

Appendix 4 – Response to Public Comments



Comments Received in Response to Notice 20-0238 – Rules Notice – Request for Comments – Client Focused Reforms – Proposed Rule Amendments for Public Comment

On November 19, 2020, we issued [Notice 20-0238](#) requesting comments on the Client Focused Reforms (**CFRs**) Proposed Rule Amendments (**CFR Amendments**) and the Proposed Product Due Diligence and Know-Your-Product Guidance (the **Proposed Guidance**)¹:

IIROC received [nine comment letters](#) from the following commenters:

Peter Whitehouse
Ruth Elliott
Art Ross
Kenmar Associates
Canadian Foundation for Advancement of Investor Rights (FAIR)
The Canadian Advocacy Council of CFA Societies Canada (CAC)
Yvonne Whitehouse
Investment Industry Association of Canada (IIAC)
TD Bank

Copies of these comment letters are publicly available on IIROC’s website (www.iiroc.ca). The following table sets out a summary of the comments received and our response.

¹ Refer for Notice 21-0148, for the CFR Amendments and the Product Due Diligence and Know-Your-Product Guidance GN-3300-21-001 (**PDD and KYP Guidance**) approved for implementation.

Summary of Comments	IIROC Response
A. General comments	
<p>Commenters expressed support for our efforts to enhance the client-registrant relationship and better align the interests of securities registrants with the interests of their clients, in a harmonized approach with the Canadian Securities Administrators (CSA), while at the same time addressing IIROC’s unique business models.</p> <p>Commenters asked for additional clarification and guidance on several CFR areas and further harmonization with the CSA CFRs,² in a number of those areas.</p>	<p>Thank you for your comments.</p> <p>We intend to provide further clarity and guidance as needed. The CSA has already published guidance on the CSA CFRs in its CFR FAQs webpage, which will be updated from time to time.³ We follow suit by issuing a guidance on the know-your-client (KYC) and suitability requirements, which we published for comments (KYC & Suitability Guidance). Where possible, we have tried to harmonize the IIROC CFR Amendments with the CSA CFRs.</p>
B. IIROCCFRs Public Comment Amendments	
1. IIROCCFRs Amendments to Core Regulatory Obligations (section 2.2 of Notice 20-0238)	
1.1. IIROCCFRs Account Appropriateness Amendments (section 3211)	
<p>Commenters expressed concern that the proposed account appropriateness requirement is too broad. Specifically, one commenter noted that both the account appropriateness and account suitability determination requirements</p>	<p>The account appropriateness obligation (section 3211) was introduced in the course of the IIROC Rules implementation as a separate concept from the account suitability obligation (see Notice 17-0054 and Notice 18-0014). Unlike the suitability</p>

² Canadian Securities Administrators, *Notice of Amendments to NI 31-103 and Companion Policy 31-103CP: Reforms to Enhance the Client-Registrant Relationships (Client Focused Reforms)*, dated October 3, 2019, (CSACFRs).

³ Please continue to visit the CSA’s webpage dedicated to the *Client Focused Reforms, Frequently Asked Questions*, for information and timely updates.

