

# IIROC NOTICE

## Rules Notice Guidance Note

IIROC Rules

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## Know-your-client and suitability determination for retail clients

### Executive Summary

This Guidance sets out our expectations and provides our views on some acceptable practices relating to the “know-your-client” (**KYC**) and suitability determination obligations in the IIROC Rules. We also clarify our rules and explain how KYC and suitability determination obligations are not “one-size-fits-all”. This guidance has been drafted to conform in all material respects to the KYC and suitability determination guidance issued by the Canadian Securities Administrators (**CSA**) in Companion Policy 31-103 CP – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

While the practices we set out in this Guidance are intended to present some acceptable methods that Dealer Members (**Dealers**) can use to comply with our KYC and suitability determination obligations, they may not be the only acceptable methods. Dealers may use alternative methods, provided these methods demonstrably achieve IIROC Rule compliance. We encourage Dealers to adopt a risk-based approach when setting internal compliance procedures.



This Guidance focuses on the KYC and suitability determination obligations owed to retail clients<sup>1</sup>.

In this Guidance, all rule references are to the IIROC Rules unless otherwise specified.

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<sup>1</sup> As defined in subsection 1201(2).



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## 1. Overview: Our requirements are not “one-size-fits all”

No two Dealers are exactly alike. Dealers have different business models, offer distinct services, products and investment strategies, service different types of clients, and employ varying approaches to complying with regulatory requirements. Dealers have various means they can use to meet their obligations under the IIROC Rules, and not all of the issues discussed in this Guidance will be applicable to every Dealer.

The KYC and suitability determination obligations owed to retail clients and institutional clients are different, and Dealers have flexibility in how they meet these obligations.

## 2. Know-your-client

### 2.01 What is the KYC obligation?

The KYC obligation involves the collection and maintenance of information to:

- learn and remain informed of the essential facts relative to each client and their orders and accounts,
- establish the client’s identity,
- verify the client’s reputation, based upon reasonable inquiries,
- establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded,
- meet any suitability determination obligation owed to the client under Rule 3400, and
- establish the creditworthiness of the client.

KYC information is not only required to be collected and maintained to meet a Dealer’s suitability determination obligation. Specifically, Dealers are also required to collect KYC information as part of their role as gatekeepers of our financial markets, including complying with their anti-money laundering (**AML**) regulatory obligations<sup>2</sup>.

The KYC obligation is specific to each individual client. For example, Registered Individuals<sup>3</sup> should not attribute characteristics of the client’s family members to the client, such as attributing a spouse’s investment experience and knowledge.

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<sup>2</sup> See [Notice 19-0201](#) (AML Compliance Guidance) for more information.

<sup>3</sup> In this Guidance, the term “Registered Individual” refers collectively to individuals approved by IIROC as Registered Representatives, Portfolio Managers or Associate Portfolio Managers.



## 2.02 What types of KYC information must be collected?

### 2.02.01 Essential facts

All Dealers, regardless of their business model, must learn and remain informed of the “essential facts” relative to each order, client and account.<sup>4</sup>

Dealers must collect this information as gatekeepers of the capital markets. Unlike the KYC factors required in clause 3202(1)(iii), the essential facts are not necessarily linked to the suitability determination obligation. For example, we expect Dealers to determine that a client in an advisory account meets the definition of accredited investor or otherwise qualifies to purchase an exempt market product prior to selling them such a product, as required under securities laws<sup>5</sup>. In such circumstances, the Dealer may need to collect KYC information more frequently than required under subsection 3209(4).

As part of the “essential facts” they collect on their clients, we expect Dealers to obtain certain biographical information. Dealers are also required to collect similar information under other applicable laws, such as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. We discuss the relationship between the IROC Rules and the PCMLTFA in our AML Compliance Guidance<sup>6</sup>.

### 2.02.02 Client identification

Dealers must collect information to establish the identity of clients. Dealers must also take reasonable steps to confirm the accuracy of this information in order to form a reasonable belief that they know the client’s identity.<sup>7</sup> We discuss client identity verification further in our AML Compliance Guidance. Identifying a client is the first step in knowing the client.

### 2.02.03 Client reputation

Dealers must make reasonable inquiries if they have concerns about the reputation of the client.<sup>8</sup> Their inquiries must be sufficient to resolve their concerns.

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<sup>4</sup> Subsection 3202(1).

<sup>5</sup> As defined in subsection 1201(2).

<sup>6</sup> See [Notice 19-0201](#) (AML Compliance Guidance)

<sup>7</sup> Clause 3202(1)(i) and sections 3203 through 3206.

<sup>8</sup> Clause 3202(1)(i).



#### **2.02.04 Client insider status**

Dealers must take reasonable steps to establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded.<sup>9</sup> In meeting this obligation, Dealers should explain to the client what an insider is and what it means for securities to be publicly traded and then ask the client whether they are an insider.

#### **2.02.05 KYC for conducting a suitability determination**

Dealers must collect adequate information to ensure they have a sufficient understanding of their clients to enable them to discharge their suitability determination obligations.<sup>10</sup> The depth of enquires made and information collected/maintained may vary depending on the Registered Individual's relationship with the client and the securities<sup>11</sup> and services offered by the Dealer. Dealers and Registered Individuals must not manipulate KYC information to correspond or match with a security, account, portfolio or otherwise be manipulated to lead to a pre-determined outcome.

#### **2.02.06 Creditworthiness of the client**

Dealers must collect information to assess the creditworthiness of clients<sup>12</sup>, which generally includes information relating to the client's financial circumstances.

### **2.03 What specific KYC information must be collected for suitability determination purposes?**

#### **2.03.01 Client's personal circumstances**

Paragraph 3202(1)(iii)(a)(I) requires the Dealer to ensure it has sufficient information about the client's personal circumstances. For individuals, this includes:

- date of birth,
- address and contact information,
- civil status or family situation,

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<sup>9</sup> Clause 3202(1)(ii).

<sup>10</sup> Clause 3202(1)(iii).

<sup>11</sup> While the suitability determination requirement in Rule 3400 uses the specific term "security" we believe it would be impractical, and potentially confusing to clients, for Dealers to adopt a different meaning for investment products that may not be securities. Accordingly, we would expect Dealers to apply this Guidance and the suitability determination requirement to all investment products offered, and not just securities.

<sup>12</sup> Clause 3202(1)(iv).





- number of dependants,
- employment status and occupation,
- whether someone other than the client is authorised to provide instructions on the account, and
- whether someone other than the client has a financial interest in the account.

