

July 27, 2022

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

Care of:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
comment@osc.gov.on.ca

M^e 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
consultation-en-cours@lautorite.qc.ca

And to:

Mr. Tony Toy, Policy Manager
Canadian Council of Insurance Regulators
National Regulatory Coordination Branch
25 Sheppard Avenue West, Suite 100
Toronto, Ontario M2N 6S6
ccir-ccrra@fsrao.ca



Dear Sirs/Mesdames,

**Re: Canadian Securities Administrators (CSA)
Canadian Council of Insurance Regulators (CCIR)
Total Cost Reporting for Investment Funds and Segregated Funds**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide the following comments on Total Cost Reporting for Investment Funds and Segregated Funds. Advocis shares the CSA and CCIR's goal of improving disclosure for clients.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis' motto: *non solis nobis* – not for ourselves alone.

2. OUR COMMENTS

Advocis believes that regulatory requirements should centre on the client experience. The goals of total cost reporting can best be achieved through a simple and easily understood disclosure process.

At the same time, for regulatory requirements to be effective, obligations must be imposed on entities that have the capacity to fulfill those obligations. Registered dealers and advisors are entirely reliant upon the information provided by fund managers in providing disclosure to their clients. The proposal places obligations on securities dealers and advisors that they are unable to discharge.

We would also appreciate clarification around the meaning of significant costs when a policyholder withdraws the full market value of the segregated fund.



a. Effective, Simple Disclosure

When an investor considers a financial product, they need to understand two fundamental concepts in relation to the investment: the risk and the reward. To be useful, both initial and ongoing disclosure must provide the investor with the information needed to assess the risk and reward of the financial product in a straightforward and understandable manner. Fees are important because they impact a product's risk/reward characteristics.

The regulatory objective must be to provide the investor with the information needed to assess risk/reward in the most accessible way possible.

We know that consumers do not read lengthy contracts or disclosure documents.¹ To be effective, disclosure must be short, clear, and written in plain language. Unnecessary or redundant information should be eliminated.

The Ontario Securities Commission's Behavioural Insights Team has specifically examined barriers which prevent investors from understanding and acting upon fee disclosure information.²

Among several concrete recommendations, the Behavioural Insights Team suggests:

"Eliminate non-essential or redundant information. One way to reduce cognitive load is by eliminating non-essential or redundant information presented in the Annual Fee Report."³

Although the Behavioural Insights Team did not find any significant benefit from removing disaggregated fee information,⁴ the current proposal calls for even more information fields to be provided to investors. We worry that this additional disaggregated information may form a barrier to investor comprehension.

The Behavioural Insights Team also recommends using plain language and presenting important information up front.⁵

¹ For instance, one study found that only 1-2 retail consumers out of 1,000 (0.1-0.2%) accessed the license agreement when purchasing software and even fewer read more than a small portion of the document; see: Yannis Bakos, Florencia Marotta-Wurgler, and David R. Trossen, "Does Anyone Read the Fine Print? Consumer Attention to Standard Form Contracts," *Journal of Legal Studies* 43:1 (2014).

² OSC Staff Notice 11-787: "Improving Fee Disclosure Through Behavioural Insights," (2019), available here: https://www.osc.ca/sites/default/files/pdfs/irps/sn_20190819_11-787_improving-fee-disclosure-through-behavioural-insights.pdf

³ *Ibid*, at pg. 14.

⁴ *Ibid*.

⁵ *Ibid*, at pgs. 12-14.



Taking these insights into account, Advocis believes that a simple, direct approach to disclosure will most effectively inform and protect investors.

Investors should receive a clear, easily understood bottom-line number which encompasses all the costs of holding the particular investment fund.

However, this information should not be presented in isolation. Fees are only part of the picture. Contextual information about the benefits associated with the product—such as the rate of return and, for segregated funds, the guarantee—should also be included up front so that investors can easily understand the risks and rewards associated with their holdings.

This contextual information is essential. Investors need to understand both the costs they pay and the returns of their investments. When faced with fee information in isolation, investors may be discouraged from investing their money, thereby undermining their future financial security.

