence commentary in the draft amendments to NI 31-103CP be amended as follows to better contextualize and clarify the concepts of susceptibility and position of influence:

"If both the degree of influence by the registered individual in the position of influence and the confusion or susceptibility of a person subject to that influence result in or could result in the person being subject to the undue influence of the registered individual, a registered firm is expected to consider the outside activity to be a position of influence".

We note that this new section could also not only preclude registered individuals from accepting certain new clients but require them to abandon certain clients with whom they have relationships, some of which may be longstanding. Each person in a potential position of influence would need to survey existing and potential new clients to ensure that they are not in the type of relationship with the person that would place the registrant in a position of influence as contemplated by the Proposed Amendments. While clients can be attended to by other registrants if necessary, this may not satisfy these clients' wishes.

Regarding the prohibition on a registrant from trading for or recommending trades to the spouse, parent, brother, sister, grandparent or child of an individual with whom the registrant is in a position of influence, it is not always possible for a registrant to automatically know whether an existing or new prospective client is a close family member of an individual with whom the registrant is in a position of influence. We propose that the language be revised to indicate that a registrant is prohibited from knowingly trading for or recommending trades to a close family member of an individual with whom the registrant is in a position of influence.

We are concerned that the proposed prohibition could dissuade registrants from assuming roles in their communities. Therefore, we suggest that a positive statement be made in NI 31-103CP that the application of new section 13.4.3 is not intended to restrict registrants from assuming roles in their communities.

Nevertheless, those who currently serve their communities in various capacities may feel obligated to terminate their community participation to ensure they can continue to serve their clients where the clients may be seen to be under the registrants' influence.

Alternatively, to address issues posed by this new rule, we recommend that section 13.4.3 of NI 31-103 be amended to align with IIROC's personal financial dealings rule and NI 31-103CP be amended accordingly. This change would be consistent with the CSA's objective of providing greater clarity to registrants and receiving more precise information. It would also likely reduce the subjective determinations to be made in highly fact specific situations, thereby reducing regulatory burden and the amount of documentation filed with the CSA.

Reporting

10. *Do you see any challenges in reporting updates to registration information by the proposed deadlines? If so, please identify the registration information that this would be challenging for and explain the challenges.*

The use of three different time frames for reporting registration information is overly complicated. We suggest moving all reporting to a 30-day timeframe as this would provide a single standard that is clear and could easily be applied. All affected parties could easily understand and comply with this approach, which would facilitate administration in many ways. For example, registrants could canvass their registered staff monthly to determine any reportable changes in their registration information. Alternatively, we suggest that all 10-day reporting obligations be changed to 15 days, which would be consistent with other filing requirements that have been extended to 15 days.

12. *Do you see any legal, operational or other challenges for a registered firm to delegate to another affiliate registered firm the requirement to notify the regulator of changes in certain registration information? If so, please explain the challenges.*

The ability to delegate reporting obligations for a number of registrant firms to a single registrant is seen as a great benefit and is fully supported. However, providing this ability only to registrants with the same principal regulator significantly limits the benefit of this provision for the organizations having registrants with different principal regulators. We suggest that this provision be modified to provide that the single reporting registrant file only with its principal regulator, which in turn is responsible for liaising with the other applicable regulators or alternatively that the filing entity file with all applicable regulators.

Transition

21. *Are there any significant operational changes that you need to make in order to implement the Proposed Revisions? If so, please describe these operational changes.*

The number of significant regulatory changes that need to be addressed by December 31, 2021 (i.e. CFRs, IIROC plain language Rule Book) require the dedication of significant operational and technical resources leaving registrants with limited or no-capacity to address many of the more complex and challenging changes to meet the Proposed Amendments. While registrants are appreciative of the reduction in regulatory burden that will ultimately be gained from the Proposed Amendments when implemented, implementation by December 31st will be difficult if not impossible for many IFIC members. We therefore request that the Proposed Amendments, other than the new reporting time lines, come into force as of June 30, 2022 to ensure registrants have sufficient time and resources to draft and implement policies and procedures across their organizations and complete the necessary training.

Other Issues

15. *In a legal action, are there changes other than documentary discovery and adjournments that could significantly affect the firm, its business or the outcome of the legal action but should not be reported for other reasons or would be captured in reporting elsewhere?*

The only additional information that should be reported is the settlement of the case or the issuance of a judgment. It is also noted that subsection 8.3(a) requires registrant firms to report all outstanding legal actions, regardless of the nature of the cause of action or the amount of any claim. For a larger organization,

reporting insignificant matters which do not touch on the integrity of the firm or its finances in a material manner is burdensome and serves no meaningful purpose. We therefore recommend that section 8.3 (a) be amended to require the reporting only of any outstanding legal action that alleges fraud, theft or securities related activities or that could significantly adversely affect the firm's business or financial health.

Conclusion

IFIC members are confident that the Proposed Amendments will to some extent increase clarity and reduce the regulatory burdens faced by the industry, while providing the CSA with the information they need to carry out their regulatory roles. Nevertheless, we are concerned that two aspects of the Proposed Amendments are unlikely to reduce regulatory burden significantly and could lead to uncertainty and confusion as our members attempt to comply, obviating much of the benefit flowing from the Proposed Amendments. The proposed provisions dealing with outside activities and positions of influence could, despite the CSA's intentions to the contrary, present significant on-going challenges, which must be addressed if the Proposed Amendments' objectives are to be met in full. Accordingly, we made recommendations to amend Form 33-109F4 Item 10 and NI 33-109CP, concerning outside business activities, and NI 31-103 and NI 31-103CP concerning persons of influence.

* * * * *

IFIC appreciates this opportunity to provide the CSA with our comments on this important initiative. Please feel free to contact me by email at ahochman@ific.ca or by phone at 416-309-2314. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Arnie Hochman
Vice-President, Policy & General Counsel