

ASC Registrant Regulatory Update



Registrant Oversight Staff
Calgary, Alberta
June 23 and 25, 2014

Jamie Hood, Manager, Registrant Oversight

Nicole Smith, Regulatory Analyst, Registrant Oversight

Introduction

CRM2: 2014 Requirements and FAQs

Late Filings

KYC, KYP and Suitability Obligations

Dispute Resolution Services

Questions

Client Relationship Model Phase 2 (CRM2): 2014 Requirements

CSA Staff Notice 31-337

Cost Disclosure, Performance Reporting and Client Statements: FAQ and Additional Guidance



Nicole Smith, Regulatory Analyst
Calgary, Alberta
June 23 and 25, 2014

CSA Staff Notice 31-337 Cost Disclosure, Performance Reporting and Client Statements: FAQ and Additional Guidance

- Published February 27, 2014
 - Contains a compilation of frequently asked questions and answers
 - Contains guidance for the implementation of CRM2
-

- Applicable to all dealers and advisers, with some application to investment fund managers

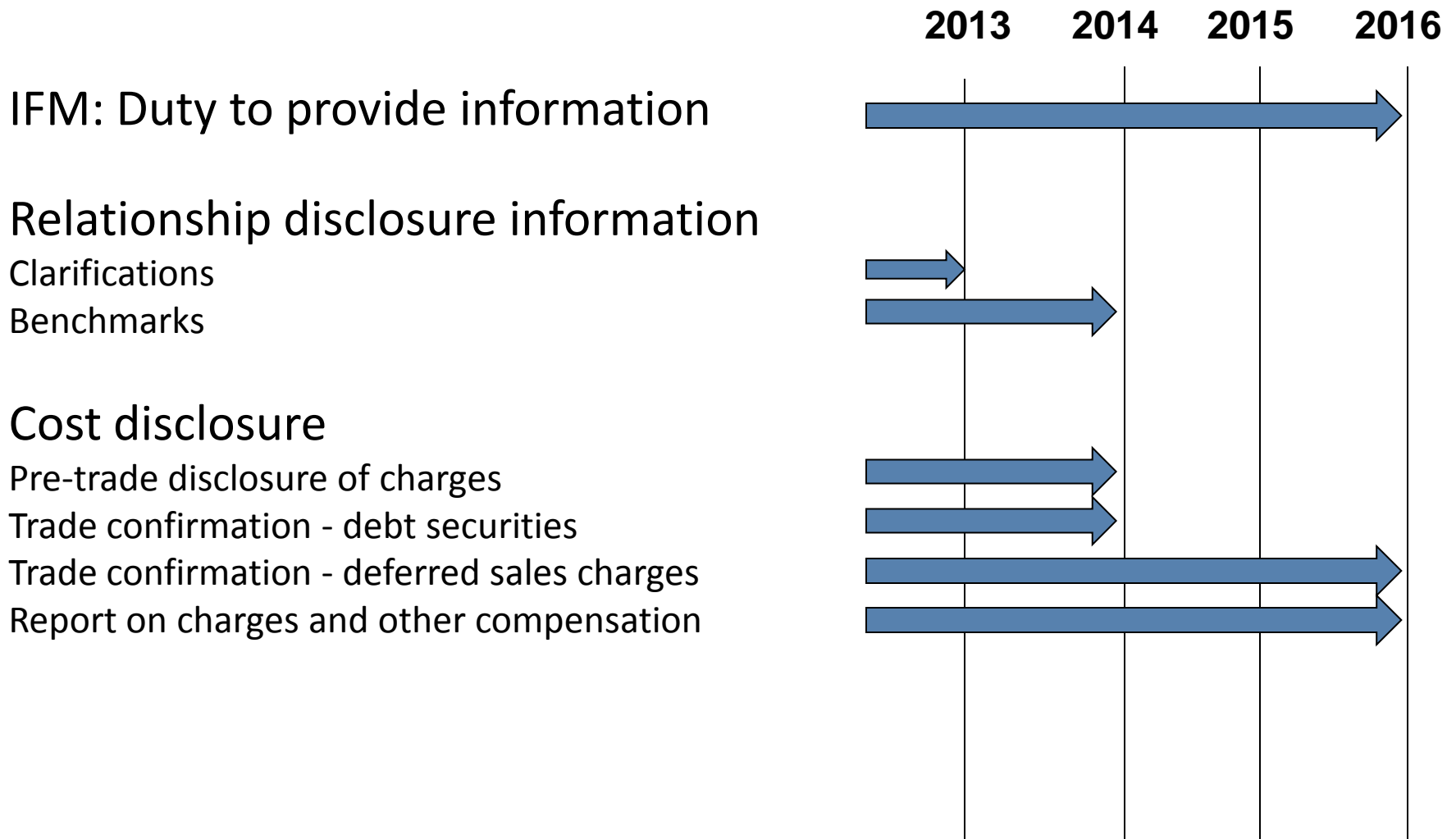
 - Limited application to many exempt market client relationships, where:
 - No securities are held by the dealer
 - Client relationship is not ongoing
 - Dealer may not be in a position to know whether the client still owns securities
 - No reliable market value for exempt market securities can be determined
-

