FAIR Canada | Canada's Investor Rights Advocate | Promoteur des droits des investisseurs

July 27, 2022

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

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Re: CSA and CCIR Joint Notice and Request for Comment – Total Cost Reporting for Investment Funds and Segregated Funds (TCR Proposal)

FAIR Canada is pleased to provide comments on the above-referenced TCR Proposal published by the Canadian Securities Administrators (CSA) and the Canadian Council of Insurance Regulators (CCIR).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.[1]

Unless otherwise noted, our comments throughout apply to both the securities and insurance components of the TCR Proposal, and references to "investors" or "clients" include persons holding mutual funds, exchange-traded funds (ETFs), or segregated funds. We also refer to dealer firms, adviser firms, and insurers collectively as "firms."

A. GENERAL COMMENTS

1. Full cost disclosure is a fundamental investor right and promotes healthy competition

A basic tenet of fairness within consumer protection frameworks is that the consumer should be able to see and understand all the fees and costs associated with buying a product. It should be no different when buying securities or insurance products. Yet the lack of "total cost" transparency in the securities and insurance sector has been, and continues to be, an ongoing problem.

Like any other business, fund companies need to be compensated for the services they provide. This is not the issue. Rather, it is that investors are not informed about how these costs affect their investments each year. This problem is aggravated by the fact that these costs often represent a significant portion of the total costs of investing. They impact how much money stays in the investor's pocket and, ultimately, affect the individual's financial well being —a recent study found that higher investment fees can set back an individual's retirement by four years.[2]

We are pleased that the CSA and CCIR have made resolving this issue a priority. We fully support the TCR Proposal. It builds on the Mutual Fund Dealers Association (MFDA)'s efforts and is a critical investor protection initiative that will finally close the transparency gap. It will promote better outcomes and enhance investor confidence that they are being treated fairly.

The increased transparency should also help investors identify the more expensive products in their portfolio and ways to lower their costs, while maintaining suitable investments. This will promote healthy competition within the fund management industry and help drive down costs as firms compete on delivering products and services more efficiently. This would certainly be a welcome development, given that Canada has some of the highest mutual fund costs in the world.[3]

2. Investor-facing disclosure must be based on behavioural research and testing

[1] Visit www.faircanada.ca for more information.
[2] Higher fees can set back retirement by four years: Mercer (2022), Mercer Canada.
[3] Mutual Fund Fees in Canada Are Among the World's Highest (2019), Barron's.

While we are disappointed the TCR Proposal took this long to develop, and will take further time to implement, we support the regulators' efforts to consult often and early on this initiative. And we support efforts to harmonize the requirements across the securities and insurance sectors.

We are also encouraged by the regulators' use of behavioural insights (BI) research and focus group testing to develop the new prototypes for reporting annual costs. We believe this approach should be used when developing all investor-facing disclosure. The insights gained from BI research and testing with focus groups will lead to better disclosure that is easier to read and understand. It will also lead to greater investor engagement and help them appreciate the importance of the information they receive from firms.

Given the importance of BI research as a means for improving investor outcomes, we are disappointed the CSA was not willing to share the BI research it relied on for the TCR Proposal. This lack of transparency makes it more difficult to evaluate and comment on the annual cost report prototypes and other amendments. It is also inconsistent with best practice, which is to promote transparency in the rule-making process.[4] To the extent any regulatory proposal relies on research to support policy choices, this research should be made public or at least shared when requested by stakeholders.

3. Implementing the TCR Proposal should not be delayed further

As detailed further below, we have several recommendations that would improve the TCR Proposal. While we believe these recommendations will help enhance the proposal, they should not necessitate further delays.

We also believe the proposed 18-month transition period is more than sufficient for firms to implement the TCR Proposal.

Regulators have engaged early and often with firms on this investor protection issue. Given the level of awareness about the proposal, firms have been well positioned to start scoping and planning for any needed changes to their back-office systems. There is absolutely no reason this work could not start before the rules are finalized.

This is particularly true for firms that manufacture and distribute investment funds/ segregated funds in-house (integrated firms), which already have the information needed to begin designing and testing system changes. Moreover, firms in the securities sector are not starting from scratch—the TCR Proposal builds on existing CRM2 requirements and systems previously implemented by firms. Case in point, we understand that some firms are already providing TCR to their clients.

From the perspective of investors, the fact that some firms choose to turn a blind eye to this issue should not now be used to justify further delays. Otherwise, regulators risk rewarding them for their lack of authentic engagement with the public consultations over these many years.

[4] For example, the MFDA's Improving Fee Disclosures for Canadian Investors (2021) report and the OSC's Improving Fee Disclosure Through Behavioural Insights (2019) were both made public.