Summary of Comments	IIROC Response
<p>(clauses 3402(3)(i) and 3403(4)(i)) can be interpreted to stretch beyond the account suitability determination under the CSA CFRs.</p> <p>The commenters also expressed concern that the proposed provision could be broadly interpreted to require Dealer Members (Dealers) to determine that it is in the best interest of the client to enter into a relationship with Dealer A as opposed to Dealer B. According to one of the commenters, this creates ambiguity regarding the expectations for suitability determination particularly at a Dealer that operates multiple lines of business with distinct brands, products and services.</p> <p>Commenters recommend we limit Dealers' account appropriateness obligation to assessing whether the <u>account</u> is appropriate for the person, and revise clause 3211(1)(i) accordingly.</p> <p>One commenter asked us to confirm that IIROC's account appropriateness expectation for Dealers offering order execution only accounts (OEO Dealers) continues to be as set out in IIROC Notice 18-0076.</p>	<p>determination obligation, which is an ongoing obligation, account appropriateness is a one-time obligation to be conducted before an account is opened. Once the account is opened, Dealers will be subject to the account suitability obligation. This explains the differences between our account appropriateness and CSA CFR account suitability (sub-section 13.3(1) of NI 31-103)).</p> <p>We proposed the CFR Amendments to sub-section 3211(1) to clarify the existing requirements in view of the diverse account models on the IIROC platform. We understand from the comments received that the proposed language could result in ambiguity. We have made changes to clause 3211(1)(i), to achieve closer alignment with the language of the CSA CFR (sub-section 13.3(1) of NI 31-103). We have also clarified that before opening an account Dealers are required to assess <u>that the action of opening an account</u> with the Dealer is appropriate for the <i>person</i>⁴ (e.g., opening an account with an OEO Dealer, full-service Dealer or portfolio manager). As part of this requirement, we do not expect Dealers to consider account alternatives outside of the Dealer.</p> <p>We further clarify the account appropriateness and account suitability requirements in the KYC and Suitability Guidance.</p> <p>Notice 18-0076 remains applicable. To provide further clarity, there is also no requirement to assess the appropriateness of products and services that the person would have access to in a direct electronic access account.</p>

⁴ In this document the term *person* has the same meaning given to it in the IIROC Rules.

Summary of Comments	IIROC Response
1.2.IIROCCFRs Suitability Amendments (sections 3402 through 3404)	
<i>Suitability determination (subsection 3402(1))</i>	
<p>Commenters recommend that we issue guidance on how a Registered Individual can meet our requirement to consider a ‘reasonable range of alternatives’, in the course of their suitability determination, and properly document it. They also suggest that in the guidance we provide explanatory language about the benefits of considering a range of alternative investment actions and how this leads to a recommendation that puts clients’ interests first.</p> <p>One commenter recommends that IIROC ensure via rules and guidance that the <i>risk tolerance</i> (willingness to accept risk) and <i>risk capacity</i> (ability to endure loss) components of risk profiling are properly understood before an investment recommendation is made. The commenter also suggests we add a third risk component to the risk profile, that of the <i>risk need</i>, i.e., the amount of risk that the investor must take, or does not need to take, in order to reach their financial objectives.</p>	<p>In the KYC and Suitability Guidance, we discuss our enhanced suitability determination requirement, including the requirement for Dealers to consider a range of investment alternatives and how this leads to an action that puts the client’s interests first.</p> <p>Dealers are required to make a suitability determination based, in part, on the client’s KYC information, which includes their risk profile, based on the client’s risk tolerance and risk capacity. We clarify this further in the KYC and Suitability Guidance.</p> <p>We do not consider a client’s risk needs to be a component of the client’s risk profile assessment. The client’s risk needs are part of the more holistic review process that must be undertaken to determine the reasonableness of the client’s KYC information. Specifically, if the client’s risk profile is at a lower risk level than the risk that is needed to be assumed by the client to reach their stated investment objective(s), then the client should be informed that their financial objectives may not be achievable within the time they want to achieve them.</p>

Summary of Comments	IIROC Response
<i>Triggering events (subsection 3402(2))</i>	
<p>One commenter recommends that we require Dealers to review their suitability determination in the event of market fluctuations. The commenter also recommends we discuss this specifically in the KYC and Suitability Guidance.</p>	<p>Under the CFR Amendments, Dealers and Registered Individuals must conduct a suitability review when there is a change in a security in the client’s account that could result in the client’s portfolio of account investments no longer being suitable for the client.</p> <p>In the PDD and KYP Guidance we clarify that generally we would not consider a change in the overall market or economic conditions to require a reassessment of individual securities. However, a change in market conditions that affects only a particular security, or sector, or new information regarding a particular security or sector, may require a reassessment of the affected securities. We expect Dealers to use professional judgment in determining whether there is a change in a security, as a result, that would trigger an account suitability determination review.</p> <p>In the KYC and Suitability Guidance we discuss Dealer’s obligation to consider factors such as market conditions when determining the appropriate investment concentration and liquidity in the client’s account.</p>
<i>Account suitability determination (subsections 3402(3) and 3403(4))</i>	
<p>One commenter recommends we limit the account suitability determination to the account itself.</p> <p>At the same time, commenters believe that the new subsections 3402(3) and 3403(4) complicate existing Dealer suitability determination practices and</p>	<p>In Notice 20-0238 (section 2.3.4) we clarify that subsections 3402(1) and (2) are intended to cover what we referred to, for simplicity of discussion, as the retail client “portfolio suitability requirements”. Subsection 3402(3), on the other hand, sets out the retail account suitability requirements, and subsection</p>