For non-individuals, this includes:

- legal name,
- head office address and contact information,
- type of legal entity, i.e. corporation, trust, or other entity,
- form and details regarding the organization of the legal entity, i.e. articles of incorporation, trust deed, or other constating documents,
- nature of business,
- persons authorized to provide instructions on the account and details of any restrictions on their authority, and
- whether someone other than the client has a financial interest in the account.

We also consider this information to be “essential facts” relative to the client, and as such, require all Dealers to collect it even in circumstances where they are not assessing suitability. We discuss this further in section 2.04 of this Guidance.

### **2.03.02 Client’s financial circumstances**

Paragraph 3202(1)(iii)(a)(II) requires the Dealer to ensure it has sufficient information about the client’s financial circumstances. This includes, where applicable:

- annual income,
- liquidity needs,
- financial assets,
- net worth, and
- whether the client is using leverage or borrowing to finance the purchase of securities.

#### ***Client’s liquidity needs***

Registered Individuals should consider ascertaining the extent to which their clients wish or need to access all or a portion of their investments to meet their expenses and financial obligations or fund major planned expenditures. When assessing a client’s liquidity needs, a Registered Individual should consider whether the client has other means to cover their



expenditures, whether the needs are expected or unexpected, and whether, once the need materializes, the money will be withdrawn on a regular basis.

### ***Client's financial assets and net worth***

Registered Individuals should take reasonable steps to obtain a breakdown of a client's financial assets, including deposits and type of securities such as mutual funds, listed securities, and exempt securities. A Dealer should also take reasonable steps to determine a client's net worth, which includes their assets and liabilities. A Registered Individual may need to ask about investments, other assets and liabilities the client maintains outside the Dealer to better understand a client's financial circumstances.

### ***Use of leverage or borrowing to finance the purchase of securities***

Registered Individuals should determine whether a client is using leverage or borrowing to purchase securities. When a client uses leverage or borrows money to invest, the Dealer should gather information on the client's ability to meet debt obligations. The Dealer can use this information to determine whether an investment funded or carried through borrowing for the client would be suitable and put the client's interest first.

We do not expect the Dealer to have an extensive supervisory framework in place to identify and monitor loans extended by third parties where:

- the Dealer or Registered Individual does not recommend a borrowing to invest strategy, and
- the third party loan is instigated solely by the client and details are not disclosed to the Registered Individual or the Dealer despite requests by the Dealer or Registered Individual for this information during the KYC process to understand the client's financial circumstances.

However, Dealers and Registered Individuals should not ignore situations where:

- a third party loan comes to light during a review of the client account, including during a review of the client's KYC information, or
- there are indicia that the client may be using borrowed money to invest.<sup>13</sup>

### **2.03.03 Client's investment needs and objectives**

Paragraph 3202(1)(iii)(a)(III) requires the Dealer to ensure it has sufficient information about the client's investment needs and objectives. A client's investment needs may include liquidity needs as discussed in section 2.03.02 of this Guidance. A client's investment objectives are

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<sup>13</sup> See [Notice 14-0044](#) (Borrowing for Investment Purposes – Suitability and Supervision)



what they want to achieve when investing, such as capital preservation, income generation or capital growth.

Dealers should provide their clients with the opportunity to express their investment needs and objectives in terms that are meaningful to them, such as saving for retirement to maintain a certain lifestyle, increasing wealth by a certain percentage in a specific number of years, investing for the purchase of a home, or investing for the post-secondary education of their children.

Depending on their relationship with a client and the Dealer's business model, a Registered Individual may find it appropriate to set out investment goals for a client's account or for multiple accounts of the client, which they may choose to do through an investment policy statement or similar document.

If a Registered Individual and their client agree upon certain investment goals, they should be specific and measurable. A Registered Individual should consider setting out investment return assumptions required to meet the client's investment needs and objectives. If investment goals are set, the Registered Individual should periodically update the client on their progress towards these goals.

#### **2.03.04 Client's investment knowledge**

Paragraph 3202(1)(iii)(a)(IV) requires the Dealer to ensure it has sufficient information about the client's investment knowledge. This includes the client's understanding of:

- the financial markets,
- the relative risk and limitations of various types of investments, and
- how the level of risk taken affects potential returns.

Dealers and Registered Individuals can use this information in their assessment of the client's risk profile under paragraph 3202(1)(iii)(a)(V).

When assessing a client's investment knowledge, Dealers should inquire about a client's level of awareness and previous experiences with finances and investments. Although some Dealers may use self-assessment questionnaires, Registered Individuals should always make further inquiries if the information provided by a client appears to be inconsistent with their apparent level of investment knowledge. For example, a client may indicate that they have limited investment knowledge and experience, while also indicating a willingness to take on a high level of risk.



### 2.03.05 Client's risk profile

#### ***Determination of the client's risk profile***

In establishing a client's risk profile, a Registered Individual should ascertain the client's:

- willingness to accept risk, sometimes referred to as risk tolerance, and
- ability to endure financial loss, sometimes referred to as risk capacity.

Risk tolerance and risk capacity are separate considerations that together make up the client's overall risk profile.

Dealers should have thorough processes for assessing a client's risk profile, including:

- assessing a client's risk tolerance and risk capacity,
- appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers,
- determining whether the products and services the client has access to within their account are appropriate for them based on their assessed risk tolerance and risk capacity, and
- identifying clients that are more suited to placing their money in cash deposits or guaranteed products because they are unwilling or unable to accept the risk of loss of capital.

When determining a client's risk capacity, the Registered Individual should consider:

- other information required in clause 3202(1)(iii), particularly the client's financial circumstances,
- how much of a client's total investments an account or a particular securities position represents<sup>14</sup>, and
- the client's age and life stage.

The client's risk profile should reflect the lower of the client's assessed risk tolerance and risk capacity.

The process for developing a client's risk profile should be supportable and reliable. The questions and answers that are used to establish the level of risk a client is willing and able to take should be documented. The questions should be fair, clear and not misleading. A client's

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<sup>14</sup> If a client is unwilling to provide or update information about their investments held outside of the Dealer, this does not automatically prevent the Dealer or Registered Individual from assessing the client's capacity for loss. Dealers and Registered Individuals should determine whether they have collected sufficient information to document a client's capacity for loss and whether that information remains sufficiently current.



risk profile should not be manipulated to justify recommending higher-risk products, and clients should not be influenced by a Registered Individual as to the way they respond to questions related to their risk tolerance or risk capacity.

### ***Resolving conflicts between a client's expectations and risk profile***

Where the client's expectations for returns conflict with their risk profile, the Registered Individual should consider having a detailed discussion with the client on the relationship between risk and return to reconcile such conflicts and establish more realistic expectations.