Some examples of ongoing relationships:

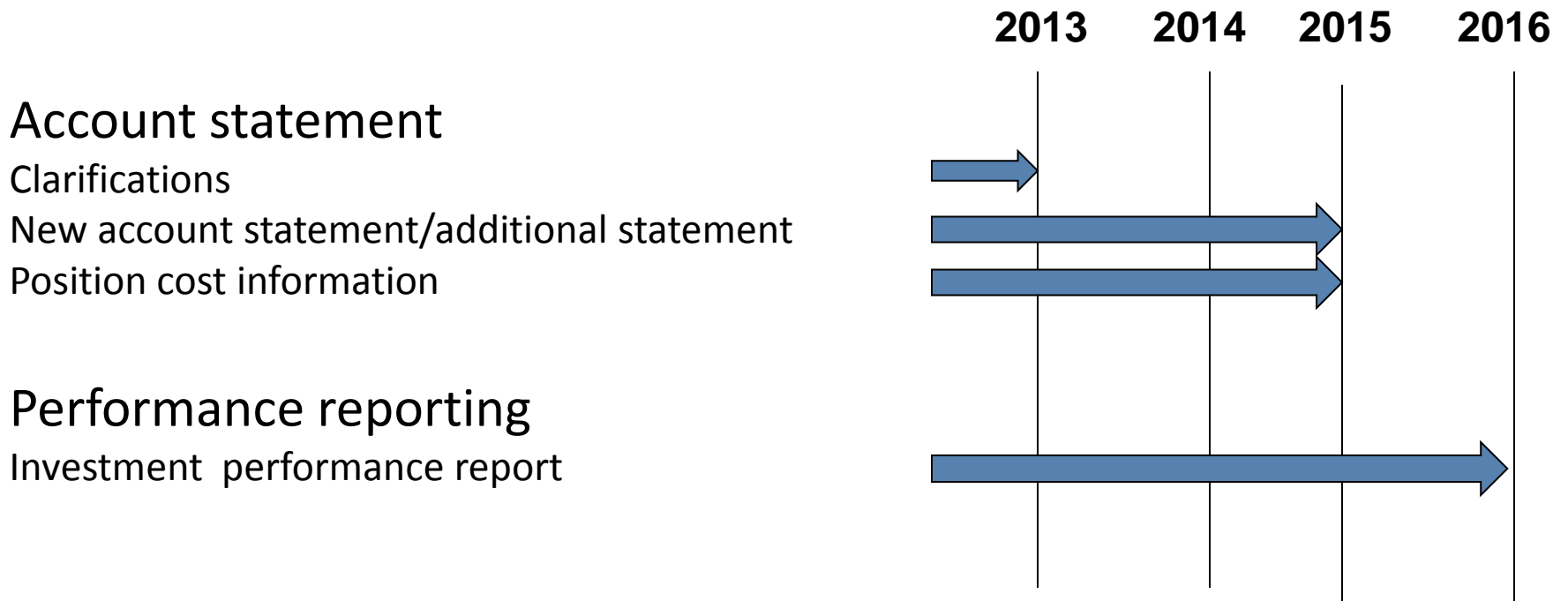
- EMD has a related issuer and is in the position to obtain information as to whether the client still holds the security
 - EMD receives any continuing payment related to the transaction
 - Continuing transactions with the client
-