Summary of Comments	IIROC Response
<p>are not necessary in light of the other suitability determination provisions of section 3402. They also request further clarity regarding the timing and frequency of account suitability reviews once the client account is set up.</p> <p>Commenters also question the ability of OEO Dealers to satisfy the ongoing account suitability determination pursuant to clauses 3402(3)(i) and 3403(4)(i)). This in consideration of OEO Dealers being exempt from collecting KYC information, apart from certain information at the time of account opening (limited in scope towards identifying “red flags”), and the ability of these OEO Dealers to effectively operationalize this ongoing suitability requirement.</p>	<p>3403(4) sets out the institutional account suitability requirements, both crafted around the diverse account models in our IIROC platform and as a continuation of our account appropriateness standard.</p> <p>In consideration of the comments received, we decided to revise the language in subsection 3402(3) and 3403(4) to further clarify our requirement in alignment with the revisions to the account appropriateness language discussed above in section B. 1.1. <i>IIROCCFRs Account Appropriateness Amendments (section 3211)</i>.</p> <p>In the KYC and Suitability Guidance, we further clarify the account suitability determination obligation.</p> <p>Our account suitability expectation for OEO Dealers tracks the account appropriateness expectation set out in Notice 18-0076. We expect OEO Dealers to continue to be mindful of certain “red flags” indicating that it is no longer suitable for a client to have an OEO account, such as for instance the client expecting recommendations from such a Dealer.</p>
<p><i>Suitability determination (subsection 3402(4)) – investment portfolio suitability</i></p>	
<p>Commenters raised concerns that, absent further clarity, the investment portfolio suitability requirement (subsection 3402(4)) can be interpreted to require that Dealers assess a client’s investment portfolio suitability across multiple accounts at the same Dealer. They note that this broad interpretation poses practical challenges for Dealers that operate distinct</p>	<p>Overall, our retail client account portfolio suitability approach is aligned with the CSA CFR’s account portfolio suitability approach, with the exception of provisions that are tailored around the unique Dealer models in our platform.</p>

Summary of Comments	IIROC Response
<p>types of accounts (e.g. OEO and advisory accounts) and across various business lines for the same client.</p> <p>Commenters also argue that this interpretation of investment portfolio suitability goes beyond the suitability requirements in:</p> <ul style="list-style-type: none"> • section 13.3 of NI 31-103, which is limited to portfolio suitability at an individual account level, and • 31-103CP, which contemplates client’s portfolio suitability assessment (across the client’s accounts within a Dealer) only for securities concentration and liquidity considerations. <p>In view of the above, commenters recommend that:</p> <ul style="list-style-type: none"> • we revise subsection 3402(4) to the effect that the client portfolio suitability assessment is carried out at an individual account level; and • in the guidance: <ul style="list-style-type: none"> ○ clarify that our portfolio suitability approach aligns with the CFR Implementation Committee December 18, 2020 FAQ (CSA CFR FAQs), including the clarified position on concentration and liquidity assessment across accounts, and ○ reiterate the current flexibility, provided in IIROC Notice 12-0109, for Dealers to conduct multiple account suitability determination for a client (e.g. for household accounts) at their discretion. 	<p>We understand that the current use of the term “investment portfolio” can lead to confusion. As such, we have revised subsection 3402(4) to clarify that Dealers are required to assess the suitability of the client’s portfolio of investments in the client’s account, rather than across multiple accounts, except when otherwise specified in the IIROC Rules and related guidance.</p> <p>On the matter of assessing multiple account concentration and liquidity risks, our position is aligned with the CSA’s position as made public via the CSA CFR FAQs.</p> <p>In the KYC and Suitability Guidance, we:</p> <ul style="list-style-type: none"> • provide further guidance and clarity on the suitability determination requirement, and • maintain the current flexibility for Dealers to conduct a suitability determination for multiple accounts based on a single set of KYC information.