Advocis supports providing additional disaggregated fee information, as contemplated in the proposal. However, this additional information must not distract from the key considerations for investors. Instead, the additional breakdown should be in place to supplement the primary simplified disclosure.

We believe that a simplified approach will assist retail investors by removing barriers which stand in the way of their understanding of the fundamental features of their investments. To help illustrate this point, we have prepared a sample cost disclosure document, attached as an appendix to these submissions.

b. Securities: Registered Dealer Obligations regarding Information Quality

The proposed amendments to National Instrument 31-103 impose a significant obligation on registered firms regarding the quality of fee information reported to the client. Specifically, the proposed section 14.17.1 provides:

...

(2) Subject to subsection (3), if no information is provided under section 14.1.1, or the registered firm reasonably believes that any part of the information provided pursuant to section 14.1.1 is incomplete or that relying on it would cause information required to be delivered to a client to be misleading, the registered firm must rely on the most recent information disclosed in the relevant fund facts document, ETF facts document, prospectus or management report of fund performance, as applicable;



(3) If there is no publicly available information or if the information referred to in subsection (2) was disclosed more than 12 months before the end of the period covered by the statement or report required to be delivered to the client, or the registered firm reasonably believes that relying on the publicly available information would cause information required to be delivered to the client to be misleading, the registered firm must not rely on the publicly available information and must

(a) make reasonable efforts to obtain the information referred to in subsection (1) by other means, and

(b) subject to subsection (4), rely on the information obtained under paragraph (a).

(4) If the registered firm reasonably believes it cannot obtain information under paragraph (3) that is not misleading, the registered firm must exclude the information, from the calculation of the amount of fund expenses or of the direct investment fund charges reported to the client, as the case may be, or, in the case of a fund expense ratio, must not report the fund expense ratio, and must disclose the fact that the information is excluded or not reported in the relevant statement or report.

In practice, registered dealers are entirely reliant upon the information supplied by fund managers to provide the required disclosure for their clients. Registered dealers are unable to verify information provided by fund managers regarding the fees associated with their products, particularly trading expenses.

However, the proposal imposes an obligation on registered dealers by requiring them to determine whether the information is incomplete or potentially misleading. Since registered dealers rely entirely on fund managers for the information, regulators should not attempt to impose such an obligation. Registered dealers are simply not able to fulfill this obligation. Instead, regulators should focus on ensuring that fund managers provide the timely and accurate information.

Further, the proposal may harm investors. If the amendment is adopted, investors will believe that registered firms independently verify the fee information contained in the disclosure. However, since registered dealers rely on fund managers for this information and cannot independently verify it, this confidence is unwarranted.

We appreciate the effort by the regulators to protect investor interests by making all industry participants responsible for fee disclosure. However, in this case, the fund manager is the only party with access to complete underlying information. Therefore, the obligation to ensure timely and accurate disclosure of this information should fall on the fund manager.



As part of their “Know Your Product” obligation, registered dealers must ensure that fee information is available. If no fee information is available, registered dealers should carefully consider whether the product fulfills the enhanced suitability requirements in the best interests of the client, particularly when fee information is available for alternative products. This would be another example of putting the onus of a regulatory obligation on the actor that is best positioned to discharge it.

c. Insurance: Significant Costs on Withdrawal

The proposed segregated fund guidance indicates that costs incurred from withdrawing the full market value of the segregated fund should be explained in a plain-language notice if these costs are “significant”.

While we support the transition towards principles-based, outcomes-focused regulation, we believe that the use of the word “significant” in this context is needlessly ambiguous.

In particular, the subsequent statement—that deferred sales charges are significant—suggests that some costs are significant due to their nature, regardless of their magnitude.

We would therefore appreciate greater clarity from the CCIR regarding when a cost is considered significant. Can a bright-line test be applied? Or are there other costs that would, by definition, be significant?

Greater clarity on this point would assist the industry in complying with the proposed guidance.

3. CONCLUSION

We welcome the work that the CSA and the CCIR have undertaken to improve cost disclosure in for investment funds and segregated funds. Where appropriate, disclosure standards for these products should be harmonized. However, regulation must also recognize the unique features of these products.

We support effective, simple disclosure for investors. We believe that the best protection for investors comes from understandable and accessible disclosure.

We believe that regulatory obligations should fall on those best able to fulfill them. For this reason, we submit that the obligations on registered dealers related to the quality of information provided by fund managers is misplaced. Instead, the regulatory framework should focus on the obligation of fund managers to provide timely and accurate information to registered dealers.



We would also appreciate greater conceptual clarity around the meaning of significant costs in the context of withdrawals from a segregated fund.

We would welcome the opportunity to further discuss this initiative with you. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Advocacy and General Counsel at jryu@advocis.ca.

Sincerely,

Original signed by

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Original signed by

Catherine Wood, CFP, CLU, TEP, CHS, MBA, MIST, ICD.D.
Chair, National Board of Directors

APPENDIX - SAMPLE COST REPORTING

Dealer ABC Inc.

Your Account Number: **123-4567**

All values as of **December 31, 2021**

Total Book Cost of Your Account (what you invested¹):

\$36,500.00

Total Market Value of Your Account (what your investments are worth²):

\$42,000.00

Your Current Gains or Losses are:

\$5,500.00

Your Gains or Losses in the last year are:

\$2,500.00

Your Total Cost of Investing in the last year was:

\$815.00

A detailed itemization of these costs can be found in the remainder of this report.

¹ Book cost is the original price you paid for your investments plus transaction costs, adjusted for any reinvested dividends, corporate reorganizations, and distributions.

² Market value is the value of your investments on the market. However, this value does not reflect any transaction costs or redemption fees which may be triggered if you sell your investments. All values in this report are as of market close on December 31, 2021.



Your Cost of Investing and Our Compensation

This report shows for 2021:

- your cost of investing, including what you paid to us and to investment fund companies
- our compensation

Your Cost of Investing

Costs reduce your profits and increase your losses. Your total cost of investing was **\$815** last year.

What you paid

Our charges: Amounts that you paid to us by withdrawals from your account or by other means such as cheques or transfers from your bank.	
Account administration and operating fees - you pay these fees to us each year	\$100.00
Trading fees - you pay these fees to us when you buy or sell some investments	\$20.00
Total you paid to us	\$120.00
Investment fund company fees: Amounts you paid to investment fund companies that operate the investment funds (e.g., mutual funds) in your account.	
Fund Expenses - See the fund expenses % shown in the holdings section of your account statement ³	\$645.00
Redemption fees on deferred sales charge (DSC) investments ⁴	\$50.00
Amount you paid to investment fund companies	\$695.00
Your total cost of investing	\$815.00

³ **Fund expenses.** Fund expenses are made up of the management fee, operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.

The number shown here is the total dollar amount you paid in management fees, trading fees and operating expenses for all the investment funds you owned last year. This amount depends on each of your funds' fund expenses and the amount you invested in each fund. Your account statements show the fund expenses as a percentage for each fund you hold.

⁴ **Redemption fees on DSC investments:** You paid this cost because you redeemed your units or shares of a fund purchased under a deferred sales charge option (DSC) before the end of the redemption fee schedule and a redemption fee was payable to the investment fund company. Information about these and other fees can be found in the prospectus or fund facts document for each investment fund. The redemption fee was deducted from the redemption amount you received.



Our Compensation

What we received

Total you paid us, as indicated above	\$120.00
Trailing commissions ⁵ paid to us by investment fund companies	\$342.00
<i>Total we received for advice and services we provided to you</i>	\$462.00

⁵ **Trailing commissions.** Investment funds pay investment fund companies a fee for managing their funds. Investment fund companies pay us ongoing trailing commissions for the services and advice we provide you. The amount of the trailing commission for each fund depends on the sales charge option you chose when you purchased the fund. You are not directly charged for trailing commissions. They are paid to us by investment fund companies.

Information about fund expenses, MERs, trading expenses and other investment fund company charges, as well as trailing commissions, is also included in the prospectus or fund facts document for each fund you own.