Registered Individuals should not override a client's risk profile or other KYC information to meet a client's expectations for returns. The Registered Individual should identify any mismatches between the client's investment needs and objectives, risk tolerance and risk capacity and revisit them with the client. If a client's goals or return objectives cannot be achieved without taking greater risk than they are able or willing to take, the Registered Individual should clearly explain the alternatives available.

Where the Registered Individual concludes that the client does not have the capacity or tolerance to sustain the potential losses and volatility associated with a higher risk portfolio, the Registered Individual should explain to the client that their need or expectation for a higher return cannot realistically be met, and as a result, the higher risk portfolio is unsuitable. The Registered Individual should properly document their interaction with the client and the end result.

### **2.03.06 Client's investment time horizon**

When a client identifies their investment time horizon, the Dealer has the responsibility to assess its feasibility and reasonableness relative to the client's liquidity needs, age, investment objectives, risk profile, and other particular circumstances. The length of the client's investment time horizon impacts the types of investments that may be suitable for the client. Investors with a longer investment time horizon may have a greater degree of flexibility when building a portfolio, whereas a short investment time horizon may mean that conservative investments may be the only suitable option.

### **2.03.07 Detail of KYC information to be collected for suitability determination purposes**

Although clause 3202(1)(iii) sets out a prescribed list of factors a Dealer must take into consideration in order to obtain sufficient KYC information for suitability determination purposes, the depth of the Dealer's enquiries can vary based on:

- its business model,



- its relationships with clients, and
- the securities and services it offers to them.

For example, a Dealer may require more extensive KYC information if they offer a fully-customized service or if they are a portfolio manager for a client with complex financial circumstances. Less extensive enquiries may be sufficient where they offer less complex model portfolios of investment funds to clients with more straightforward financial circumstances. Where securities being sold are illiquid or highly risky, more information on a client's financial circumstances, including investments held elsewhere, may need to be gathered by the Dealer to sufficiently support a suitability determination.

In determining the detail of information to be collected, Dealers should consider whether the information is required to be collected for other purposes and if so, the detail required to be able to use the information for other purposes, such as complying with the PCMLTFA.

#### **2.04 Is the KYC obligation the same for all accounts?**

The KYC requirements generally apply equally to all accounts, with the following exceptions:

- there are some differences in the information that must be collected and maintained for individual and non-individual accounts, specifically as it relates to verifying the identity and reputation of the client<sup>15</sup>,
- the requirement to determine a client's investment needs and objectives and risk profile does not apply to:
  - order execution only accounts<sup>16</sup>,
  - direct electronic access accounts<sup>17</sup>,
  - carried accounts maintained on the books of a carrying broker<sup>18</sup>, and
  - accounts held by institutional clients<sup>19</sup>.

It should be noted that Dealers may need to collect and maintain some of the information used for suitability determination purposes to meet other obligations, irrespective of the account

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<sup>15</sup> Sections 3202, 3203, 3204 and 3206.

<sup>16</sup> Clause 3208(1)(i).

<sup>17</sup> Clause 3208(1)(ii).

<sup>18</sup> Clause 3208(1)(iii).

<sup>19</sup> Clause 3208(1)(iv).



type or clients involved. For example, for order execution only accounts, direct electronic access accounts and accounts held by institutional clients, Dealers must collect and maintain:

- certain personal circumstance and financial circumstance information set out in paragraphs 3202(1)(iii)(a)(I) and (II) to meet federal AML requirements and to learn the “essential facts” of the client<sup>20</sup>, and
- certain financial circumstance information set out in paragraph 3202(1)(iii)(a)(II) to assess client creditworthiness pursuant to clause 3202(1)(iv).

A Dealer’s policies and procedures must<sup>21</sup> specifically address collecting and maintaining accurate, complete and up-to-date information about each client to meet its KYC obligations. These policies and procedures may take into account the Dealer’s business model, including the nature of its relationship with clients and the securities and services that it offers to them. Dealers should review their KYC policies and procedures when there is a significant change in their business model.

## **2.05 Who carries out the KYC process?**

In subsections 3209(1) and 3209(2), we specify that compliance with our KYC requirements is primarily the obligation of the Registered Individual assigned to the client’s account and that they cannot delegate this responsibility to any other person. However, the Dealer is ultimately responsible for ensuring the KYC requirements are met for all its clients.

Because this information is an input into the suitability determination analysis, Dealers and Registered Individuals may not rely on a third party, such as an affiliate, or an unregistered individual for the KYC information required in clause 3202(1)(iii). Dealers and Registered Individuals may rely on third parties or unregistered individuals for other types of information, including client identification information.

A Dealer may assign multiple Registered Individuals to the same client’s account. In that case, any one of the Registered Individuals assigned to the client’s account may collect the information required in clause 3202(1)(iii).

## **2.06 Interactions with the client**

### **2.06.01 How does the client confirm the accuracy of this information?**

Under subsection 3202(3), the Dealer must take reasonable steps to obtain the client’s

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<sup>20</sup> Subsection 3202(1).

<sup>21</sup> Subsection 3213(1).



confirmation of the accuracy of the information collected under subsection 3202(1), including any significant changes to the client's information. Dealers may evidence this confirmation by obtaining the client's signature (handwritten, electronic or digital signature), or by maintaining notes in the client file detailing any client instructions to change the information. Dealers should verify any change to client information by confirming it with the client in writing and providing the client with an opportunity to correct any changes.

Dealers should consider implementing additional controls for changes in client name, address or banking information or other areas where there is an increased risk of fraud. For example, the Dealer may want to obtain the client's signature for such changes.

As a best practice, Dealers should record the date on which information is collected under subsection 3202(1). At a minimum, Dealers should review, and if necessary update KYC information, at the frequency set out in subsection 3209(4). Dealers should maintain evidence of the client's confirmation of the accuracy of their KYC information.

#### **2.06.02 Need for meaningful interaction with the client regardless of tools or technology**

KYC is not a "tick the box" exercise. A Dealer's process for collecting and updating their clients' KYC information should amount to a meaningful interaction between the client and the Dealer. Although the Dealer may use standardized questionnaires or other tools to collect and document KYC information, the Dealer is responsible for the KYC process. The KYC obligation does not vary depending on the medium through which a Dealer interacts with its client to gather the necessary information.

Where a Dealer uses questionnaires or other tools to record the client's KYC information, they should ensure these tools accurately reflect the client's information. Registered Individuals should not use such tools to manipulate a client's information to justify recommending certain products or align a client's KYC information with certain securities.

Dealers should carefully monitor the use of these tools to ensure they record meaningful information.