Summary of Comments	IIROC Response
<i>Suitability determination (section 3402) and Primary responsibility and delegation (section 3406) – model portfolio accounts</i>	
<p>Commenters raise concerns on the applicability of these provisions to third party managed accounts and model portfolio accounts.</p> <p>According to the commenters, for these accounts Dealers will find it difficult to meet the suitability determination and documentation requirement on an individual transaction, or exercise of discretion, basis (section 3402). Currently, portfolio changes initiated by the third-party manager or model and executed by the Dealer follow an Investment Policy Statement approved by such Dealer to be suitable for the enrolled clients (similar to investment fund products). This ensures overall suitability of transactions and exercise of discretion for each client at a portfolio level but not on an individual transaction or exercise of discretion basis.</p> <p>Commenters recommend clarification of section 3406 prohibition, to allow for delegation to the sub-advisor of suitability determination in the context of discretionary or managed accounts when operated by a sub-advisor (pursuant to clause 3279(1)(iii)).</p>	<p>While compliance with our suitability requirements is primarily the obligation of the Registered Individual assigned to the client’s account, the Dealer remains ultimately responsible for ensuring the suitability determination requirement is met for all its retail clients.</p> <p>Where the Dealer has authorized an individual at a third party sub-advisor to deal with managed accounts (pursuant to clause 3279(1)(iii)), and perform certain functions related to suitability, the Dealer remains responsible for the suitability determination obligation.</p>
2. IIROCCFRs Exemption from Core Regulatory Obligations (section 2.3 of Notice 20-0238)	
2.1. Know-your-client exemptions (section 3208)	
<p>One commenter recommends that we provide exemptions (or waivers) from the collection of KYC information for suitability assessment purposes (clause 3202(1)(iii) and subsection 3209(4)) for individuals who qualify as a “permitted client” under NI 31-103.</p>	<p>Under the CFR Amendments, institutional clients are exempt from certain KYC requirements (subsection 3208(1)(iv)). In a separate project, we have proposed amendments to the institutional client definition, to include a certain category of</p>

Summary of Comments	IIROC Response
	individuals; see Notice 19-0200. We intend to consider the CFR exemptions/waivers for clients who are individuals in the context of that definition.
2.2.Account appropriateness exemptions (subsections 3211(2) and (3))	
<p>One commenter recommends that we exempt the following clients from the account appropriateness requirement, given their level of sophistication:</p> <ul style="list-style-type: none"> • institutional clients that are permitted clients and who wave suitability, and • individuals who are permitted clients and who waive suitability for non-managed accounts. 	<p>We thank you for your comments. While certain institutional clients may waive the suitability requirement, account appropriateness is a distinct requirement. A Dealer is expected to carry out an account appropriateness determination for a person before they become an institutional client or retail client of the Dealer and dealt with on that basis.</p>
2.3.Product due diligence and know-your-product exemptions (section 3303)	
<p>One commenter recommends that IIROC introduce a rule that prohibits OEO dealers from receiving trailing commissions, given that the know-your-product (KYP) clause 3303(2)(i) seems to broadly exempt OEOs from the KYP obligations and as result from the analysis on the suitability of products that offer trailing commission. The commenter also noted that there should be an accepted definition of ‘trailing commission’.</p>	<p>The requirements concerning trailing commissions are outlined in the CSA <i>Notice of Amendments to National Instrument 81-105, Mutual Fund Sales Practices and Related Consequential Amendments – Prohibition of Mutual Fund Trailing Commissions Where No Suitability Determination Was Required</i>, September 17, 2020.</p>

