

M.O., 2019-09**Order number V-1.1-2019-09 of the Minister of Finance dated 11 December 2019**

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations

WHEREAS paragraphs 1, 3, 8, 9, 11, 26 and 34 of section 331.1 of the Securities Act (chapter V-1.1) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act provide that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (chapter R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section provide that every regulation made under section 331.1 must be approved, with or without amendments, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation;

WHEREAS the Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations was made by ministerial order 2009-04 dated September 9, 2009 (2009, *G.O.* 2, 3309A);

WHEREAS there is cause to amend this regulation;

WHEREAS the draft Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations was published in the *Bulletin de l'Autorité des marchés financiers*, vol. 15, no. 24 of June 21, 2018;

WHEREAS the revised text of the draft Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations was published in the *Bulletin de l'Autorité des marchés financiers*, vol. 16, no. 39 of October 3, 2019;

WHEREAS the *Autorité des marchés financiers* made, on November 18, 2019, by the decision no. 2019-PDG-0054, Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations;

WHEREAS there is cause to approve this regulation with amendments;

CONSEQUENTLY, the Minister of Finance approves with amendments the Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations appended hereto.

11 December 2019

ERIC GIRARD,
Minister of Finance

Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (8), (9), (11), (26) and (34))

1. Section 3.4 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10) is amended by deleting, in paragraph (1), the words “, including understanding the structure, features and risks of each security the individual recommends”.

2. Section 8.16 of the Regulation is amended by replacing subparagraph (iii) of subparagraph (b) of paragraph (3) with the following:

“(iii) in Alberta, section 10 or 11 of Alberta Securities Commission Rule 72-501 Distributions to Purchasers Outside Alberta.”.

3. Section 9.3 of the Regulation is amended:

(1) by inserting, in paragraph (1) and after subparagraph (j), the following:

“(j.1) section 13.3.1;”;

(2) by inserting, in paragraph (2) and after subparagraph (e), the following:

“(e.1) section 13.3.1;”.

4. Section 9.4 of the Regulation is amended:

(1) by inserting, in paragraph (1) and after subparagraph (i), the following:

“(i.1) section 13.3.1;”;

(2) by inserting, after paragraph (1.1), the following:

“(1.2) In Québec, the requirements listed in paragraphs (a) to (g), paragraphs (i) to (m) and paragraphs (p.1) to (x) of subsection (1) do not apply to a mutual fund dealer to the extent equivalent requirements to those listed in these subparagraphs are applicable to the mutual fund dealer under the regulations in Québec.

“(1.3) Despite subsections (1) and (2), in Québec, only the exemptions from the requirements specified in paragraphs (m.2), (m.3), (n), (n.1) and (n.2) of subsection (1) apply to a mutual fund dealer that is also registered as a mutual fund dealer in another jurisdiction if the mutual fund dealer complies with the corresponding MFDA provisions that are in effect.”;

(3) by inserting, in paragraph (2) and after subparagraph (c), the following:

“(c.1) section 13.3.1;”;

(4) by repealing paragraphs (3) and (4).

5. Section 11.1 of the Regulation is replaced with the following:

“11.1. Compliance system and training

(1) A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to

(a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and

(b) manage the risks associated with its business in accordance with prudent business practices.

(2) A registered firm must provide training to its registered individuals on compliance with securities legislation including, without limitation, the obligations under sections 13.2, 13.2.1, 13.3, 13.4 and 13.4.1.”.

6. Section 11.5 of the Regulation is amended, in paragraph (2):

(1) by inserting, in subparagraph (l) and after “13.2”, “, 13.2.1”;

(2) by inserting, in subparagraph (o) and after the word “compliance”, the word “, training”;

(3) by inserting, after subparagraph (o), the following:

“(p) demonstrate compliance with Part 13, Division 2;

“(q) document

(i) the firm’s sales practices, compensation arrangements and incentive practices, and

(ii) other compensation arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit;

“(r) demonstrate compliance with section 13.18.”.

7. The Regulation is amended by replacing the title of Division 1 of Part 13 with the following:

“DIVISION 1 Know your client, know your product and suitability determination”.

8. Section 13.2 of the Regulation is amended:

- (1) by replacing, in paragraph (1), “2(b)” with “(2)(b)”;
- (2) by replacing subparagraph (c) of paragraph (2) with the following:

“(c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 or, if applicable, the suitability requirement imposed by an SRO:

- (i) the client’s personal circumstances;
- (ii) the client’s financial circumstances;
- (iii) the client’s investment needs and objectives;
- (iv) the client’s investment knowledge;
- (v) the client’s risk profile;
- (vi) the client’s investment time horizon, and;”;

- (3) by inserting, after paragraph (3), the following:

“(3.1) Within a reasonable time after receiving the information, a registrant must take reasonable steps to have a client confirm the accuracy of the information collected under subsection (2).”;

- (4) by replacing paragraph (4) with the following:

“(4) A registrant must take reasonable steps to keep current the information required under this section, including updating the information within a reasonable time after the registrant becomes aware of a significant change in the client’s information required under this section.

“(4.1) A registrant must review the information collected under paragraph (2)(c)

- (a) for managed accounts, no less frequently than once every 12 months,
- (b) if the registrant is an exempt market dealer, within 12 months before making a trade for, or recommending a trade to, the client, and
- (c) in any other case, no less frequently than once every 36 months.”.

(5) by replacing paragraphs (6) and (7) with the following:

“(6) Paragraph (2)(b) does not apply to a registrant in respect of a client for which the registrant only trades securities referred to in paragraphs 7.1(2)(b) and (2)(c).

“(7) Paragraph (2)(c) and subsection (4.1) do not apply to a registered dealer in respect of a client if the registered dealer purchases or sells securities for the client only as directed by a registered adviser acting for the client.”.

9. The Regulation is amended by inserting, after section 13.2, the following:

“13.2.1. Know your product

(1) A registered firm must not make securities available to clients unless the firm has taken reasonable steps to:

(a) assess the relevant aspects of the securities, including the securities’ structure, features, risks, initial and ongoing costs and the impact of those costs,

(b) approve the securities to be made available to clients, and

(c) monitor the securities for significant changes.

(2) A registered individual must not purchase or sell securities for, or recommend securities to, a client unless the registered individual takes steps to understand the securities, including the securities’ structure, features, risks, initial and ongoing costs and the impact of those costs.

(2.1) For purposes of subsection (2), the steps required to understand the security are those that are reasonable to enable the registered individual to meet their obligations under section 13.3.

(3) A registered individual must not purchase securities for, or recommend securities to, a client unless the securities have been approved by the firm to be made available to clients.

(4) This section does not apply to a registered dealer in respect of a security if it purchases or sells the security for a client only as directed by a registered adviser acting for the client.”.

10. Section 13.3 of the Regulation is amended:

(1) by replacing paragraphs (1) and (2) with the following:

“(1) Before a registrant opens an account for a client, purchases, sells, deposits, exchanges or transfers securities for a client’s account, takes any other investment action for a client, makes a recommendation or exercises discretion to take any such action, the registrant must determine, on a reasonable basis, that the action satisfies the following criteria:

factors:

(a) the action is suitable for the client, based on the following

section 13.2;

(i) the client's information collected in accordance with

(ii) the registrant's assessment or understanding of the security consistent with section 13.2.1;

(iii) the impact of the action on the client's account, including the concentration of securities within the account and the liquidity of those securities;

(iv) the potential and actual impact of costs on the client's return on investment;

(v) a reasonable range of alternative actions available to the registrant through the registered firm, at the time the determination is made;

(b) the action puts the client's interest first.

“(2) A registrant must review a client's account and the securities in the client's account to determine whether the criteria in subsection (1) are met, and take reasonable steps, within a reasonable time, after any of the following events:

(a) a registered individual is designated as responsible for the client's account;

(b) the registrant becomes aware of a change in a security in the client's account that could result in the security or account not satisfying subsection (1);

(c) the registrant becomes aware of a change in the client's information collected in accordance with subsection 13.2(2) that could result in a security or the client's account not satisfying subsection (1);

(d) the registrant reviews the client's information in accordance with subsection 13.2(4.1).

“(2.1) Despite subsection (1), if a registrant receives an instruction from a client to take an action that, if taken, does not satisfy subsection (1), the registrant may carry out the client's instruction if the registrant has

(a) informed the client of the basis for the determination that the action will not satisfy subsection (1),

(b) recommended to the client an alternative action that satisfies subsection (1), and

(c) received recorded confirmation of the client's instruction to proceed with the action despite the determination referred to in paragraph (a).”;

- (2) by replacing paragraph (4) with the following:

“(4) This section does not apply to a registered dealer in respect of a client if it purchases or sells securities for the client only as directed by a registered adviser acting for the client.”.

11. The Regulation is amended by inserting, after section 13.3, the following:

“13.3.1. Waivers

(1) Paragraph 13.2(2)(c), subsection 13.2(4.1), and section 13.3 do not apply to a registrant in respect of a permitted client if

- (a) the client is not an individual, and
- (b) the client has requested, in writing, that the registrant not make suitability determinations for the client’s account.

(2) Paragraph 13.2(2)(c), subsection 13.2(4.1), and section 13.3 do not apply to a registrant in respect of a permitted client if

- (a) the client is an individual,
- (b) the client has requested, in writing, that the registrant not make suitability determinations for the client’s account, and
- (c) the client’s account is not a managed account.”.

12. Section 13.4 of the Regulation is replaced with the following:

“13.4. Identifying, addressing and disclosing material conflicts of interest – registered firm

(1) A registered firm must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable,

- (a) between the firm and the client, and
- (b) between each individual acting on the firm’s behalf and the client.

(2) A registered firm must address all material conflicts of interest between a client and itself, including each individual acting on its behalf, in the best interest of the client.

(3) A registered firm must avoid any material conflict of interest between a client and the firm, including each individual acting on its behalf, if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.

(4) A registered firm must disclose in writing all material conflicts of interest identified under subsection (1) to a client whose interests are affected by the conflicts of interest if a reasonable client would expect to be informed of those conflicts of interest.

(5) Without limiting subsection (4), the information required to be delivered to a client under that subsection must include a description of each of the following:

- (a) the nature and extent of the conflict of interest;
- (b) the potential impact on and risk that the conflict of interest could pose to the client;
- (c) how the conflict of interest has been, or will be, addressed.

(6) The disclosure required under subsection (4) must be presented in a manner that, to a reasonable person, is prominent, specific, and written in plain language.

(7) A registered firm must disclose a conflict of interest to a client under subsection (4)

- (a) before opening an account for the client if the conflict has been identified at that time, or
- (b) in a timely manner, upon identification of a conflict that must be disclosed under subsection (4) that has not previously been disclosed to the client.

(8) For greater certainty, a registrant does not satisfy subsection (2) or subsection 13.4.1(3) solely by providing disclosure to the client.”

13. The Regulation is amended by inserting, after section 13.4, the following:

“13.4.1. Identifying, reporting and addressing material conflicts of interest – registered individual

(1) A registered individual must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the registered individual and the client.

(2) If a registered individual identifies a material conflict of interest under subsection (1), the registered individual must promptly report that conflict of interest to the registered individual’s sponsoring firm.

(3) A registered individual must address all material conflicts of interest between the client and the individual in the best interest of the client.

(4) A registered individual must avoid any material conflict of interest between a client and the registered individual if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.

(5) A registered individual must not engage in any trading or advising activity in connection with a material conflict of interest identified by the registered individual under subsection (1) unless

- (a) the conflict has been addressed in the best interest of the client, and
- (b) the registered individual's sponsoring firm has given the registered individual its consent to proceed with the activity.

“13.4.2. Investment fund managers

Sections 13.4 and 13.4.1 do not apply to an investment fund manager in respect of an investment fund that is subject to Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43).”.

14. Section 13.7 of the Regulation is amended:

(1) by replacing the definition of the expression “referral arrangement” with the following:

““referral arrangement” means any arrangement in which a registrant agrees to provide or receive a referral fee to or from another person;”;

(2) by replacing the definition of the expression “referral fee” with the following:

““referral fee” means any benefit provided for the referral of a client to or from a registrant.”.

15. Section 13.8 of the Regulation is amended by replacing, in paragraph (c), the word “registrant” with the words “registered firm”.

16. The Regulation is amended by replacing the title of Division 4 of Part 13 with the following:

“DIVISION 4 Borrowing and lending”.

17. Section 13.12 of the Regulation is replaced with the following:

“13.12. Restriction on borrowing from, or lending to, clients

(1) A registrant must not lend money, extend credit or provide margin to a client unless any of the following apply:

- (a) in the case of a loan, the registrant is an investment fund manager, and the money is loaned on a short-term basis to an investment fund it manages, if the loan is for the purpose of funding redemptions of the investment fund's securities or paying expenses incurred by the investment fund in the normal course of its business;

- (b) in the case of a registrant that is a registered firm, the client is
 - (i) a registered individual sponsored by the firm,
 - (ii) a permitted individual, as defined in Regulation 33-109 respecting Registration Information (chapter V-1.1, r. 12), of the firm, or
 - (iii) a director, officer, or employee of the firm;
- (c) in the case of a registrant that is a registered individual, both of the following apply:
 - (i) the client and the registered individual are related to each other for the purposes of the Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.));
 - (ii) the registered individual has obtained the written approval of the registered individual's sponsoring firm to lend the money, extend the credit or provide the margin.

(2) A registered individual must not borrow money, securities or other assets or accept a guarantee in relation to borrowed money, securities or any other assets, from a client, unless either or both of the following apply:

- (a) the client is a financial institution whose business includes lending money to the public, and the loan to the registered individual is in the normal course of the financial institution's business;
- (b) both of the following apply:
 - (i) the client and the registered individual are related to each other for the purposes of the Income Tax Act (Canada);
 - (ii) the registered individual has obtained the written approval of the individual's sponsoring firm to borrow the money, securities or other assets or accept the guarantee."

18. Section 13.17 of the Regulation is amended, in paragraph (1):

(1) by deleting, in the text preceding subparagraph (a), the word "requirements";

(2) by replacing subparagraph (a) with the following:

"(a) Division 2 of Part 13, except section 13.5 and section 13.6;".

19. The Regulation is amended by inserting, after section 13.17, the following:

“DIVISION 7 Misleading communications**“13.18. Misleading communications**

(1) Registered individuals must not hold themselves out, and a registered firm must not hold itself or its registered individuals out, in a manner that could reasonably be expected to deceive or mislead any person as to any of the following matters:

(a) the proficiency, experience, qualifications or category of registration of the registrant;

(b) the nature of the person’s relationship, or potential relationship, with the registrant;

(c) the products or services provided, or to be provided, by the registrant.

(2) For greater certainty, and without limiting subsection (1), a registered individual who interacts with clients must not use any of the following:

(a) if based partly or entirely on that registered individual’s sales activity or revenue generation, a title, designation, award, or recognition;

(b) a corporate officer title, unless their sponsoring firm has appointed that registered individual to that corporate office pursuant to applicable corporate law;

(c) if the individual’s sponsoring firm has not approved the use by that registered individual of a title or designation, that title or designation.”.

20. The title of section 14.1.1 of the Regulation is replaced with the following:

“14.1.1. Duty to provide information – investment fund managers”.

21. Section 14.2 of the Regulation is amended:

(1) by inserting, before paragraph (1), the following:

“(0.1) In this section, “proprietary product” means a security of an issuer if one or more of the following apply:

(a) the issuer of the security is a connected issuer of the registered firm;

(b) the issuer of the security is a related issuer of the registered firm;

(c) the registered firm or an affiliate of the registered firm is the investment fund manager or portfolio manager of the issuer of the security.”;

(2) in paragraph (2):

(a) by replacing subparagraph (b) with the following:

“(b) a general description of the products and services the registered firm will offer to the client, including

(i) a description of the restrictions on the client’s ability to liquidate or resell a security, and

(ii) a statement of the investment fund management expense fees or other ongoing fees the client may incur in connection with a security or service the registered firm provides;

“(b.1) a general description of any limits on the products and services the registered firm will offer to the client, including

(i) whether the firm will primarily or exclusively offer proprietary products to the client, and

(ii) whether there will be other limits on the availability of products or services;”;

(b) by replacing subparagraph (h) with the following:

“(h) a general description of any benefits received, or expected to be received, by the registrant, from a person other than the registrant’s client, in connection with the client’s purchase or ownership of a security through the registrant;”;

(c) by replacing subparagraph (k) with the following:

“(k) a statement that the registered firm must determine that any investment action it takes, recommends or decides on, for the client is suitable for the client and puts the client’s interest first;”;

(d) by replacing, in subparagraph (l), the words “a registered firm must collect” with the words “the registered firm has collected”;

(e) by inserting, after subparagraph (n), the following:

“(o) a general explanation of the potential impact on a client’s investment returns from each of the fees described in subparagraph (b)(ii) and the charges described in paragraphs (f) and (g), including the effect of compounding over time.”.

22. Section 14.2.1 of the Regulation is amended by adding, in paragraph (1) and after subparagraph (c), the following, and making the necessary changes:

“(d) whether there are any investment fund management expense fees or other ongoing fees that the client may incur in connection with the security.”.

23. Section 14.5.3 of the Regulation is amended by replacing, in the French text of paragraph (b), the words “le client ou le fonds d’investissement” with the words “les clients ou les fonds d’investissement”.

24. Appendix G of the Regulation is amended:

(1) by replacing, in the row relating to section 13.3, “section 13.3 [*suitability*]” with “section 13.3 [*suitability determination*]”;

(2) by inserting, after the row relating to section 13.3, the following:

“

section 13.3.1 [<i>waivers</i>]	<ol style="list-style-type: none"> 1. Dealer Member Rule 1300.1(o) [<i>Business Conduct</i>]; 2. Dealer Member Rule 1300.1(p) [<i>Suitability determination required when accepting order</i>]; 3. Dealer Member Rule 1300.1(q) [<i>Suitability determination required when recommendation provided</i>]; 4. Dealer Member Rule 1300.1(r) [<i>Suitability determination required for account positions held when certain events occur</i>]; 5. Dealer Member Rule 1300.1(s) [<i>Suitability of investments in client accounts</i>]; 6. Dealer Member Rule 1300.1(t) – (v) [<i>Exemptions from the suitability assessment requirements</i>]; 7. Dealer Member Rule 1300.1(w) [<i>Corporation approval</i>]; 8. Dealer Member Rule 2700, Part I [<i>Customer Suitability</i>]; and 9. Dealer Member Rule 3200 [<i>Minimum requirements for Dealer Members seeking approval under Rule 1300.1(t) to offer an order-execution only service</i>]
-----------------------------------	--

”;

(3) by replacing the row relating to section 13.12 with the following:

“

section 13.12 [<i>restriction on borrowing from, or lending to, clients</i>]	<ol style="list-style-type: none"> 1. Dealer Member Rule 17.11; and 2. Dealer Member Rule 100 [<i>Margin Requirements</i>]
--	--

”;

(4) by replacing, in the second column of the row relating to section 14.5.2, the first provision with the following:

“1. Dealer Member Rule 17.2A [*Establishment and maintenance of adequate internal controls in accordance with Dealer Member Rule 2600*];”.

25. Appendix H of the Regulation is amended:

(1) by replacing, in the row relating to section 13.3, “section 13.3 [*suitability*]” with “section 13.3 [*suitability determination*]”;

(2) by inserting, after the row relating to section 13.3, the following:

“

section 13.3.1 [<i>waivers</i>]	1. Rule 2.2.1 [<i>“Know-Your-Client”</i>]; and 2. Policy No. 2 [<i>Minimum Standards for Account Supervision</i>]
-----------------------------------	--

”;

(3) by replacing the row relating to section 13.12 with the following:

“

section 13.12 [<i>restriction on borrowing from, or lending to, clients</i>]	1. Rule 3.2.1 [<i>Client Lending and Margin</i>]; and 2. Rule 3.2.3 [<i>Advancing Mutual Fund Redemption Proceeds</i>]
--	--

”.

26. (1) Paragraphs 4(2) and (4) of this Regulation come into force on December 31, 2019.

(2) The following sections of this Regulation come into force on December 31, 2020:

(a) sections 12 to 18;

(b) sections 20 to 23.

(3) Paragraphs 4(1) and (3) and all of the remaining sections of this Regulation come into force on December 31, 2021.