Fidelity INVESTMENTS

The Regulatory *Pulse*

Q4 2023

Canadian Investment Regulatory Organization ("CIRO") Rule Proposals

The Mutual Fund Dealers Association of Canada ("**MFDA**") and Investment Industry Regulatory Organization of Canada ("**IIROC**") combined on January 1, 2023, to establish one organization now known as CIRO.

RULE CONSOLIDATION PROJECT – PHASE 2

CIRO has published for comment Phase 2 of its Rule Consolidation Project rule proposals. CIRO is seeking feedback on the proposals, which are intended to adopt rules that are unique to the current IIROC or MFDA rules and that have been assessed as not having a material impact on stakeholders. Phase 2 of CIRO's consultation involves the proposed adoption of rules relating to margin, debt market and inter-dealer bond brokers and trading.

The Phase 2 rule proposals are out for comment until March 11, 2024. Phase 1 of the rule proposals were published on October 20, 2023. Currently, there is an interim rule book comprised of the IIROC and MFDA rules. CIRO provides an FAQ on the interim rules on its website.

PROFICIENCY REQUIREMENTS

CIRO also released a consultation paper proposing a new proficiency model for individuals at investment dealers. The proposed new model incorporates writing a general industry exam on competencies common across all CIRO registration categories, rather than mandatory courses as pre-requisites to exams. After completing the general exam, an individual registrant would then require sponsorship from a dealer to be permitted to write any additional exams, which would be specific for each approved person category. After approval for registration is granted, individuals would be required to take a mandatory professional conduct training course within 30 days of approval. In general, CIRO intends to take a greater role in program design than in the past.

The paper also proposes an increase in baseline education requirements for registered representatives, which would include a relevant diploma, degree, or two years of relevant experience working in the financial industry.

CIRO is reviewing comments and intends to publish amendments to the proficiency rules by fall of 2024. Any future changes to the proficiency regime relating to mutual fund dealers will be done in collaboration with the CSA.

Client Focused Reforms – Compliance Reviews

The Canadian Securities Administrators (the "**CSA**") introduced reforms to enhance the client-registrant relationship (the "**Client Focused Reforms**") which came into effect fully on December 31, 2021. The main objective of these reforms is for the registrants to put clients' interests first when giving them investment advice and trading securities for them. You can visit our Regulatory Resource page on Fidelity.ca for a detailed summary of the Client Focused Reforms.

CONFLICTS OF INTEREST

CIRO and the CSA conducted a detailed review of 172 registered firms to assess their compliance with the CFR Conflict of Interest ("**COI**") requirements that came into effect on June 30, 2021. The objective of the review was to determine if dealers had met the spirit of the new COI rules and implemented processes to address material conflicts in the best interest of clients.

A joint CSA and CIRO Staff Notice published on August 3, 2023 (the "**Staff Notice**") reports on common deficiencies that were identified in the compliance review, and provides additional guidance to registrants on how to comply with the COI requirements going forward.

The most common deficiencies identified include:

- 34% of the firms reviewed did not identify or adequately address material COI, including conflicts related to proprietary products, internal compensation and incentive practices, third-party compensation and referral arrangements.
- 53% of firms provided incomplete disclosure to clients about material COI.

When disclosing COI, registrants are required to include a description of:

1. the nature and extent of the conflict of interest,
2. the potential impact on and the risk that the conflict of interest could pose to the client, and
3. how the material conflict of interest has been, or will be, addressed.

- 28% of firms had inadequate controls to address certain material conflicts in the best interest of clients.
- 66% of firms had inadequate policies and procedures related to COIs.

Registrants are encouraged to review the requirements set out in NI 31-103, the guidance published in 31-103CP, IDPC Rule 3100 Part B, MFD Rule 2.1.4, and the Staff Notice, to assess their COI policies and procedures and client disclosure relating to COIs. Additional guidance can also be found in the CSA's Client Focused Reforms - Frequently Asked Questions (updated April 29, 2022).

KNOW YOUR CLIENT, KNOW YOUR PRODUCT AND SUITABILITY

As mentioned in the Staff Notice, the CSA and CIRO are conducting reviews specifically to assess compliance with the remaining CFRs obligations, including the know your client ("**KYC**"), know your product ("**KYP**") and suitability requirements that came into effect on December 31, 2021. Registrants will be expected to show the securities regulators how they have met the new requirements and put a client's interest first when making a suitability determination, by providing documentation and note-taking.