Finally, while the TCR Proposal is a significant step forward, the regulatory focus on simplifying information for investors should not stop here. For example, regulators should explore whether firms should be required to report costs at the portfolio level, rather than on a per-account basis. While firms are free to do so today, many do not. Breaking down the cost information on a per-account basis, while beneficial, is inferior to a portfolio-level approach. This is because investors still need to take steps to piece together information from different reports to see the total picture.

B. MANDATE KEY ELEMENTS OF THE PROTOTYPES

The TCR Proposal includes sample prototype statements and annual cost reports developed using BI research concepts and techniques. Focus groups were also used to test various wording and formats to objectively find the best way to present information that most investors will read, understand and absorb.

Use of these prototypes, however, is not mandatory. Apart from some specific wording prescribed in the rules, firms will continue to be free to choose their own content and wording, as well as how they layout and organize the cost-related information.

We appreciate the importance of preserving flexibility for how each firm communicates with its clients. This creates an understandable reluctance to require firms to use a prescribed form. However, unless the key information and the basic presentation headings are prescribed, we are concerned the lessons learned from the BI research will not be broadly applied in practice.

A random review of firm disclosures (where the contents are not prescribed) demonstrates this. The quality and readability vary tremendously, with many firms failing to present information in plain language or in a way that the average investor can easily read and understand. Our concern is that without prescribing critical minimum disclosure elements, the TCR Proposal will not measurably improve investor comprehension or engagement with the cost information.

To improve results and maximize the impact of the TCR Proposal, we recommend that section 14.17 of National Instrument (NI) 31-103 (and the relevant CCIR Guidance documents where necessary) be further amended to prescribe the following:

1. Firms should explain why the information is important

Firms should have to provide, in plain language, a brief description of the information included in the annual cost report, including why it is important.[5]

BI research commissioned by the MFDA provides an example of a statement that should be prescribed:

[5] We use "annual cost report" to refer collectively to the Annual Charges and Compensation report in the securities sector and the proposed equivalent prototype report in the insurance sector.

> "This report provides a breakdown of the total costs you paid to invest in [Year]. It includes all the fees you paid us [FIRM NAME] for things like investing advice, account administration, and transactions. It also includes fees that you paid to other entities, like the mutual fund companies that operate the mutual funds you hold. The information in this report is important and can help you make more informed investing decisions."[6]

Further, this information should be placed at the beginning of the annual cost report or included as a prescribed cover page. The placement of the information helps make it more salient and minimizes the risk it will be missed.[7]

2. Firms should prominently set out a single dollar amount representing the total cost of investing

All firms should be required to include at the top of their annual cost report, or in a prescribed cover page, the following notification or a notification that is substantially similar: "Your total cost of investing was $X last year."

3. All firms should explain how costs affect the client's returns

MFDA research and the TCR Proposal both reflect the importance of communicating the impact of costs on returns.[8] The proposed amendments to NI 31-103 will require this information, but it will be buried in the footnote that explains "fund expenses."

In our view, all firms should include, at the top of their annual cost report or in a prescribed cover page, the following notification or a notification that is substantially similar: "Costs can have a big impact on how much money you earn from your investments. They reduce your profits and increase your losses."[9]

4. Firms should explain what steps a client can take if concerned about their costs

Earlier research published by the Ontario Securities Commission (OSC) indicates that investors are not aware of all the actions they can take based on the information they receive.[10] Simply put, even if investors see and understand the annual cost report, they may not know how to act on it. The OSC study suggests that one way to address this knowledge gap is to provide a simple list of actions investors could take to lower costs.

Accordingly, firms should have to include in their annual cost report the following notification or a notification that is substantially similar:

[6] Improving Fee Disclosures for Canadian Investors (2021), MFDA, at page 10.
[7] Ibid., at page 10.
[8] Ibid., at page 10.
[9] The securities sector prototype of the annual cost report includes similar wording near the top of the first page.
[10] Improving Fee Disclosure Through Behavioural Insights (2019), OSC, at pages 3 and 21.

Here are some of the **steps you might take to reduce your fees:**

Talk to us about whether lower-fee investment options might be right for you**.** Call us at (555) 123-4567, or reach us by email at advisor@investmentdealerabc.com

Go to our website to learn more. For example, learn what questions you might want to ask us to start a conversation about our charges.

If you think it might be right for you, **ask your advisor about investment strategies that include passive as well as active investments**.