- Email to CCOs sent March 7, 2014
 - “Planning Tips for the Implementing the CRM2 Amendments”
 - Contains a summary of the changes that come into effect in each of the next 3 years
-

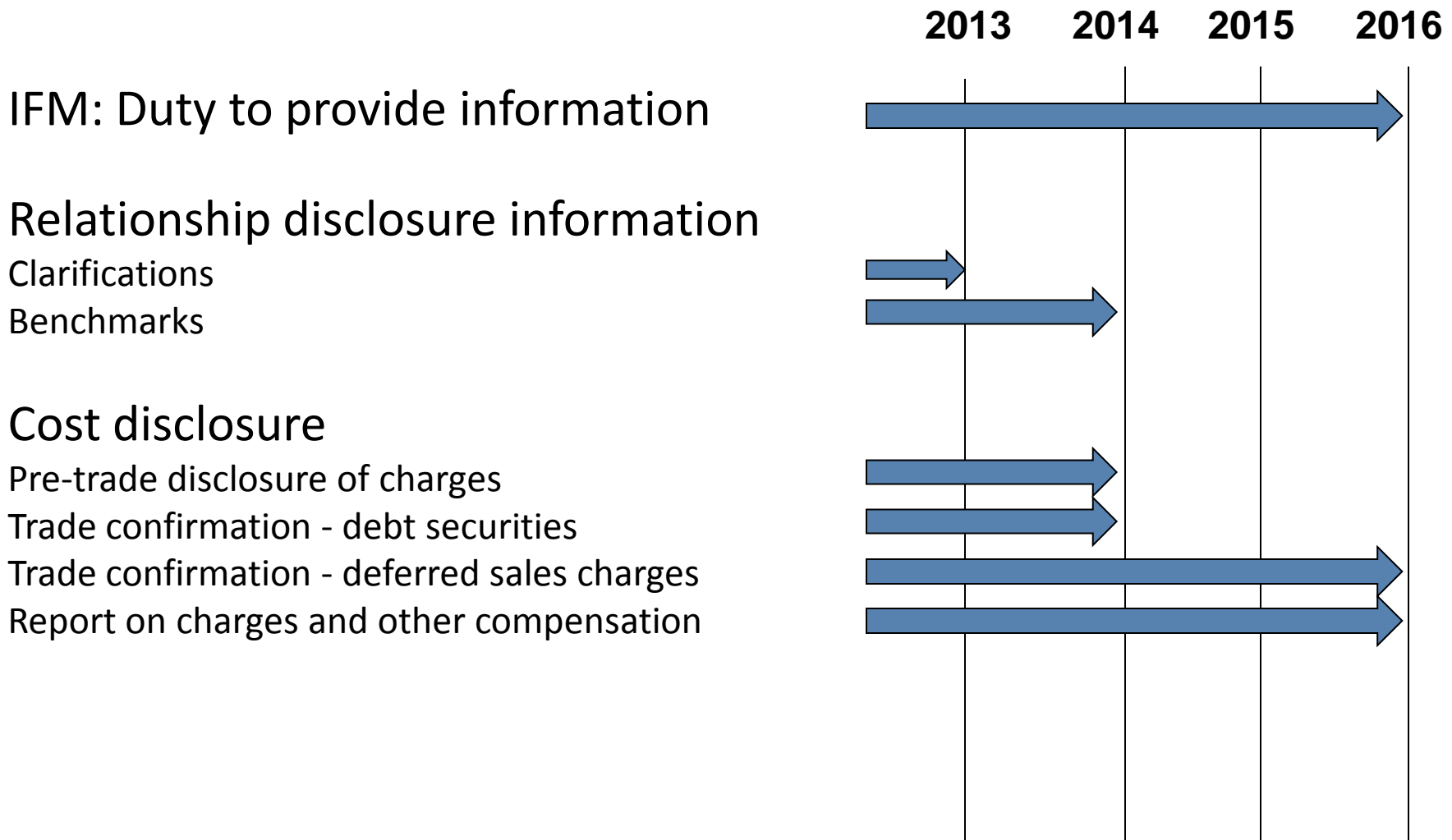
CRM2 Transition Period



CRM2 Transition Period



CRM2 Transition Period



- Investment performance benchmarks
 - Must provide explanation of benchmarks and options available to clients in RDI
 - Firms using benchmarks are also required to disclose specific information about the benchmarks that they use
 - Guidance on the use of benchmarks has been added to the Companion Policy to NI 31-103