Summary of Comments	IIROC Response
<p>3. Proposed Product Due Diligence and KYP Guidance (section 3 of Notice 20-0238)⁵</p>	
<p>General comments</p>	
<p>Several commenters raise the need for additional clarity with respect to the product due diligence (PDD) and KYP requirements, preferably in the Proposed Guidance. In the following section we discuss these comments more specifically.</p>	<p>The PDD and KYP rules were intentionally designed to be principles-based requirements that give Dealers flexibility to design processes that take into consideration the unique risk-based factors that apply in different contexts. We expect that Dealers will have the expertise and insight required to develop policies and procedures that make sense in the context of their business model, and products and services offered by the Dealer.</p>
<p>Section 1.1. - What is product due diligence?</p>	
<p>One commenter recommends that in paragraph 2, IIROC:</p> <ul style="list-style-type: none"> clarify the language, as recommended below, to avoid the confusion that Dealers will prevent access to complex or unique securities for the entire category of retail clients: <p style="padding-left: 40px;">For example, where a Dealer determines that a particular security has complex or unique features making it difficult to fully understand, the Dealer may conclude that the security should not be made available to a certain class or subset of retail clients,</p>	<p>We agree with the recommended wording change. Refer to the PDD and KYP Guidance</p>

⁵ Refer to GN-3300-21-001, Product Due Diligence and Know-Your-Product Guidance, for the revised guidance in response to the comments.

Summary of Comments	IIROC Response
<ul style="list-style-type: none"> remove the examples provided, as it may interfere with the Registered Individual's ability to use their professional judgement. 	<p>Given that the amended wording provides Dealers and Registered Individuals with the discretion to determine whether certain securities should be made available only to certain clients, the examples are not prescriptive, and therefore they will remain.</p>
<p>Section 1.1.3 - Is the product due diligence responsibility the same for all types of business models?</p>	
<p>One commenter raised concerns that the Proposed Guidance seems to suggest that OEO Dealers are required to conduct product suitability determination as part of their PDD obligation, at a time they are exempt from the suitability determination obligation. The commenter recommends that, in order to avoid outcomes that contradict Dealer obligations (e.g., sub-clause 3241(2)(i)(c)) and clients' expectations towards an OEO Dealer, the Proposed Guidance is revised to remove the following:</p> <p style="padding-left: 40px;">At a minimum, the product due diligence obligation for OEO accounts will include a determination regarding whether certain products should be made available for any clients.</p> <p>Another commenter agrees with IIROC's approach to not exempt OEO Dealers from the PDD requirements for products that they make available on their product shelf.</p> <p>We received comments in support and against the Proposed Guidance's approach for PDD flexibility based on Dealer's business model. One commenter questioned the need for such flexibility given that, with few exceptions, many Dealers adopt similar models. According to the commenter, this approach may result in Dealers having to engage in the 'onerous task' of interpreting the PDD requirements.</p>	<p>We disagree with the suggested change. A large part of the PDD obligation for OEO Dealers is to perform a baseline assessment regarding whether certain products may be inappropriate for any class of client on OEO platforms. There are various reasons for excluding certain securities, such as a lack of information available for clients to assess the security, and also significant conflicts of interest associated with the governance of certain products. In extreme cases a product may be suspected to be of a fraudulent nature. These baseline considerations do not entail a suitability obligation for individual clients.</p> <p>We have revised the language of section 1.1.3 to clarify this position. Refer to the PDD and KYP Guidance.</p> <p>While IIROC acknowledges that many Dealers do in fact have similar business models, the rules allow firms flexibility in terms of achieving compliance with the rules. Please refer to the response above in regards to General Comments.</p>

