

M.O., 2023-17

Order number V-1.1-2023-17 of the Minister of Finance dated 3 November 2023

Securities Act
(chapter V-1.1, s. 331.1, par. (1), (3), (8), (9), (20),
(26) and (34))

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

WHEREAS paragraphs 1, 3, 8, 9, 20, 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 amendment, 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 approved by ministerial order no. 2009-04 dated 9 September 2009 (2009, G.O. II, 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 for consultation in the *Bulletin de l'Autorité des marchés financiers*, vol. 19, no. 16 of 28 April 2022;

WHEREAS the *Autorité des marchés financiers* made, on 11 October 2023, by the decision no. 2023-PDG-0049, Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations;

WHEREAS S there is cause to approve this Regulation without amendment;

CONSEQUENTLY, the Minister of Finance approves without amendment the Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations appended hereto.

3 November 2023

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), (20), (26) and (34))

1. Section 1.1 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (chapter V-1.1, r. 10) is amended:

(1) by inserting, after the definition of the expression “designated rating organization”, the following:

““direct investment fund charge” means an amount charged to a client if the client buys, holds, sells or switches securities of an investment fund, including any federal, provincial or territorial sales taxes paid on that amount, other than, for greater certainty, an amount included in the investment fund’s fund expenses;”;

(2) by inserting, after the definition of the expression “foreign custodian”, the following:

““fund expense ratio” means the sum of an investment fund’s management expense ratio and trading expense ratio, expressed as a percentage;”;

(3) by inserting, after the definition of the expression “managed account”, the following:

““management expense ratio” has the same meaning as in section 1.1 of Regulation 81-106 respecting Investment Fund Continuous Disclosure (chapter V-1.1, r. 42);”;

(4) by inserting, after the definition of the expression “mutual fund dealer”, the following:

““newly-established investment fund” means,

(a) for an investment fund required to file a management report of fund performance, as defined in section 1.1 of Regulation 81-106 respecting Investment Fund Continuous Disclosure, a fund that has not yet filed that report, or

(b) for an investment fund not referred to in paragraph (a), a fund established less than 12 months before the end of the period covered by the statement or report that is required to be delivered by the registered dealer or registered adviser under section 14.17;”;

(5) by inserting, after the definition of the expression “total percentage return”, the following:

“trading expense ratio” means the ratio, expressed as a percentage, of the total commissions and other portfolio transaction costs incurred by an investment fund to its average net asset value, calculated in accordance with paragraph 12 of item 3 of Part B of Form 81-106F1 of Regulation 81-106 respecting Investment Fund Continuous Disclosure;”.

2. Section 14.1.1 of the Regulation is replaced by the following:

“14.1.1. Duty to provide information – investment fund managers

A registered investment fund manager of an investment fund must, within a reasonable period of time, provide a registered dealer or a registered adviser that has a client that owns securities of the investment fund with the information that is required by the dealer or adviser, in order for the dealer or adviser to comply with paragraph 14.12(1)(c), subsections 14.14(4) and (5), 14.14.1(2) and 14.14.2(1) and paragraphs 14.17(1)(h), (i), (j), (m), (p), (q), (r) and (t).”.

3. The Regulation is amended by inserting, after section 14.1.1, the following:

“14.1.2. Determination of fund expenses per security

(1) For the purpose of section 14.1.1, with respect to the information required in respect of paragraph 14.17(1)(i), the registered investment fund manager must provide the fund expenses per security of the applicable class or series of securities of the investment fund for each day that the client owned those securities, expressed in dollars and calculated using the following formula, making any adjustments to A or B that are reasonably necessary to accurately determine C:

$A \times B = C$, where

A = the fund expense ratio for the day of the applicable class or series of securities of the investment fund;

B = the market value of a security for the day of the applicable class or series of securities of the investment fund;

C = the fund expenses per security for the day in dollars for the investment fund class or series of securities.

(2) Despite section 14.1.1 and subsection (1), unless the investment fund manager reasonably believes that doing so would result in misleading information being reported to clients of the registered dealer or registered adviser, a registered investment fund manager may

(a) use a reasonable approximation of A or B for the purpose of calculating C in the formula in subsection (1), or

(b) provide a reasonable approximation of the information required to be provided for the purpose of paragraphs 14.17(1)(i), (j) or (m).

(3) Despite section 14.1.1 and subsections (1) and (2), in the case of an investment fund that is a newly-established investment fund, the registered investment fund manager is not required to provide the information required under paragraphs 14.17(1)(i), (m) and (r).”.

4. Section 14.17 of the Regulation is amended:

(1) by adding, in paragraph (1) and after subparagraph (h), the following:

“(i) the total amount of fund expenses charged to the investment fund by its investment fund manager or any other party, after making the necessary adjustments to add performance fees and deduct fee waivers, rebates or absorptions, in relation to securities of investment funds owned by the client during the period covered by the report, excluding any charges included in the amounts under paragraph (c) or (f);

“(j) the total amount of direct investment fund charges charged to the client by an investment fund, investment fund manager or any other party, in relation to securities of investment funds owned by the client during the period covered by the report, excluding any charges included in the amounts referred to in paragraph (c) or (f);

“(k) the total amount of the fund expenses reported under paragraph (i) and the direct investment fund charges reported under paragraph (j);

“(l) the total amount of the registered firm’s charges reported under paragraph (d) and the investment fund expenses and charges reported under paragraph (k);

“(m) the fund expense ratio of each class or series of securities of each investment fund owned by the client during the period covered by the report, including any performance fees and deducting any fee waivers, rebates or absorptions;

“(n) if the client owned investment fund securities during the period covered by the report,

(i) the following notification or a notification that is substantially similar, in relation to the total amount of fund expenses reported:

“Fund expenses are made up of the management fee (which includes trailing commissions paid to us), 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 estimated total dollar amount you paid in fund 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.”, and;

(ii) the following notification or a notification that is substantially similar, in relation to the fund expense ratios required to be reported under paragraph (m):

“Please refer to the prospectus or fund facts document of each investment fund for more detailed information about fund expenses and fund performance.