#### **2.06.03 Providing assistance to clients**

While Dealers and Registered Individuals can readily obtain certain KYC information from their clients, they may need to explain or discuss other KYC factors with the client before collecting the necessary information. For example, Registered Individuals may need to assist their clients in articulating their investment needs and objectives.





Registered Individuals should also exercise care with less sophisticated clients and those who may be vulnerable due to age or disability. Registered Individuals should not assume their clients will understand all KYC factors, questions and related discussions. In these situations, Registered Individuals should provide more detailed explanations to their clients to help them understand the discussion and provide accurate and meaningful information.

#### **2.06.04 Ask questions in plain language**

Dealers should draft their KYC questions and client communications in plain language and explain what factor each question or item relates to and what relevant terms mean. Dealers should limit technical jargon and consider using a conversational tone. Where appropriate, Dealers may also consider using visual aids.

#### **2.06.05 Validate client information**

Dealers should ensure client answers are consistent and reasonable. Registered Individuals should be prepared to assess the validity of any information they collect. For instance, where they have concerns about the validity of a client's KYC information, Registered Individuals should consider asking for similar information in different ways to validate that information.

### **2.07 Use of one set of KYC information for multiple accounts**

#### **2.07.01 Conditions under which one set of KYC information may be used for multiple accounts**

Dealers can use one account application to collect and maintain one set of KYC information for multiple accounts (e.g. a client's cash, margin and registered accounts) provided that:

- for individuals, the account beneficial owner is the identical individual for all the accounts,
- for non-individuals, the account beneficial owner is the identical legal entity for all the accounts,
- the same Registered Individual (or team of Registered Individuals, see section 2.05 of this Guidance) is designated as responsible for all of the accounts,
- the Dealer has the ability to supervise each of the accounts, including the review of KYC information updates and orders for suitability determination purposes, on a multiple-account basis, and
- the client understands and acknowledges that the Dealer may use the information collected in the one application to assess and determine suitability on a multiple-account basis.



### **2.07.02 Examples of where separate account applications would be required**

As explained above, a Dealer can only use a single account application for multiple accounts if the beneficial owner of each account is identical. A Dealer must use separate account applications if that same client holds a beneficial interest in a joint, corporate or trust account, for the reasons discussed below.

- *Joint account* – A Dealer must use a separate account application for a joint account because the account’s beneficial owners are not identical to the beneficial owner of an individual account.
- *Corporate account* - Although the beneficial owner of a personal corporation may be the same individual as the client who has an individual account, a Dealer cannot use the same account application to open a corporate account, as the corporate account’s owner is the corporation and not the corporation’s beneficial owner. The Dealer must use the corporation’s information to complete the account application, not the individual beneficial owner’s information. The beneficial owner(s) of a corporation are separate and distinct persons from the corporate legal entity. The Dealer has a contractual relationship with the corporation, and the account application should reflect this.
- *Trust accounts* – Dealers must also use separate account applications for formal and informal trust accounts because the trust is a separate legal entity from its beneficiary(ies) and may have different investment objectives, which are usually determined by the trustee, acting in accordance with the trust’s or trust deed’s terms. The Dealer does not have a contractual relationship with beneficiary(ies) of the trust. Rather, the Dealer has a contractual relationship with the trust itself through the trustee, who must operate the account consistent with the trust’s or trust deed’s terms.

### **2.08 Additional considerations for managed accounts**

Clause 3278(1)(i) requires Dealers to describe or refer to the client information required under clause 3202(1)(iii) in that client’s managed account agreement. Dealers are not required to record the client information required under clause 3202(1)(iii) in both the managed account agreement and a separate account opening or KYC form. Dealers can either:

- include a reference to the client’s account opening KYC form where this information is recorded in the client’s managed account agreement, or
- record this information in the managed account agreement itself, which we would consider an acceptable means of complying with clause 3202(1)(iii).



## **2.09 What questions should be asked when inheriting a client relationship from another Registered Individual?**

When inheriting a client relationship, the Registered Individual must conduct a suitability determination<sup>22</sup> and should ensure they have sufficient KYC information to comply with that requirement and any other regulatory obligations. They should gather sufficient information to ensure the information they received from the previous Registered Individual or the Dealer about the client is correct and current.

## **2.10 What if the client won't provide the information?**

During the initial KYC collection, Dealers should explain to clients their role in keeping KYC information current. For example, a Dealer could include in its account opening documentation information about the client's obligation to notify their Registered Individual of any significant change in their circumstances. Dealers should also identify and explain to clients why they are collecting KYC information. Dealers should consider providing clients with IIROC's [Opening an Investment Account: A Guidance for Investors](#) brochure, which includes this information.

Despite these efforts, some clients may be reluctant to provide KYC information or may delay responding to requests. If that is the case, Registered Individuals should consider taking some or all of the following steps:

- let the client know which pieces of information they need to open the account,
- let the client know that the more they provide, the better the Registered Individual can service them, and
- remind the client of the Dealer's privacy policy and confidentiality requirements.

If a client refuses to provide or update the information a Dealer or Registered Individual requests, this does not automatically prevent the Dealer from servicing the client. Dealers and Registered Individuals should determine whether they have collected enough information and whether the information remains sufficiently current, in order to have a sufficient understanding of the client to be able to discharge their suitability determination obligation.

## **2.11 How often must client information be updated?**

### **2.11.01 Keeping KYC information current**

Under subsection 3209(3), Dealers must make reasonable efforts to keep their clients' KYC information current. We consider information to be current if it is sufficiently up-to-date to

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<sup>22</sup> Clause 3402(2)(ii).



support a suitability determination and meet the Dealer’s other regulatory obligations. Without adequate and timely KYC information, a Dealer cannot meet their suitability determination obligations and other regulatory obligations. At a minimum, Dealers must review, and if necessary update, KYC information at the frequency set out in subsection 3209(4). Dealers should consider more frequent updates when they are distributing exempt market securities, as discussed in section 2.02.01 of this Guidance, or for client accounts that contain a significant position in securities or products that are high risk, complex or illiquid.

If a Dealer determines, as a result of the review, that no KYC updates are required, the Dealer must retain documented evidence that a review was conducted as required, such as the date of when the review was conducted and the outcome of the review.

Dealers and Registered Individuals should review and refresh a client’s KYC information after a meaningful and documented interaction with the client. We do not expect Dealers to re-collect their clients’ information at every review. In some situations, a Dealer might decide to conduct a more fulsome inquiry process (including re-collection of all of a client’s KYC information), depending on how long it has been since the last update of that client’s KYC information. Dealers should be proactive in determining whether KYC information is current by periodically confirming it with their clients.

While order execution only accounts, direct electronic access accounts and accounts held by institutional clients are exempt from the retail client suitability determination obligation and from the minimum review frequency in subsection 3209(4), they are not exempt from the requirement in subsection 3202(1) to remain informed of the essential facts relative to each client. For these accounts Dealers should ensure their client information is sufficiently up-to-date to meet their regulatory obligations, including their anti-money laundering and anti-terrorist financing requirements and, where applicable, the obligation under clause 3202(1)(iv), to establish their client’s creditworthiness when financing the client’s acquisition of a security.

### **2.11.02 Significant change to client information**

Dealers should make reasonable enquiries to determine if there has been a significant change to a client’s KYC information. A Registered Individual may make such inquiries when they meet a client to review their portfolio, otherwise corresponds with the client to discuss other account related matters or contacts the client to verify the accuracy of the account information as required under 3202(4).

For the purposes of subsection 3209(3), a “significant change” in a client’s information includes changes to the client’s:

- risk profile,



- investment time horizon,
- investments needs and objectives, or
- any other change that could reasonably significantly impact the client's net worth or income.

A significant change to the client's KYC information may result in the information no longer being sufficient to enable the Dealer and Registered Individual to meet the suitability determination obligation, for example, where a client's change in employment status (e.g. job loss) results in a change to their risk profile and investment needs and objectives, or where a significant change would require a complete re-collection of the client's KYC information. In those circumstances, the Dealer should consider restricting activities in the client's account to liquidating trades, transfers or disbursements, until such time as the Dealer has had a chance to re-evaluate the client's KYC information.

### **2.12 Is there anything that should not be done as part of the collection and maintenance of KYC information?**

Dealers and Registered Individuals should not:

- pre-populate questionnaires with the KYC information required under clause 3202(1)(iii) before interacting with the client,
- combine multiple KYC variables into one question (i.e. the client's risk profile and investment objectives are being asked together in a single question), or
- mischaracterize a client's KYC information in their account records to validate an otherwise unsuitable investment recommendation.

## **3. Suitability**

The suitability determination is a fundamental obligation Dealers and Registered Individuals owe to their clients and is critical to investor protection. Suitability is a cornerstone of the registration regime and an extension of Dealers' and Registered Individuals' duty to deal fairly, honestly and in good faith with their clients<sup>23</sup>.

### **3.01 What is the suitability determination obligation?**

Before a Dealer takes or recommends an investment action for a retail client, it must determine that the investment action is suitable for the client based on the factors in clause 3402(1)(i) and

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<sup>23</sup> See for example, OSC Rule 31-505 – *Conditions of Registration*



puts the client's interest first<sup>24</sup>. Meeting the suitability determination obligation does not guarantee any particular client outcome.

As part of this obligation, Dealers should also determine that the order type, trading strategy, fee structure and method of financing the trade recommended and/or adopted are suitable for the client and put the client's interest first. Dealers should explain the features and associated costs of different types of accounts that are available to the person, such as, for example, fee based and commission based accounts, and recommend the account type that is most appropriate for the person and puts their interest first.

### **3.01.01 Meeting KYC, product due diligence and know-your-product (KYP) obligations**

Dealers and Registered Individuals cannot determine suitability without first complying with the KYC, product due diligence and KYP obligations<sup>25</sup>.

Dealers should gather sufficient information through the KYC process to support a suitability determination. For example, using the risk rating of a security as the only input in determining its suitability for a client is not sufficient to meet the requirements in subsection 3402(1).

Registered Individuals must<sup>26</sup> also understand all securities that they trade in or advise on to support a suitability determination. We discuss this requirement further in our Notice 2X-XXXX [Product Due Diligence and Know-Your-Product].

### **3.01.02 Meaning of "investment action"**

An "investment action" includes purchasing, selling, depositing, exchanging or transferring securities for a client's account, and taking any other investment action for a client, or making a recommendation or decision to take any such action.

An investment action also includes a recommendation or decision to hold securities, which may occur when a Registered Individual reviews the securities in a client's account under subsection 3402(2).

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<sup>24</sup> Clause 3402(1)(ii).

<sup>25</sup> Rule 3300.

<sup>26</sup> Section 3302.



### **3.01.03 What does it mean to “put the client’s interest first”?**

The client’s interests, as distinguished from the Dealer’s, the Registered Individual’s or anyone else’s, are at the core of the suitability determination obligation. It is not sufficient for a Dealer to determine that a recommendation or decision is suitable for a client, the Dealer must<sup>27</sup> also determine that the action puts the client’s interest first.

Dealers and Registered Individuals should determine suitability based on the client’s overall circumstances, considering the relationship between the client and the Dealer, and the securities and services offered by the Dealer.

#### ***Range of possible suitable recommendations***

There may be several options or courses of action Dealers or Registered Individuals may take when recommending securities or services to clients, or when making decisions for clients, that can meet the criteria for a suitability determination. An assessment by a Dealer or Registered Individual of the suitability factors outlined in clause 3402(1)(i) may result in a range of possible suitable recommendations or decisions for the client. However, when making a suitability determination, Dealers and Registered Individuals must put the client’s interest first, ahead of their own interests and any other competing considerations, such as a higher level of remuneration or other incentives, and must exercise their professional judgement when opting for one recommendation or decision among other suitable options.

### **3.01.04 Account portfolio of investments approach to suitability**

To meet the criteria in clause 3402(1)(ii) to put the client’s interest first, Dealers and Registered Individuals cannot determine suitability on an individual trade/position basis, but must make a suitability determination based on the overall client’s account portfolio of investments, given the relationship between the client and the Dealer, and the securities and services the Dealer offers.

Where a client has multiple accounts with the Dealer, the Registered Individual should also consider whether a recommendation or decision for one account would materially affect the concentration and liquidity of the client’s portfolio of investments across all of their accounts, which we discuss further in section 3.07 of this Guidance.

Where the Dealer has represented to clients that it will determine suitability for a client’s portfolio of investments based on the client’s accounts held both inside and outside the Dealer, the Registered Individual must consider client investments held in accounts outside the Dealer

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<sup>27</sup> Clause 3402(1)(ii).



that are subject to the suitability determination obligation.

### **3.02 How should a suitability determination be carried out?**

#### **3.02.01 What should the Registered Individual consider?**

When making a suitability determination, we expect a Registered Individual to use the information obtained while fulfilling the KYC and KYP obligations and apply professional judgement to identify securities or strategies that are suitable for a particular client and that put that client's interests first. When exercising this judgement, a Registered Individual should determine whether an investment is suitable for the client, given the client's KYC information, including meeting the client's investment objectives while staying within that client's risk profile, as determined by the client's comfort level and personal and financial circumstances, and whether that investment puts the client's interests first.

A Registered Individual should make their suitability determination based on the information reasonably available to them at the time. We discuss this further in section 3.11 of this guidance.

When recommending a security to a client in an advisory account that is suitable for the client and puts the client's interest first, a Registered Individual should disclose any material negative and positive factors involved in the transaction to the client to assist the client in making an informed decision. The Registered Individual should ensure the client understands the risks involved, particularly where the client has limited investment experience. We expect the Registered Individual to document this disclosure.

#### **3.02.02 What specific factors must be considered?**

Clause 3402(1)(i) specifies the factors upon which Dealers and Registered Individuals must base their suitability determination. However, these factors may not be equally applicable to every suitability determination. When making a suitability determination, Dealers and Registered Individuals should use their professional judgement to determine the weight to put on each of the specific factors in clause 3402(1)(i) and, overall, to put the client's interest first.

#### **3.02.03 Concentration and liquidity in a client's account**

Over-concentration in any one security, sector or industry can have a significant negative impact on the risk and liquidity in a client's account. Dealers should determine appropriate concentration and liquidity thresholds for their clients and implement processes to calculate, monitor and manage concentration risks in a client's account.





Dealers should consider a number of factors when determining appropriate concentration and liquidity, for example the type of security, market conditions, and redemption or other liquidity restrictions. Generally, the higher the concentration in a particular type of security, sector or industry, the more steps a Dealer or Registered Individual should take, and document, to demonstrate the investment was suitable for the client.

For example, Dealers should assess whether the client's investments are over-concentrated in:

- illiquid exempt market securities as compared to more liquid publicly traded securities,
- securities of a single issuer, or group of related issuers, as compared to a broadly based portfolio of issuers, or
- securities of an issuer, or related issuers, that provides exposure to a single industry or asset class, for example, real estate, as compared with a broadly based portfolio of issuers that provide exposure to diversified industries or asset classes.

For more information on what Dealers should do when assessing concentration and liquidity across multiple accounts at the same Dealer, see section 3.07 of this Guidance.

#### **3.02.04 Consideration of a reasonable range of alternatives**

Registered Individuals must<sup>28</sup> consider a range of alternative recommendations or decisions available to them through the Dealer when making a suitability determination. What constitutes a reasonable range of alternatives will depend upon the circumstances, including the securities and services offered, the Registered Individual's skill and proficiency, and the client's particular circumstances. For example, where a Dealer offers only a limited range of model portfolios, we would not expect the Registered Individual to conduct an in-depth consideration of alternatives if it is clear that only a limited number of options, or a single option, would be suitable for the client.

#### **3.02.05 Potential and actual impact of costs**

We interpret the term "cost"<sup>29</sup> broadly to include:

- all direct and indirect costs, fees, commissions and charges, including trailing commissions, and
- all direct or indirect Dealer or Registered Individual compensation which may be associated with:

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<sup>28</sup> Sub-clause 3402(1)(i)(e).

<sup>29</sup> As referred to in sub-clause 3402(1)(i)(d)



- a client purchasing, selling, holding or exchanging a security, or
- a Registered Individual making a decision for a client's managed account.

Costs can significantly impact a client's return over time. Registered Individuals must assess the costs, and their potential impacts, of the options available at their Dealer when making a suitability determination. Registered Individuals should assess the impact on the client's return of any compensation paid, directly or indirectly, to the Dealer or Registered Individual, regardless of who pays that compensation. Registered Individuals must put their client's interest first when making this assessment, and must document the reasonable basis for their conclusions.

### **3.03 What is the difference between account appropriateness and suitability?**

#### **3.03.01 What is the account appropriateness obligation?**

Dealers and Registered Individuals, before opening an account for a person, must<sup>30</sup> determine that:

- (a) this action (opening an account with for example an order execution only (**OEO**) Dealer, full-service Dealer or portfolio manager), and
- (b) the scope of products, services and account relationships (e.g., margin, futures or options account, fee or commission based account, etc.) which they would have access within the account

are appropriate for that person given their particular circumstances and put that person's interest first.

As part of this obligation, we expect Dealers to ensure the Dealer or Registered Individual compensation option and the nature of the service offered to the person, including the use of investment strategies such as leveraging, are appropriate for the person and put their interest first. We do not expect Dealers to consider account alternatives outside of the Dealer.

Dealers must<sup>31</sup> also explain the features and associated costs of the different types of accounts that are available to the client at the Dealer, such as, for example, fee-based and commission-based accounts, as applicable, and recommend the type of account that puts the client's interest first.

We remind Dealers and Registered Individuals that when they are considering whether an account type is appropriate for a client or potential client and puts their interest first, they must

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<sup>30</sup> Subsection 3211(1).

<sup>31</sup> Sub-clauses 3216(5)(i)(a) and 3216(5)(i)(h).



have also complied with Part B of Rule 3100 – *Conflicts of Interest*. We expect Dealers and Registered Individuals to have identified any existing or reasonably foreseeable material conflicts of interest between themselves and the client and to have addressed the conflict in the best interest of the client. For example, when determining which type of Dealer or Registered Individual compensation option is most appropriate for the client, the Dealer or Registered Individual must ensure any conflict or potential conflict has been addressed in the best interest of the client. We discuss this particular conflict in detail in [Notice 17-0093](#).

### **3.03.02 How is account appropriateness different from the account suitability determination obligation?**

Account appropriateness is a one-time obligation to be conducted before an account is opened. The account suitability determination obligation tracks the account appropriateness obligation and is carried out after the account has been opened for a client.

To the extent that a client’s circumstances change or new products, services or account types are made available by a Dealer after the opening of the account, the Dealer must<sup>32</sup> determine, putting the client’s interest first, that:

- it continues to be suitable for the client to have an account with the Dealer, and
- the scope of products, services and account relationships which the client has access to within the account are suitable for that client.

We discuss this further in section 3.04.04 of this Guidance.

### **3.03.03 Is the account appropriateness obligation the same for all types of business models?**

The account appropriateness obligation applies to all Dealers, subject to certain account type/arrangement exemptions (see below). However, when determining what is appropriate for a client or potential client, the Dealer should take into consideration the products, services and account relationships they offer and the client’s particular circumstances. For example, where a Dealer has a limited product shelf and offers only one account type, we expect their account appropriateness assessment will be limited to whether that account and those products and services are appropriate for the potential client and put their interest first.

Where a Dealer has a large product shelf and offers multiple account types, it should focus on assessing whether any of the products, services and account relationships the client has access

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<sup>32</sup> Subsection 3402(3).



to within each of its various account types are appropriate for that client and put their interest first prior to opening the account for that client. For example:

- if a potential client wants to direct their own trades, the Dealer should generally not open a managed account for the client, or
- if a potential client does not intend to trade frequently, the Dealer should consider whether a commission-based account would be more appropriate for the client and would put the client's interest first.