14.2(2)(m) Relationship Disclosure Information

- Cost disclosure: Pre-trade disclosure of charges
 - Prior to the transaction, must provide disclosure of the charges a client will have to pay or a reasonable estimate
- Carve-outs: for permitted clients that are not individuals, for dealers trading as directed by an adviser, and for managed accounts

14.2.1 Pre-trade disclosure of charges

- Cost disclosure: Pre-trade disclosure of charges
 - Example: For mutual fund transactions, the following information should be explained to the client:
 - The management fee
 - The sales charges or deferred sales charges and other redemption fees or short term trading fees
 - Trailing commission or other embedded fees
 - Any options regarding front end loads
 - Switch or change fees
-

- Cost disclosure: Debt securities
 - Two new requirements:
 - (1) Security's annual yield (purchases only)
 - (2) Compensation from debt securities:
 - Total \$ amount of compensation; and
 - Total \$ amount of any commission paid to the firm, plus a general notification (mark- up/mark-down, service charge)

14.12 Content and delivery of trade confirmation

- Consider the following when planning the implementation of the CRM2 requirements:
 - Developing and implementing system changes
 - Updating policies and procedures
 - Training Staff
 - Communications with clients about the new information
-

Question:

- If a firm does not use benchmarks, do they need to include this information in RDI?

Answer:

- Regardless of whether a firm uses benchmarks, all firms are required to provide a general explanation of benchmarks in their RDI
 - For example, a firm should disclose general information about benchmarks and, if the firm uses specific benchmarks, it should explain the relationship to individual investment performance
-

Question:

- Do EMDs have the same statement and annual report obligations under CRM2 amendments as advisers and other dealers?

Answer:

- CRM2 Amendments do not distinguish between categories of registered advisers and dealers
 - Firms must review all of the requirements
 - EMDs must consider the totality of their dealings with clients and the client's expectations of the firm
-

Answer- continued

Items to consider:

- Are there expected to be continuing transactions with the client?
- Is the client expecting ongoing services from the firm?
- Is the firm engaged in a different capacity, for example, as a registered adviser managing the client's other investments?

These factors are not exhaustive and must be considered in relation to the firm's business model