“Please refer to your latest account statement for more information about the market value and the number of securities of the investment funds you currently own.”;

“(o) the following notification or a notification that is substantially similar:

“What can you do with this information? Take action by contacting your advisor to discuss the fees you pay, the impact those fees have on the long-term performance of your portfolio and the value you receive in return. If you are a self-directed investor, consider how fees impact the long-term performance of your portfolio, and possible ways to reduce those costs.”;

“(p) if the client owned investment fund securities during the period covered by the report and any deferred sales charges were paid by the client, the following notification or a notification that is substantially similar:

“You paid this cost because you redeemed your units or shares of a fund purchased under a deferred sales charge (DSC) option 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 made available at the time of purchase. The redemption fee was deducted from the redemption amount you received.”;

“(q) if the client owned investment fund securities during the period covered by the report and direct investment fund charges, other than deferred sales charges, were charged to the client, a short explanation of the type of fees that were charged;

“(r) if information reported under paragraph (i), (j) or (m) is based on an approximation or any other assumption, a notification that this is the case;

“(s) if any structured product, labour sponsored investment fund or investment fund the securities of which are distributed solely under an exemption from the prospectus requirement was owned by the client during the period covered by the report, the following notification or a notification that is substantially similar:

“Please note that other products you may own or may have owned during the reporting period, such as exempt-market investment funds, labour-sponsored investment funds or structured products, may have embedded fees that are not reported here. You can contact us for more information.”;

“(t) if the securities of an investment fund were owned by the client during the period covered by the report, the manager of the investment fund is incorporated, continued or organized under the laws of a foreign jurisdiction, and the information reported for those securities under paragraphs (i), (j) or (m) is based on information disclosed under the laws of a foreign jurisdiction, the following notification or a notification that is substantially similar:

“This report includes information about the fund expenses and fund expense ratio of foreign investment funds. Please note that this information may not be directly comparable to equivalent information for Canadian investment funds, that may include different types of fees.”;

“(u) if the registered firm knows or has reason to believe that the client paid, to third parties, custodial fees, intermediary fees or interest charges related to securities owned by the client during the period covered by the report and those fees or charges are not required to be reported to the client by a registrant under this section, the following notification or a notification that is substantially similar:

“The costs in this report may not include any fees you pay directly to third parties, including custodial fees, intermediary fees or interest charges that may be deducted from your account. You can contact those service providers for more information.”;

(2) by adding, after paragraph (5), the following:

“(6) The total amount of fund expenses referred to in paragraph (1)(i) must be determined by adding together the daily fund expenses for each class or series of securities of each investment fund owned by the client for each day that the client owned it during the reporting period, using the following formula to calculate the daily fund expenses:

$A \times B = C$, where

A = the fund expenses per security for the day of the applicable class or series of securities of an investment fund calculated in dollars using the formula in subsection 14.1.2(1);

B = the number of securities owned by the client for that day;

C = the daily fund expenses in dollars for a class or series of securities of an investment fund.

“(7) Despite paragraphs (1)(i), (m), and (r), a registered firm may exclude the information required to be reported for an investment fund under those paragraphs if the fund is a newly-established investment fund and the following notification or a notification that is substantially similar is included:

“The total amount of fund expenses reported may not include cost information for newly-established investment funds.”.

“(8) Despite paragraphs (1)(i), (j) and (m), if a reasonable approximation was provided by an investment fund manager under subsection 14.1.2(2), or if the registered firm obtained or determined a reasonable approximation under paragraph 14.17.1(2)(a), the firm may report a reasonable approximation of the information required to be reported under paragraphs (1) (i), (j) and (m).

“(9) For the purposes of paragraphs (1)(i), (j), (m), (n), (p), (q), (r) and (u), subsections (6), (7) and 14.1.2(3) and section 14.17.1, an investment fund does not include:

- (a) a labour sponsored investment fund, or
- (b) an investment fund whose securities are distributed solely under an exemption from the prospectus requirement.”.

5. The Regulation is amended by inserting, after section 14.17, the following:

“14.17.1. Reporting of fund expenses and direct investment fund charges

(1) Subject to subsection (2), for the purposes of paragraphs 14.17(1)(i), (j), (m), (p), (q), (r) and (t), the information required to be delivered to clients by a registered dealer or registered adviser must be based on the information provided under section 14.1.1.

(2) 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, that firm must

(a) make reasonable efforts to obtain or determine the information referred to in subsection (1), or obtain or determine a reasonable approximation of that information, by other means, and

(b) subject to subsection (3), rely on the information obtained or determined under paragraph (a).

(3) If the registered firm reasonably believes it cannot obtain or determine information under paragraph (2)(a) that is not misleading, that firm must exclude the information from the calculation of the amount of fund expenses or 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 that the information is excluded or not reported, as the case may be, in the relevant statement or report.”.

6. (1) This Regulation comes into force on 1 January 2026.

(2) In Saskatchewan, despite paragraph (1), if this Regulation is filed with the Registrar of Regulations after 1 January 1 2026, this Regulation comes into force on the day on which it is filed with the Registrar of Regulations.