5. Firms should have to present information using specified sections and headings

A key improvement in the annual cost report prototype is the way information is organized into different sections under key headings. Specifically, one section for the fees paid by the investor, and another section highlighting the fees received by the firm. It also uses plain language headings like “What you paid” and “What we received”.

Breaking out the information into different sections with plain language headings helps promote readability and comprehension. As such, firms should be required to use these basic elements when designing their annual cost reports.

In our view, however, the MFDA’s breakdown and headings are clearer and easier to read and understand.[11] If adopted, the MFDA approach would require firms to break down the cost information into two sections—one that highlights the net amount of fees received by the firm, and the other showing the net amount paid to investment fund companies.

In contrast, the securities sector prototype in the TCR Proposal is more confusing because it tries to capture all the fees paid in one section (“What you paid”), but then breaks it down further in order to highlight the amount received by the firm (“Our Compensation”).

We believe the MFDA’s approach is clearer and will help the investor better understand where their fees are going. It is also easier to follow the “math” and understand how the firm arrived at the total costs amount.

Ensuring that all annual cost reports contain the five elements above will help promote better investor outcomes and the TCR Proposal’s ultimate success. They are based on science and extensive BI research. Not prescribing them means that we risk losing the benefit of that research and perpetuating existing investor confusion over fees.

For example, the Investment Funds Institute of Canada (IFIC) conducted a behavioural audit of annual fee summaries required under CRM2 (the IFIC Audit). [12] While regulatory guidance exists for fee disclosure under CRM2, the form of the disclosure is not mandated. The IFIC Audit found that many CRM2 fee summaries contained jargon and technical language, which

[11] Specifically, see “Option 4: Expanded Cost Detail, Combined Costs & BI” of Improving Fee Disclosures for Canadian Investors (2021), MFDA, at page 49.
[12] Behavioural Economics (BE) Applied to Financial Disclosure (2019), IFIC.

decreased attention, comprehension, and perceived value.[13] BI research commissioned by the MFDA came to similar conclusions and found that "fewer than 1 in 5 investors surveyed correctly identified the types of fees currently included in annual fee summaries."[14]

Information about annual fees and costs is too critical to leave it to chance that firms will get it right. As such, we recommend that the CSA and CCIR ensure the critical elements discussed above will be provided to investors.

C. THE FUND EXPENSE RATIO

1. Include the Trading Expense Ratio (TER) as proposed

Under the TCR Proposal, firms will have to disclose the "fund expense ratio" (FER). This is defined to include both the "management expense ratio" (MER) and the "trading expense ratio" (TER). In our view, the FER should include both the MER and TER for multiple reasons.

First, the TER is less likely to be provided to investors after the point of sale, or as part of a fund's marketing materials. This is because trading fees vary significantly from fund to fund depending on market conditions, investment strategy, and asset class or mix. Trading fees also depend on fund flows, the level of liquidity of different securities held by the fund, or how efficiently the securities are traded.[15]

Second, while the TER may be small for some funds, it could be more significant for other funds. In the case of some funds, the TER may even exceed the MER.

Finally, the purpose of the TCR Proposal is to provide investors with an overview of their total costs. Omitting the TER would give investors an incomplete picture of all their expenses, including how those expenses are allocated by the fund companies.

2. Should the account statement include the FER?

In addition to defining the FER, the TCR Proposal will require that it be included in the account statement, or an "additional statement" required under NI 31-103. It will have to be expressed as a percentage in those statements.[16]

The rationale for this new requirement is not explained. Presumably, it is intended to increase cost transparency by periodically highlighting FER information pending delivery of the annual cost report.

We also do not know whether this proposed change to the account statement is based on BI research or testing with focus groups. And, if so, we do not know whether that research

[13] Ibid., at page 77.
[14] Improving Fee Disclosures for Canadian Investors (2021), MFDA, at page 7.
[15] See "What drives a fund's TER" in Anatomy of the Trading Expense Ratio (TER) (2019), RBC Global Asset Management.
[16] See proposed amendments to sections 14.14 and 14.14.1 of NI 31-103.

supports the proposed change.

The MFDA's BI research speaks to this issue to a certain extent. It states:

> [M]anagement fees could be linked to investor choices by adding a column noting the MER of each investment fund held to the holdings section of account statements. This would help investors acknowledge that investment funds have different MERs and identify which holdings have higher costs…[17]

The MFDA research, however, seems to be more focused on the need to break down the information on a per fund basis (we discuss this issue in more detail below), rather than necessarily including it in account statements.

In terms of where to include that information, we question the value of including it in both the account statements and the annual cost report. Between these two options, we believe the annual cost report is the better choice.

