

ORDER NUMBER 96

**IN THE MATTER OF THE *SECURITIES ACT* ("the *Act*")
R.S.N.L. 1990 CHAPTER S-13, AS AMENDED**

AND

**EXEMPTIONS FROM CERTAIN CLIENT RELATIONSHIP MODEL - PHASE 2 ("CRM2") PROVISIONS
OF NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING
REGISTRANT OBLIGATIONS* ("NI 31-103")**

**ORDER
(Sections 144.(1) of the *Act*)**

Definitions

1. Unless otherwise defined in this order or the context otherwise requires, terms used in this order that are defined in NI 31-103 or National Instrument 14-101 *Definitions* have the same meaning.

Background

2. Certain NI 31-103 provisions related to the implementation of CRM2 will come into effect on July 15, 2015 and July 15, 2016 (the "2015/2016 CRM2 Amendments"). Corresponding self-regulatory organization ("SRO") provisions have been adopted.
3. Some registered firms have indicated they may experience difficulty in implementing the 2015/2016 CRM2 Amendments or corresponding SRO provisions by their effective dates.
4. Certain technical issues have also been identified relating to the delivery of information prescribed in the 2015/2016 CRM2 Amendments or corresponding SRO provisions.
5. Under section 9.3 [*exemptions from certain requirements for IIROC members*] of NI 31-103, a registered investment dealer that is an Investment Industry Regulatory Organization of Canada ("IIROC") member ("IIROC Member") is exempt from certain requirements in NI 31-103 if it complies with the corresponding IIROC provisions in Appendix G of NI 31-103 that are in effect.
6. Under section 9.4 [*exemptions from certain requirements for MFDA members*] of NI 31-103, a registered mutual fund dealer that is an Mutual Fund Dealers Association of Canada ("MFDA") member ("MFDA Member") is exempt from certain requirements in NI 31-103 if it complies with the corresponding MFDA provisions in Appendix H of NI 31-103 that are in effect.

7. Amendments to sections 9.3 and 9.4 and Appendixes G and H of NI 31-103 are planned to provide relief for IIROC Members and MFDA Members from the 2015/2016 CRM2 Amendments if they comply with the corresponding SRO provisions applicable to them.
8. The SROs plan to make housekeeping amendments to conform the SRO provisions with certain of the relief granted under this order.
9. Under section 15.1 of NI 31-103 the Superintendent or Deputy Superintendent may grant an exemption from that Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

Order

10. Considering that it would not be prejudicial to the public interest to do so and pursuant to section 144.(1) of the *Act* and Section 15.1 of NI 31-103, the Superintendent orders that:
 - (1) That a registered firm, other than a member of IIROC or the MFDA in respect of its activities as an investment dealer or mutual fund dealer, is exempt
 - (a) from the following NI 31-103 provisions that come into effect on July 15, 2015 if it complies with the provisions beginning with client statements delivered for the period ending December 31, 2015:
 - (i) section 14.11.1 [*determining market value*];
 - (ii) section 14.14 [*account statements*] provided that for periods ending before December 31, 2015, it delivers statements under section 14.14 as that provision was in force on July 14, 2015;
 - (iii) section 14.14.1 [*additional statements*] except for paragraph 14.14.1(2)(g);
 - (iv) section 14.14.2 [*position cost information*] provided that if it discloses market value instead of security position cost
 - (A) under subparagraph 14.14.2(2)(a)(ii), it is not required to specify that the market value being disclosed is as of the transfer date, and
 - (B) under subparagraph 14.14.2(2)(b)(ii), it may disclose market value as at December 31, 2015 or an earlier date, using the same date and value for all similar clients of the firm;
 - (v) section 14.15 [*security holder statements*];
 - (vi) section 14.16 [*scholarship plan dealer statements*];

- (b) from the requirement in paragraph 14.14.1(2)(g) of NI 31-103 to identify securities that may be covered under an investor protection fund;
 - (c) from the requirement in paragraphs 14.19(1)(e) and (h) of NI 31-103 to include market value information as at and since July 15, 2015 if instead
 - (i) an investment performance report is delivered that provides the information for the 12-month period ending December 31, 2016 and the included market value information is as at and since
 - (A) January 1, 2016, or
 - (B) a date earlier than January 1, 2016, if the same date is used for all similar clients, or
 - (ii) the included market value information is as at and since July 15, 2015 or an earlier date used for all similar clients;
 - (d) from the requirement in paragraph 14.19(2)(e) of NI 31-103 to provide annualized total percentage return information if instead
 - (i) an investment performance report is delivered that provides the information for the 12-month period ending December 31, 2016, or
 - (ii) an investment performance report is delivered that provides the information
 - (A) for the period since the account was opened, if the account has been open for more than one year before the date of the report, or
 - (B) for the period since July 15, 2015 or an earlier date used for all similar clients, if the account was opened before July 15, 2015.
- (2) That an IIROC Member or MFDA Member is exempt from the NI 31-103 provisions specified in the table below if it complies with the corresponding SRO provisions that are applicable to it.

NI 31-103 provision	IIROC provision	MFDA provision
section 14.11.1 [<i>determining market value</i>] and Form 31-103F1 which mandates use of "fair value"	Dealer Member Rule subsection 200.1(c) [<i>definition of "market value"</i>], and Definition (g) of the General Notes and Definitions to Form 1 [<i>definition of "market value" for the purposes of regulatory reporting to IIROC</i>]	MFDA Rule 5.3(1)(f) [<i>definition of "market value"</i>] and Definitions to Form 1 <i>Financial Questionnaire and Report</i> [<i>definition of "market value of a security"</i>]

section 14.14 [<i>account statements</i>]	Dealer Member Rule subsection 200.2(d) [<i>client account statements</i>], and “Guide to Interpretation of Rule 200.2”, Item (d) [<i>client account statements</i>]	MFDA Rule 5.3.1 [<i>delivery of account statement</i>] and MFDA Rule 5.3.2 [<i>content of account statement</i>]
section 14.14.1 [<i>additional statements</i>]	Dealer Member Rule subsection 200.2(e) [<i>report on client positions held outside of the Dealer Member</i>], and section 200.4 [<i>timing of sending documents to clients</i>], and “Guide to Interpretation of Rule 200.2”, Item (e) [<i>report on client positions held outside of the Dealer Member</i>]	MFDA Rule 5.3.1 [<i>delivery of account statement</i>] and MFDA Rule 5.3.2 [<i>content of account statement</i>]
section 14.14.2 [<i>position cost information</i>]	Dealer Member Rule subsections 200.1(a) [<i>definition of “book cost”</i>], 200.1(b) [<i>definition of “cost”</i>], and 200.1(e) [<i>definition of “original cost”</i>], and subclauses 200.2(d)(ii)(F) and (H) [<i>client account statements</i>], and subclauses 200.2(e)(ii)(C) and (E) [<i>report on client positions held outside of the Dealer Member</i>]	MFDA Rules 5.3(1)(a) [<i>definition of “book cost”</i>], 5.3(1)(c) [<i>definition of “cost”</i>], 5.3(1)(h) [<i>definition of “original cost”</i>], and MFDA Rule 5.3.2(c) [<i>content of account statement – market value and cost reporting</i>]
section 14.17 [<i>report on charges and other compensation</i>]	Dealer Member Rule subsection 200.2(g) [<i>fee/charge report</i>] and “Guide to Interpretation of Rule 200.2”, Item (g) [<i>fee/charge report</i>]	Rule 5.3.3 [<i>report on charges and other compensation</i>]

section 14.18 [<i>investment performance report</i>] and section 14.19 [<i>content of investment performance report</i>]	Dealer Member Rule subsection 200.2(f) [<i>performance report</i>] and “Guide to Interpretation of Rule 200.2”, Item (f) [<i>performance report</i>]	Rule 5.3.4 [<i>performance report</i>] and MFDA Policy No. 7 <i>Performance Reporting</i>
section 14.20 [<i>delivery of report on charges and other compensation and investment performance report</i>]	Dealer Member Rule 200.4 [<i>timing of sending documents to clients</i>]	Rule 5.3.5 [<i>delivery of report on charges and other compensation and performance report</i>]

- (3) For purposes of this order, “similar clients” means any of the following:
- (a) clients whose accounts or security positions were transferred together to a registered firm,
 - (b) clients whose accounts or security positions are on the same reporting system if a registered firm has more than one reporting system,
 - (c) other clients whose accounts or security positions would appear to a reasonable person to be similar in a way that relates to the recording or calculation of market value or position cost.
- (4) The exemptions in subparagraphs (1)(a)(i) to (iii), (v) and (vi) of this order expire on January 1, 2016.
- (5) The exemptions in subparagraphs (1)(a)(iv) and paragraphs (1)(b) to (d) of this order expire on the coming into effect of amendments to NI 31-103 dealing with the same matters.
- (6) The exemptions in section (2) of this order expire on the date on which amendments to sections 9.3 and 9.4 and Appendixes G and H of NI 31-103 come into force providing exemptions for IIROC Members and MFDA Members that comply with corresponding SRO provisions that are applicable to them.

11. This order comes into effect on July 15, 2015.

Dated at St. John’s, Newfoundland and Labrador this 5th day of January 2016.



John O'Brien, FCPA, FCA, CISA
Superintendent of Securities