Summary of Comments	IIROC Response
Section 1.1.4 - Is the product due diligence responsibility the same for all types of securities?	
<p>Commenters request further clarity concerning the level of diligence that a Dealer is expected to exercise towards meeting the PDD obligation. According to the commenter, a risk-based approach - as noted in the Proposed Guidance - suggests a lower degree of diligence for less risky or less complex products (e.g. GICs and government backed agency bonds). The commenter believes that Dealers would benefit from IIROC introducing clear obligations and a classification framework.</p>	<p>Please refer to the answer above in response to General Comments.</p>
Section 1.1.5 - What product due diligence is required for transfers-in and client directed trades?	
<p>Commenters expressed support for the added guidance related to transfers-in requirements. At the same time, they request that guidance is provided also with reference to securities holds, whereby Dealers should not be required to conduct further due diligence where the recommendation is to continue to hold the security. The commenters recommend the following revisions:</p> <p style="padding-left: 40px;">Any further recommendations, apart from the recommendation to hold or reduce client holdings of the transferred-in security, will require the security to be subject to the Dealer’s product due diligence review process.</p>	<p>IIROC’s position regarding the PDD obligation of Dealers and KYP obligation of Approved Persons is consistent with that of the CSA.</p> <p>Generally, Dealers are not required to approve securities that are transferred-in or held as a result of a client-directed trade if they do not otherwise make those securities available to clients. They however must take reasonable steps to assess those securities; the depth of such assessment may vary depending on the nature of the securities, the client’s circumstances and investment objectives, and the relationship between the client and the Dealer.</p> <p>The Approved Persons must have an understanding of all securities held in a client’s account, including those that are held as a result of a transfer-in or a client-directed trade, in order to fulfill their suitability determination obligations in Rule 3400, including with regards to a recommendation to continue to hold or reduce the securities. Approved Persons must therefore take</p>

Summary of Comments	IIROC Response
	<p>reasonable steps to assess and understand those securities transferred into the Dealer from another Dealer or registrant, as well as those that are a result of a client-directed trade, within a reasonable time after the transfer or trade.</p> <p>We have revised the language of section 1.1.5 to clarify this position. Refer to the PDD and KYP Guidance.</p>
<p>Section 1.4 - What are the key considerations when conducting product due diligence?</p>	
<p>The Proposed Guidance provides a list of factors that Dealers should assess as part of their PDD determination. One commenter recommends greater clarification in the Proposed Guidance that this list may not be applicable to all business models, such as the OEO model, in which case a Dealer should be able to tailor its own list of factors.</p>	<p>The guidance reflects the principle-based approach of PDD and KYP rules, noted above in response to the General Comments. Dealers have the flexibility to tailor their PDD processes based on their business model, and products and services offered by them. See section 1.1.3 of the PDD and KYP Guidance.</p>
<p>4. Clarification</p>	
<p>Commenters asked us to confirm our expectation regarding KYC updates under the CFR Amendments, including that:</p> <ul style="list-style-type: none"> • Dealers are not expected to update existing clients' KYC information as of the date the CFR Amendments enter into effect but rather as part of a scheduled reassessment in accordance with the KYC triggers in the CFR Amendments, and • the triggers for updating KYC information are limited to those in subsections 3209(3) and (4), respectively, and do not include the ones under 3402(2), i.e. suitability reassessment triggers. 	<p>We refer the commenters to the CSA CFR FAQs, as updated from time to time.</p>

Summary of Comments	IIROC Response
C. Comments on topics outside of the scope of the consultation of Notice 20-0238	
<p>Several comments received in response to Notice 20-0238 fall outside of the specific scope of the consultation under this notice. At a high-level, commenters made recommendations on the following areas of IIROC Rules, including on the CFR housekeeping changes:⁶</p> <ul style="list-style-type: none"> • further clarity of definitions, • further clarification and enhancements of KYC information collection processes, • further clarification and enhancement of IIROC expectations regarding material conflicts of interest, • close monitoring of KYP implementation for unintended consequences, • introduce specific rules on the use of titles and designations, • introduce specific rules for vulnerable investors, • set the bar higher for the <i>suitability</i> and <i>reasonableness</i> standard, • review the IIROC rulebook holistically, including the complaint handling practice, for congruence with the intent and spirit of the CFRs, and 	<p>We thank the commenters for sharing their comments and recommendations on these areas. We welcome feedback from the public, even on matters that fall outside the scope of a specific consultation.</p> <p>Even though we do not respond to these comments in the context of this limited consultation on Notice 20-0238, we do take note and will consider these recommendations as part of our continuous evaluation of the CFR impact and the need for further clarity or rule revisions of the CFR provisions or other IIROC rules in the future, as applicable.</p>

⁶ IIROC published the Client Focused Reforms - Housekeeping Rule Changes in Notice [20-0239](#). These changes are not published for comments and are in effect immediately upon implementation.

Summary of Comments	IIROC Response
<ul style="list-style-type: none"> • broaden CFRs, beyond securities services, to capture the breadth of wealth management services offered by Dealers. 	