The purpose of the account statement is to provide a snapshot of the investor's account holdings and highlight how those holdings performed between the reporting periods. It is not intended to provide cost-related information.

Given this different purpose and context, requiring FER information in the account statement risks creating confusion while offering little insight about why this information is important.

As such, we believe investors and the industry would be better served by keeping all cost-related information in one place—the annual cost report.

3. Break down fund expenses per fund

As noted above, we recommend the FER be broken down on a per fund basis within the annual cost report. The breakdown should include both the dollar amount and percentage for each fund.

Breaking down information in this way would help investors map these costs to specific funds, enabling them to better identify which products they may want to consider when looking to reduce their costs.

The MFDA research speaks directly about this issue. It states:

> Results also suggest that including the management expense ratio (MER) for each investment fund holding within the account holdings … may improve investors' ability to identify actions they could take (e.g., to better understand their fees, improve the value of their (sic) service they receive,

[17] Improving Fee Disclosures for Canadian Investors (2021), MFDA, at page 11.

and/or reduce their costs of investing).[18]

The MFDA report goes further and recommends that regulators:

> **Provide more detailed fee information as a supplement to the fee summary, with the more detailed information providing a "1:1" link between investor choice and costs incurred**. In additional pages attached to the main fee summary, provide investors with a breakdown of costs within each fee category to help them map their fees onto their previous choices. For example, the ongoing costs of investing could be broken down by mutual fund (or ETF) held... Each set of detailed information (i.e., each type of fee) should be in a separate section to enable narrower "choice bracketing."[19]

D. SUGGESTED IMPROVEMENTS TO THE PROTOTYPES

The proposed prototype annual cost reports included with the TCR Proposal are significant improvements over the status quo. We offer a few suggestions to help further improve them.

1. Securities sector prototype – "Your Cost of Investing and Our Compensation"

i. **Clarify the title.** To clarify the frequency of this report, amend the title as follows:

Annual Report of Your Cost of Investing and Our Compensation

ii. **"Charges" vs. "fees".** The words "charges" and "fees" are used interchangeably throughout the prototype. For example, the phrase "investment fund company *fees*" is used in the table on page 29 of the TCR Proposal, whereas "investment fund company *charges*" appears on page 30. To minimize confusion, we recommend choosing one term (either "fees" or "charges") and using it consistently.

2. Insurance sector prototype

i. **"Charges" vs. "fees".** Like the securities sector prototype, the words "charges" and "fees" are used interchangeably. For example, on page 33 of the TCR Proposal, the phrase "charges and fees" is used at the top. However, the bar chart at the bottom states "net of charges", without using the word "fees". Again, we recommend using only one of these terms in the prototype.

ii. **Bar Chart – "Your Total Annual Personal Rate of Return (net of charges)".** The bar chart on page 33 of the TCR Proposal could be enhanced by adding an illustration of the total annual personal rate of return **before** costs are paid. Including the rate of return before and after costs will help policy holders better see how costs affect their

[18] Ibid., at page 3.
[19] Ibid., at page 11.

returns.

3. **Re-organize how the information is presented based on the MFDA report.** The way the "What you paid" information relates to the "Our Compensation" section is confusing. For example, it is not immediately apparent that the $342 trailing commission under "Our Compensation" is part of the $645 fund expenses under the "What you paid" section. As noted above, the MFDA BI research provides a better way to organize this information:[20]

	Cost
1. Fees that we, *Dealer ABC Inc.*, received	
Trailing commissions[1] – paid to us by investment fund companies out of the fees they charge you	$342.00
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 investments	$20.00
Net amount we received	**$462.00**
2. Amounts you paid to investment fund companies	
Investment management fees and operating expenses[2] – automatically deducted from your investments by the investment fund companies (based on the fund's MER)	$645.00
Minus: trailing commissions the fund companies paid to us, as reported above	($342.00)
Net investment management fees and operating expenses	$303.00
Redemption fees on deferred sales charge investments	$50.00
Net amount you paid to investment fund companies	**$353.00**
Total you paid to invest in 2020	**$815.00**

E. TRANSITION PERIOD

A key question in the TCR Proposal concerns the proposed 18-month transition period. We believe that 18 months is sufficient and should not be extended for the following reasons:

1. Delays will harm investors

The IFIC Audit and other research by regulators shows that too many investors today have difficulty understanding the fees they pay as currently reported, let alone their total costs. We believe the TCR Proposal (with our recommended improvements) will help address this serious investor protection issue. Any further delays must be avoided to minimize ongoing

[20] Ibid., at page 49.

harm to investors.

2. There have been repeated consultations about TCR with firms

Firms have been extensively consulted about enhancing fee transparency and have had every opportunity to turn their minds to this issue and improve the disclosure to their clients.