Questions



Late Filings



Jamie Hood, Manager, Registrant Oversight
Calgary, Alberta
June 23 and 25, 2014

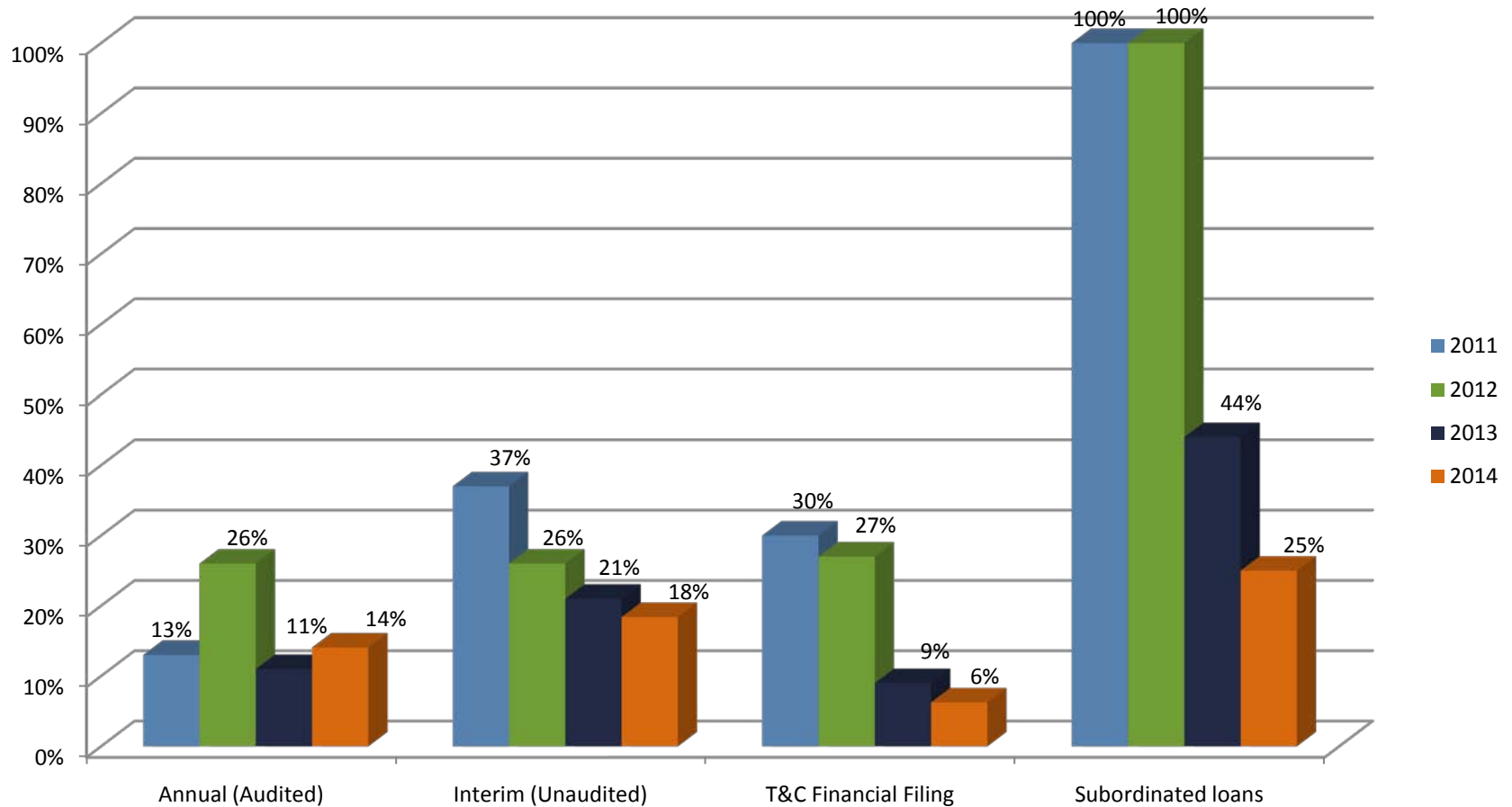
- The Fee Schedule attached to the *Securities Regulation* (AR 115/95) has been amended effective August 1, 2014
 - Rationale for the charging of late fees
 - Financial impact and effective date of late fees
-

- The late fees related to the following submissions:
 - a subordination agreement delivered under NI 31-103
 - interim financial information and annual financial statements and information under NI 31-103
 - an exempt distribution filing under NI 45-106 or
 - any document required to be filed pursuant to terms and conditions imposed on registration or an undertaking
-

Filing Deadlines

Filing Type	Due Date
Annual Filings	90 days after the end of the reporting date
Interim Filings	30 days after the end of the reporting date
Subordinated Loans – New	On or before the date when the firm wishes to rely on the subordinated amount
Subordinated Loans – Repayment	10 days prior to repayment

Percentage of Late Filings by Type and Year



- Late fees: \$100 per day to a maximum of \$5,000 in a calendar year
 - British Columbia and Ontario implemented late fees 10 years ago
 - Amendment becomes effective on August 1, 2014
-

- Review and update your policies and procedures
 - Set calendar reminders as necessary
 - Review subordinated loan filing requirements
 - Email to all CCO sent March 28, 2014 regarding requirements
 - Call a Regulatory Analyst to discuss any specific questions
-

Questions



CSA Staff Notice 31-336

Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations



Jamie Hood, Manager, Registrant Oversight
Calgary, Alberta
June 23 and June 25, 2014

- CSA Staff Notice 31-336 published January 2014
 - Compliance reviews demonstrated need for additional guidance
 - Conduct involving failure to comply with these obligations is a serious matter
 - Activities related to these obligations is a key focus of compliance reviews
-