#### ***Exemptions from the account appropriateness requirement***

The following account types/arrangements are either partially or completely exempted from the account appropriateness obligation:

- order execution only accounts<sup>33</sup>, where the obligation is limited to determining whether it would be appropriate for the person to open this account at the Dealer Member;
- direct electronic access accounts<sup>34</sup>, where the obligation is limited to determining whether it would be appropriate for the person to open this account at the Dealer Member;
- carried accounts maintained on the books of a carrying broker<sup>35</sup>, where the introducing broker and not the carrying broker is responsible for meeting the account appropriateness obligation; and
- accounts to be held by certain financial institutions<sup>36</sup>, where there is no appropriateness assessment obligation because of the sophistication of the clients opening the accounts.

#### **3.03.04 What if there are no appropriate products, services or account relationships?**

In circumstances where there are no appropriate products, services or account relationships available for the person, the Dealer should not open an account for that person.<sup>37</sup>

Where there are only a limited set of products, services or account relationships that would be appropriate for the person, the Dealer should restrict access to such product(s) and account relationships for that client, as applicable.

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<sup>33</sup> Clause 3211(2)(i).

<sup>34</sup> Clause 3211(2)(ii).

<sup>35</sup> Clause 3211(3)(i).

<sup>36</sup> Clause 3211(3)(ii).

<sup>37</sup> Clause 3211(1)(i).



### **3.04 When must a suitability determination be made?**

Dealers and Registered Individuals must<sup>38</sup> make a suitability determination:

- before taking or recommending an investment action, and
- when any of the triggering events listed in subsection 3402(2) occur.

Dealers who solely act as carrying brokers, custodians or provide trade execution, clearing and settlement services to retail clients on instructions from another Dealer, exempt market dealer or portfolio manager, are exempt from the suitability determination obligation for retail clients under subsection 3404(3) and 3404(4).

#### **3.04.01 Transfers in and other circumstances**

In some cases, such as when securities are transferred in from another Dealer or securities registrant, Dealers may not be able to complete the suitability determination before opening an account for the client. In these circumstances, we expect the Dealer to:

- complete the suitability determination within a reasonable time after opening the account<sup>39</sup>, and
- restrict the investment actions in that account until the suitability determination has been completed (for example, by restricting the accounts to liquidating trades, transfers or disbursement).

#### **3.04.02 Periodic reviews of a client's account**

The suitability determination criteria in clauses 3402(1)(i) and 3402(1)(ii) also apply to:

- all reviews of a client's account and securities that a Dealer completes under the triggering events set out in section 3402(2), including decisions or recommendations to continue to hold securities, and
- determinations about how much cash to leave uninvested in a client's account.

We discuss this further in section 3.04.04 of this Guidance.

#### **3.04.03 Client instructions and liquidating securities**

The suitability determination criteria also applies when:

- receiving a client instruction (see section 3.08 of this Guidance for more information), and

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<sup>38</sup> Subsections 3402(1) and 3402(2).

<sup>39</sup> Clause 3402(2)(i)



- liquidating securities for clients, such as those transferred in from another registrant.

Registered Individuals should use their professional judgement when liquidating securities for clients, and must do so in a way that puts the client's interest first, being mindful of any tax or other consequences.

#### **3.04.04 Reassessing suitability**

Dealers and Registered Individuals must make a suitability determination whenever an event listed in subsection 3402(2) occurs, including when they review a client's information as required by subsection 3209(4). Dealers and Registered Individuals should conduct this suitability determination in a timely manner, based on the nature and circumstances of the event.

##### ***Reassessing account suitability***

When reassessing suitability, subsection 3402(3) requires Dealers to review the client's account. As part of this review, Dealers and Registered Individuals must assess whether:

- it is suitable for that client to continue having an account with the Dealer and puts their interest first, and
- unless the client holds an OEO account or a direct electronic access account, the products, services and account relationships the client has access to within the account remain suitable for that client and puts the client's interest first<sup>40</sup>.

We do not expect that Dealers will necessarily undertake a reassessment of the client's account relationship at the time of each periodic review or suitability determination reassessment. Rather, we expect Dealers will reflect on the nature of the particular change or event triggering the suitability determination and will use their professional judgement in determining whether the client's account relationship needs to be reassessed to ensure that it continues to be suitable for the client and puts the client's interest first. For example, a Dealer may consider a new account relationship for a client if that client's circumstances have significantly changed or, if on a periodic review under clause 3402(2)(v), the Dealer's offerings have changed such that a new account relationship may be more appropriate for the client.

When assessing whether an OEO account or a direct electronic access account remains suitable for a client<sup>41</sup>, we expect the Dealer to continue being mindful of any "red flags" indicating that it would no longer be suitable for the client to have an OEO account or a direct electronic access account. For example:

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<sup>40</sup> Subsection 3402(3).

<sup>41</sup> Clause 3402(3)(i)



- if a client is expecting recommendations from the Dealer, or
  - if it becomes obvious that a client is no longer capable of conducting online activities (e.g., persistent difficulties in accessing the Dealer’s online platform to place trades)
- an OEO account or a direct electronic access account may no longer be suitable for them.

### ***Extent of requirement to make a new suitability determination***

When determining the extent of their suitability reassessment, the Dealer or Registered Individual should consider the particular circumstances, including:

- the type of event that triggered the obligation to reassess suitability,
- the relationship between the client and the Dealer or Registered Individual,
- the services and securities offered by the Dealer, and
- the types of the securities within the account.

For example:

- Pre-authorized purchases or withdrawals pursuant to established plans do not require a suitability determination before each purchase or withdrawal. However, a Registered Individual should make a suitability determination before establishing a plan and when a triggering event occurs.
- When a client’s account contains illiquid securities that have no redemption features, the suitability reassessment may be limited due to the illiquid nature of the securities. However, the Registered Individual should consider this fact when making future recommendations for the client.
- When a new Registered Individual becomes responsible for a client’s account, the extent of the suitability determination will depend on the circumstances.

### **3.05 Can suitability be assessed on a combined basis for multiple accounts?**

#### **3.05.01 Conditions for assessing suitability on a combined basis for multiple accounts**

Consistent with the conditions for collecting/maintaining one set of KYC information for multiple accounts, Dealers and Registered Individuals may assess suitability on a combined basis for multiple accounts held by the same client provided that:

- the client is the same individual or legal entity for all of the accounts,
- the client’s investment needs and objectives, time horizon and risk profile are identical for all of the accounts,



- the same Registered Individual (or team of Registered Individuals, see section 2.05 of this Guidance) is designated as responsible for all of the accounts,
- the Dealer has the ability to supervise each of the accounts, including the review of KYC information updates and orders for suitability determination purposes, on a multiple-account basis, and
- the client understands that the Registered Individual will assess suitability on a multiple-account basis.

### **3.05.02 Documenting how suitability will be assessed for multiple accounts**

Registered Individuals should clearly communicate to clients the basis upon which they will assess suitability, maintain evidence of this communication, and apply it consistently throughout the relationship.

Once a Dealer sets up the account on a certain basis (for example that suitability will be determined for investments held in all accounts on a combined basis) the Dealer and Registered Individual cannot assess suitability on a different basis from time to time (for example on a single account basis). The Dealer and Registered Individual still have an obligation to assess concentration and liquidity in the client's accounts, and across the client's accounts, as discussed in section 3.02.03 of this Guidance.

### **3.06 What are the obligations when a client has accounts at multiple Dealers?**

Dealers and Registered Individuals are not required to consider external account information when making a suitability determination. Based on the client and the level of information they are willing to share, Dealers and Registered Individuals may want to obtain a general awareness of the accounts that client has at other Dealers or firms registered to trade in or advise on securities to assist in understanding the client's financial circumstances.

For example, if a client claims to have a large net worth, but only has invested a small sum of money with the Dealer, the client's Registered Individual may want to make additional inquiries to ensure they have sufficient information about the client's financial circumstances to make a suitability determination.

### **3.07 What are the obligations when a client has accounts in separate business lines at the same Dealer?**

Where a client has multiple accounts with a Dealer, the Dealer should consider whether a recommendation or decision for one account would materially affect the concentration and liquidity of the client's investments across all of their accounts held with the Dealer. Dealers may conduct this assessment based on pre-set thresholds, as described below.





Depending on the nature of the Dealer's relationship with the client and the client's expectations of that relationship (based on the services and products offered and the Dealer's representations), the Dealer could set concentration and liquidity thresholds:

- (a) to exclude some accounts, or
- (b) at different levels between accounts.

The Dealer should use their professional judgement when making this determination, with particular attention to client expectations. The client's expectations and the concentration and liquidity thresholds set should be documented.

Dealers should not decide to exclude accounts in different operating divisions from concentration and liquidity assessments based on a pre-determined conclusion, unless the account is with the Dealer's OEO division, as discussed in section 3.07.02 of this Guidance.

In some cases, divisions within a single Dealer may effectively operate as separate Dealers. These divisions may have some or all of the following characteristics:

- they operate separately and distinct from one another,
- they have different managing minds, officers, senior management and staff,
- they have separate policies and procedures, supervision and compliance functions,
- they have distinct client account documentation,
- they use separate technology,
- they are distinctly branded,
- they offer different products and services, which are marketed differently, and target different clients or client needs.

Although none of these characteristics is determinative on its own, where operating divisions have been structured with these characteristics, the Dealer should use its professional judgement to decide, at the Dealer-level, whether concentration and liquidity should be assessed across client accounts in the different operating divisions. When making that assessment, the Dealer should consider how it holds itself out to clients and what clients expect from the Dealer.

### **3.07.01 Communications with clients**

We remind Dealers of their relationship disclosure obligations<sup>42</sup> and expect they will provide clarity to clients about:

- the client-Dealer relationship,

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<sup>42</sup> Section 3216.



- the products and services the Dealer will provide to the client within each operating division, and
- the scope of the suitability determination the Dealer will provide.

We also remind Dealers that they cannot<sup>43</sup> hold themselves or their Approved Persons out in a manner that could reasonably be expected to deceive or mislead their clients about the nature of their relationship with the Dealer and the products and services the Dealer provides. We expect Dealers will consider this requirement and the impact their brand promotion could have on their clients' expectations of their relationship with the Dealer and the products and services the Dealer's operating divisions provide.

### **3.07.02 OEO accounts**

Dealers can exclude a client's OEO accounts from their consideration of concentration and liquidity factors in the client's non-OEO accounts because the Dealer does not provide suitability assessments for those OEO accounts, provided that the Dealer has not represented to the client that they will consider these holdings.

### **3.08 Who can assess suitability?**

In subsections 3406(1) and 3406(2), we clarify that compliance with our suitability determination requirements is primarily the obligation of the Registered Individual assigned to the client's account. However, the Dealer is ultimately responsible for ensuring the suitability determination requirement is met for all its retail clients, where applicable.

The Dealer or Registered Individual must not delegate their suitability determination obligations to an unregistered individual, such as an administrative assistant or a referral agent, or to a Registered Individual at another Dealer or securities registrant<sup>44</sup>.

### **3.09 What if a client wants to make an unsuitable trade?**

A Registered Individual is not obligated to accept a client order or instruction that does not, in the Registered Individual's view, meet the criteria for a suitability determination. It is not sufficient for the Registered Individual to mark the order as "unsolicited". The Registered Individual must follow the steps set out in subsection 3402(5) and advise the client against proceeding and recommend an alternative action.

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<sup>43</sup> Section 3640.

<sup>44</sup> Subsection 3406(1).



### **3.10 Is there anything that Dealers and Registered Individuals should not do?**

Dealers and Registered Individuals should not:

- rely on outdated KYP or KYC information when making a suitability determination,
- fail to document their suitability determination analysis,
- fail to consider both trade and account portfolio suitability when making a suitability determination,
- engineer their suitability determination analysis to drive a certain recommendation,
- over-rely on asset allocation or risk assessment tools, or
- make a suitability determination that does not put the client's interest first.

### **3.11 IIROC review of a Registered Individual's or Dealer's suitability determination**

Registered Individuals should make their suitability determinations based on the information available to them at the time. If IIROC reviews a suitability determination, we will do so based on what a reasonable Registered Individual with a similar business model would have done under the same circumstances. We will not review whether the suitability determination has been met based on events subsequent to the determination by the Registered Individual or Dealer, nor do we expect that there is only one best decision, recommendation or course of action: there could be several decisions or recommendations that the Registered Individual can reasonably conclude are suitable and that put the interest of the client first.

## **4. Applicable Rules**

This Guidance relates to following IIROC Rules:

- Part A of Rule 3200 – Know-your-client and Client Identification Requirements
- Part B of Rule 3200 – Requirements for Client Accounts
- Rule 3400 – Suitability Determination

## **5. Previous Guidance Note(s)**

This Guidance replaces [Notice 12-0109 Know your client and suitability - Guidance](#), effective [XXX]