While the minimum requirement for non-managed accounts is that KYC information must be updated once every three years, registrants are obligated to take reasonable steps to keep a client's KYC information current. For managed accounts, KYC must be updated at least once every year. Registrants should use their professional judgement when interacting with clients to determine if they need to ask about any significant changes to the client's circumstances, and keep in mind the timeframe in their policies and systems for updating KYC information so they are not caught off guard when trying to process client transactions.

CSA and CIRO have also issued a reminder on the prohibition against misleading communications resulting from advisor ranking contests. The Client Focused Reforms introduced new requirements to prohibit a registrant from holding themselves out in any manner that could reasonably be expected to deceive or mislead existing or prospective clients with respect to proficiency, experience or qualifications. This includes restrictions on the use of titles, awards, and recognitions that are based on sales activity, revenue generation or assets under management. However, CSA staff note that advisors are still participating in ranking contests on these bases. These firms and advisors should immediately take steps to get into compliance.

IMPACT OF LIMITED PRODUCT SHELVES

As stated in its proposed 2024-2025 Statement of Priorities, the OSC together with CIRO and the CSA intends to conduct further investigation into the approaches taken by firms who rely on predominantly proprietary products. The OSC states their concern about the impact that predominantly proprietary product shelves may have on client outcomes (e.g., higher fees and inferior performance). In addition, other possible negative outcomes may result if firms offer predominantly proprietary product shelves and independent products are not readily available for investors and their advisors to consider.

The OSC will consider the need for additional measures to protect the goals of the CFRs and to enhance the competitive landscape for investment products.

Ombudsman for Banking Services and Investments ("OBSI")

The CSA has published for comment a proposal to provide an independent dispute resolution service with the authority to make binding compensation decisions. Other than in Québec, OBSI is the dispute resolution service for Canadian registered firms.

The CSA proposes that an investigation by OBSI would have 2 stages.

1. *The Investigation and Recommendation Stage.* At this stage, an OBSI investigator would investigate a complaint using an inquisitorial approach and provide the parties with a recommendation to resolve the dispute. The parties will have an opportunity to comment on the recommendation and reach a settlement. If neither the firm nor client objects within the specified time period, and the complainant has not withdrawn by commencing a separate legal action or otherwise, the recommendation would become binding on firms. If a party makes a formal objection to the recommendation before it becomes a final decision, the investigation will proceed to stage 2.
2. *The Review and Decision Stage.* At this stage, a senior OBSI decision-maker will consider the objections to the recommendation applying the "fairness standard". In the review process, the decision-maker would decide which elements of the dispute resolution process are essential to achieving as efficient, quick and understandable a process as possible in resolving the dispute in a fair manner (the "essential process test"). This could range from processes that are inquisitorial to adversarial. Following the review, a final decision is issued. If a firm refuses to comply with a final decision, the decision may be filed as a court order.

The proposed amendments would also prohibit firms from using certain terminology for internal services that implies independence, such as the title "ombudsman" or "ombudservice". The comment period ends on February 28, 2024.

OBSI also announced changes to its organizational governance following a public consultation which ended January 31, 2023. Based on the feedback received, OBSI increased the number of consumer interest directors to three from one, mandated that at least one industry director will have current or recent banking industry expertise, and that one director will have current or recent experience with an investment dealer or mutual fund dealer. The new board structure is incorporated in OBSI's updated By-law. In addition to governance changes, OBSI expanded its stakeholder outreach by establishing separate bi-annual meetings with consumer group and industry associations.

Title Protection

ONTARIO

On March 28, 2022, Financial Services Regulatory Authority's ("**FSRA**") Financial Professionals Title Protection Rule (the "**Titles Rule**"), outlining the minimum standards for the use of the "financial planner" (**FP**) and "financial advisor" (**FA**) titles in Ontario, came into force. In connection with the Titles Rule, FSRA also released updated guidance in its Financial Professionals Title Protection - Supervisory Framework and Financial Professionals Title Protection - Administration of Applications.

Here are some significant highlights from the Titles Rule:

- Entities seeking approval as credentialing bodies to oversee the conduct of FP and FA title users need to be approved by FSRA.
- Individuals who currently use either title will not be "grandfathered" under the new rule that establishes minimum standards for those who want to use those titles; however, there is a transition period allowed for individuals using these titles prior to January 1, 2020.
- Minimum standards for FPs require them to have a credential that, among other things, has an educational component related to financial planning, such as estates and tax planning, retirement planning, technical knowledge, ethical practices and dealing with conflicts of interest.
- Minimum standards for FAs include similar components, as well as education on providing suitable financial and investment recommendations to clients.
- FSRA has authority to take enforcement action in various circumstances, including:
  - if an approved credentialing body fails to comply with the Titles Rule or any terms and conditions associated with FSRA's approval;
  - if an individual uses the FP or FA title without an approved credential;
  - if an entity is or appears to be representing as an approved credentialing body without valid approval;
  - if an entity is or appears to be representing that it can offer an approved FP or FA credential without FSRA approval of the credential;
  - utilizing a title that could reasonably be confused with FP or FA.
- The transition period for individuals using these titles prior to January 1, 2020 expires in March 2024 for FA title users and March 2026 for FP title users. Individuals who commenced using these titles post January 1, 2020 must cease using their title until they obtain an approved credential from an approved credentialing body.

As of the date this Regulatory Pulse is written, the following credentialing bodies and credentials have been approved by the FSRA:

Approved Credentialing Body	Approved Credential	Permitted Title
FP Canada	Certified Financial Planner	Financial Planner
	Qualified Associate Financial Planner	Financial Planner
Institute for Advanced Financial Education (IAFE), a subsidiary of Advocis	Chartered Life Underwriter	Financial Planner
	Professional Financial Advisor	Financial Advisor
Canadian Securities Institute	The Personal Financial Planner	Financial Planner
	Designated Financial Services Advisor (DFSA™)	Financial Advisor
The Canadian Institute of Financial Planning (CIFP)	Registered Retirement Consultant® (RRC®)	Financial Planner
	Registered Financial and Retirement Advisor® (RFRA®)	Financial Advisor
	Registered Retirement Analyst™ (RRA™)	Financial Advisor
CIRO	Registered Representative	Financial Advisor
	Mutual Fund Dealing Representative	Financial Advisor
	Portfolio Manager	Financial Advisor
	Associate Portfolio Manager	Financial Advisor

Please refer to the FSRA's website for an up-to-date list of all approved credentialing bodies and credentials.

SASKATCHEWAN

On July 3, 2020, the Saskatchewan government passed the *Financial Planners and Financial Advisors* Act (the "**FPFA Act**"). The FPFA Act is modelled on Ontario's legislation and restricts who in Saskatchewan may legally use the titles of "financial planner" and "financial advisor".

On July 28, 2021, the Financial and Consumer Affairs Authority of Saskatchewan ("**FCAA**") published for comment proposed regulations under the FPFA Act which closely reflected Ontario's Titles Rule. In July 2022, the FCAA posted for comment changes to these regulations in response to comments received on the initial consultation. These changes reduce harmonization with Ontario in respect to certain aspects of the proposed framework.

A notable change is the FCAA is considering changing the competency profiles for the FA credential to be closer to that of a FP. Given the proposed changes to the FA credential:

- It is possible that approved FA credentialling bodies in Ontario will not qualify to be an approved FA credentialling body in Saskatchewan without expanding their education requirements.
- The FCAA has asked whether the transition period for FAs should be extended to match those that will be available to FPs (i.e. four years from the date the regulation comes into force).

The comment period on Saskatchewan's proposed regulations ended September 20, 2022.

OTHER PROVINCES

Following the lead of Ontario and Saskatchewan, the Financial and Consumer Services Commission of New Brunswick has taken the next step in establishing a framework for title protection. Following its consultation in 2021, the Financial Advisors and Financial Planners Title Protection Act has been passed into law. The next step will be consulting on proposed rules and regulations for the use of FA and FP titles in the province.

Manitoba Finance is also considering comments it received following its consultation on whether the Manitoba government should proceed with its own legislation.

Québec was the first province with title regulation in force by regulating the "financial planner" title and restricting other titles.

Advice in the Order-Execution Only ("OEO") Channel

As indicated in its proposed 2024-2025 Statement of Priorities, the OSC together with CIRO plan to reconsider the regulations on advice in the OEO channel, including discount brokers and robo-advisors. The OSC states that there is increasing consensus that the limitations on advice being provided by OEO firms are preventing important information from being provided to do-it-yourself ("**DIY**") investors who are increasingly seeking advice from unregistered channels, including social media platforms. As a result, the OSC and CIRO intend to examine whether OEO firms can provided non-tailored advice to meet the needs of DIY investors.

Electronic Delivery of Regulatory Documents

The CSA has recently published final amendments to implement an electronic access model for prospectuses of non-investment fund issuers. We will stay tuned for any updates on an electronic delivery model for investment fund regulatory documents.

Fidelity has been encouraging the regulators to not only adopt an access equals delivery model for investment fund issuers, but to switch to electronic delivery as the default method of communicating with investors.

We commissioned KPMG to estimate the carbon footprint of Fidelity as a result of the current delivery requirements for regulatory documents, including under the provincial securities acts, National Instruments and policies and Income Tax Act (Canada). This study showed us that Fidelity alone is obligated to create and mail 92 tonnes of paper on an annual basis. For the broader Canadian investment industry, it is estimated that 882 tonnes of paper are distributed annually to meet regulatory requirements.

We also asked the Behavioural Insights Team to conduct a study on the impact of digital versus paper communications on investor engagement, preferences, and comprehension. Their research found that:

- Support for electronic delivery is strong;
- Comprehension of financial documents is higher in digital format;
- Electronic delivery tends to increase engagement;
- Electronic delivery increases use of online tools that promote positive financial outcomes; and
- A digital by default approach is recommended so long as there is an easy and accessible way for investors to opt out to paper documents.

We will be taking our findings to the regulators as we continue to advocate for digitalization for the investment fund industry.

Total Cost Reporting ("TCR") Disclosure for Investors

The CSA and Canadian Council of Insurance Regulators (the "**CCIR**") have published the final enhanced cost disclosure requirements for investment funds and new cost and performance reporting requirements for segregated funds.

The TCR amendments take effect on January 1, 2026 and are intended to improve investor awareness of all embedded fees. The regulators extended the transition period from the initial proposal considering implementation issues and concerns identified in the consultation process. This means investors will receive their first annual report of charges and compensation (the "**Annual Report**") with the new requirements in January 2027 for the period ending December 31, 2026.

The amendments are part of the regulators' response to concerns relating to current cost disclosure under the client relationship model reforms ("**CRM2**") which took effect July 2016. CRM2 only required disclosure of commissions and fees paid to dealers, not fund fees paid to investment fund managers.

The Annual Report will be expanded to include:

- the total aggregated dollar value of fund expenses paid by the investor;
- any direct investment fund charges in dollars (e.g., short-term trading fees); and
- the fund expense ratio, which is the sum of the management expense ratio and trading expense ratio, expressed as a percentage for each fund held.

A joint CSA and CCIR implementation committee, with participation from CIRO, will provide guidance and assistance to the industry in operationalizing the new requirements.

Review of Mutual Fund Sales Practices

On June 1, 2023, the CSA launched a review of the use of chargebacks in the mutual fund industry. Chargebacks are a compensation practice where a dealing representative is paid upfront commissions and/or fees when their client purchases securities. If a client redeems their securities before a fixed schedule expires, the dealing representative is required to pay back all or part of the upfront commission/fees they received. The CSA's review follows a consultation by the insurance regulators, as described below. The CSA's review will guide any possible changes to the mutual fund sales practice rules going forward.

Insurance Regulators' Consultation on Potential Ban of Upfront Commissions

On May 15, 2023, the CCIR and the Canadian Insurance Services Regulatory Organizations ("**CISRO**") announced actions they intend to pursue following the public consultation on their discussion paper on upfront compensation paid for the sale and servicing of segregated funds.

The CCIR and CISRO concluded that without appropriate control measures, there is a risk of customer harm if insurers pay intermediaries for selling individual variable insurance contracts and require the intermediaries to repay some or all of the commission if the customers withdraw money within a specified time (also known as chargebacks).

For now, the CCIR and CISRO have opted not to ban chargebacks outright. The regulators will be considering the appropriate controls to be put in place and will be incorporating them into guidance they are creating with respect to segregated fund market conduct expectations, which will be published for public comment. In addition, CCIR and CISRO announced in February 2022 that the regulators are working on their respective approaches to deferred sales charge bans in their jurisdictions.

Visit our Regulatory updates page for more information and webcast replays.

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