Importance of KYC, KYP and Suitability

- Among the most fundamental obligations owed to clients
- Cornerstones of our investor protection regime
- Suitability obligation requires a registrant to:

Know the client

Know the
product being
recommended

Form an opinion as to whether the
product is suitable based on a
client's investment needs and
objectives

- Guidance representing our expectations of registrants
 - Brief summary of the applicable securities law
 - Best practices
 - Unacceptable practices
 - Examples of recent decisions
-

- KYC, KYP and suitability requirements are basic obligations of a registrant
 - Expectation that market participants will comply not only with the letter of the law but also with the spirit of the requirements
 - These obligations are extensions of each registrant's duty of care: see Section 75.2 of Securities Act (*Alberta*)
 - Failure to adequately know your client may lead to a distribution in breach of a prospectus exemption
 - Adequate documentation of the suitability process (including KYC) is critical
-

- Take reasonable steps to establish the identity of a client and to ensure they have sufficient information to meet their suitability obligation
 - Section 13.2 of the Companion Policy to NI 31-103 states:
“KYC information forms the basis for determining whether trades in securities are suitable for investors. This helps protect the client, the registrant and the integrity of the capital markets. The KYC obligation requires registrants to take reasonable steps to obtain and periodically update information about their clients.”
-

What KYC information is required?

- Registrants must take reasonable steps to ensure that they have sufficient information about their clients:

Investment needs and objectives, including time horizon

Financial circumstances, including net worth, income, current investment holdings and employment status

Risk tolerance for various types of securities and investment portfolios

What KYC information is required?

- The extent of KYC information that a registrant needs to determine suitability of trade will depend on:

The client's circumstances

The type of security

The client's relationship to
the registrant

Registrant's business model

When does the KYC obligation apply?

- A registrant must have current KYC information whenever a suitability determination is required.
- A registrant is required to make a suitability determination before a registrant:

Makes a
recommendation to buy
or sell a security

Purchases or sells a
security for a client's
managed account

KYC Information should be updated:

- whenever there is a suitability determination
- when there is a change in the client's circumstances
 - at least annually

Both the client and the registrant should review the KYC information and the client should sign and date the information

Determine whether investors are Accredited or Eligible

- Understand the different categories of investor as well as the definitions and conditions outlined in NI 45-106

Best Practices:

Develop a KYC form that has sufficient information to determine if the client is accredited or eligible

Obtain a breakdown of the client's financial and net assets

Establish policies and procedures and training for dealing and advising reps

Determine whether investors are Accredited or Eligible

Unacceptable Practices:

Solely relying on
investors
representation
without obtaining
KYC information

Relying on another
person to
determine that the
client qualifies for
the exemption

Process prospectus
exempt trades
without complete
KYC

How should registrants collect and document KYC information?

- Compliance reviews continue to identify inadequate collection and documentation KYC information

Best Practices:

Engage in
meaningful
discussions with
clients

Develop an
“investor friendly”
KYC form

Consider a client’s
willingness and
ability to accept
risk

How should registrants collect and document KYC information?

Unacceptable Practices:

Using a “tick box” approach or relying solely on the KYC form

Processing a trade if there is missing or conflicting KYC information

Delegating the KYC or suitability obligation to an unregistered individual

- Conduct a thorough review of your practices
 - Implement improvements where necessary
 - Update your Policies and Procedures Manual
 - Take the opportunity to further educate representatives
 - Be prepared for a compliance review focused on these areas
-

Questions



CSA Staff Notice 31-338

Guidance on Dispute Resolution Services- Client Disclosure for Registered Dealers and Advisers that are not members of a Self-Regulatory Organization



Nicole Smith, Regulatory Analyst
Calgary, Alberta
June 23 and 25, 2014

- Published May 1, 2014
 - Amendments to NI 31-103
 - Relates to provision of independent dispute resolution or mediation services to clients of all registered dealers and registered advisers
-

- A firm must take reasonable steps to ensure that the Ombudsman for Banking Services and Investments (OBSI) will be the independent dispute resolution or mediation service made available to clients that have an eligible complaint
 - Must provide this information to clients in writing
 - Notice sets out steps a client must take to be able to use OBSI
 - Does not apply to IFMs or in Quebec
-

- Transition period to join OBSI ends on August 1, 2014
 - All registered dealers and advisers must join and maintain ongoing membership as a “Participating Firm” by August 1, 2014
-

- CSA Staff Notice 31-338
 - Appendix A of CSA Staff Notice 31-338
 - Sample client disclosure
 - Provides additional guidance and best practices
 - May 1, 2014, CCO email: Planning Tips for OBSI Amendments
-

- The requirement to use OBSI provides investors with the following benefits:

Access to free,
independent,
consistent dispute
resolution
services

Uniform handling
of client
complaints

Clarity on who
investors can
contact if their
complaints are
not resolved

- “OBSI resolves disputes between [participating banking services and investment firms](#) and their customers if they can't solve them on their own... You must first complain to the firm involved, but if you remain unsatisfied you have a right to bring your case to us. As an alternative to the legal system, we work informally and confidentially to find a fair outcome.”

- Information about OBSI must be provided to clients at three points:

At account opening

As soon as possible after a client makes a complaint

When the firm provides the client with the decision regarding the complaint

When do you need to provide client disclosure?

1. At account opening

A description
of the firm's
obligations

The steps that
the client must
take for the
service to be
made available

May be
provided in a
standalone
document or
as part of
relationship
disclosure
information

Must be
provided in
writing

When do you need to provide client disclosure?

2. At the time of the complaint

- If a registered firm receives a complaint they must provide written acknowledgement within 5 business days which includes:

A description of the firm's obligations

The steps that the client must take for the service to be made available

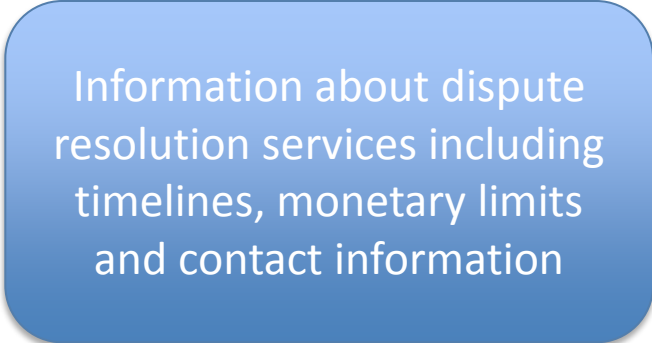
The name and contact information of the independent dispute resolution or mediation service

3. At the time of the decision

- A registered firm is expected to provide a decision to the complainant within 90 days of receipt
- When the registered firm decides to reject or make an offer on the complaint, the firm must provide the client with written notice of the decision including:



The decision on the complaint



Information about dispute resolution services including timelines, monetary limits and contact information

When do you need to offer OBSI?

- Registered firms are required to ensure that independent dispute resolution or mediation services are available if either of the following apply:
 - after 90 days of the firm's receipt of the complaint, the firm has not given the client written notice of the decision and the client has notified OBSI that it wants to use the service; or
 - within 180 days of the client's receipt of written notice of the firm's decision, the client notifies OBSI that it wants to use its service
-

- The amendments requiring the provision of independent dispute resolution services are a significant change to RDI
 - Registered firms are required to notify clients, in a timely manner, of significant changes in RDI
 - Ways to notify clients:
 - Send information separately
 - Include with an upcoming communication
 - Include with next monthly or quarterly statement
 - Before a transaction
-

- Review CSA Staff Notice 31-338 and the “Planning Tips for OBSI Amendments” email
 - Join OBSI by August 1, 2014
 - Review the sample client disclosure provided in Appendix A of the Notice
 - Prepare your firm’s client disclosure
 - Develop and implement appropriate policies and procedures
 - Update and deliver revised relationship disclosure information
 - Update your policies and procedures manual
 - Train your staff
-

Questions



Questions for Registrant Oversight Staff

Mortgage Firms

Mark Heaney
Amit Sethi

Portfolio Managers

Nicole Smith
Matias Pendola

Dealers and Financial Questions

Jamie Hood
Ally Wang