The lack of transparency was recognized in the securities sector as far back as 2004 with the publication of the *FAIR Dealing Model*.[21] Since then, regulators repeatedly tried to address this problem through the client relationship model (CRM) initiative. After years of effort, the CSA managed to adopt new rules requiring dealers to show the fees they received, either directly from their clients, or indirectly through trailing commissions.[22]

These rules (known as CRM2) were completed in 2013, but came into force in stages over a three-year period. They provided much improved fee transparency to clients. However, they still fell short of requiring dealers to give their clients a complete picture of all their costs when investing.

Further consultations within the securities sector occurred in 2015[23] and 2018[24] to try to address this gap. These proposals, referred to as "total cost reporting" or "CRM3," were led by the MFDA. They focused on reporting costs of owning investment funds that are not paid to the dealer, including management fees, fund operating costs, redemption fees and short-term trading fees. This included publishing specific proposals with concrete examples designed to aid and encourage the securities industry to transition to total cost reporting as quickly as possible.

In the insurance sector, the problem was also considered with the CCIR's *Segregated Funds Working Group Issues Paper* in 2016.[25] This paper sought stakeholder feedback on several issues, including enhancing cost disclosure to policy holders of segregated funds, an insurance product that includes an investment fund component.

3. Firms are not starting from scratch

Firms on the securities side will not be starting from scratch since the TCR Proposal builds on the current CRM2 requirements. These firms should be able to leverage the work that went into building systems and processes to comply with CRM2. They should also be able to build on and make a few modifications to their existing annual cost reports. Unless they were initially poorly designed to communicate costs, firms' forms of the annual cost report should not require a major overhaul.

4. Work can start now

[21] The Fair Dealing Model (2004), OSC.
[22] See amendments to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (June 2013).
[23] Report on Charges and Compensation – Consultation Regarding Cost Reporting for Investment Funds, (2015), MFDA.
[24] Discussion Paper on Expanding Cost Reporting (2018), MFDA.
[25] Segregated Funds Working Group Issues Paper (2016), CCIR, at page 11.

Firms do not need to wait for the TCR rules to be finalized before taking steps to be more transparent with investors. For instance, we recommend that investment funds begin collecting and supplying data on MER and TER to service providers, such as Fundserv (or the equivalent in the insurance sector). This data is currently accessible and there is no need to wait to begin consolidating it so that it is readily available to firms.

We also recommend firms set up industry working groups to begin scoping out any needed system changes, particularly when it comes to breaking down the MER and TER data on a per-account basis.

The industry should not now use the failure to start planning or begin gathering needed information to justify further delays to implement TCR.

5. Integrated firms already have the data

Integrated firms, or those that offer only proprietary products, already have access to the cost-related information needed to implement TCR. As such, for these firms in particular, there should not be any need to delay implementation. In fact, they may be able to fully implement changes to the annual cost report in significantly less time than the allotted transition period.

6. Some firms already provide TCR

We understand that some firms have taken the initiative and already include total costs in their annual cost reports to their clients. As opposed to rewarding those firms that try to do the right thing on their own, delaying implementation risks rewarding recalcitrant firms. This would be inappropriate and would send the wrong message.

We also worry that those in the industry pushing for further delays may tarnish the reputation of firms that do the right thing. Simply put, it would not be fair to firms that already provide this information to delay implementation further.

Further delays would also fuel the perception that investor protection mechanisms often take years or decades to implement, whereas burden reduction initiatives seem to occur more quickly. While there are reasons that could explain this difference, the mere perception it occurs undermines public confidence in the system. As such, we believe there should be a high bar for justifying any further delays for the TCR Proposal.

F. CONCLUSION

No one likes to pay hidden costs. And no one, if they're being honest, would argue that keeping them hidden from consumers is somehow fair.

And yet, when it comes to investment funds and segregated funds, investors continue to wait for full cost transparency. Total cost reporting has been debated and considered for about two decades, but still eludes us today. The TCR Proposal finally brings this goal within reach. For that, we thank the CSA and CCIR for making it a priority within their investor protection mandates.

We urge the CSA and CCIR to stand firm on the proposed timelines for implementing TCR. We also call on the securities and insurance industries to fully commit to delivering on this for their clients – not because the rules require it, but because it's the right thing to do.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please note that we intend to make our submission public by posting it on our FAIR Canada website. Should you have questions or require further explanation of our views on these matters, please contact us at jp.bureaud@faircanada.ca or mauro.lagana@faircanada.ca.

Sincerely,

[redacted]

Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada