



185 Frederick Street, Suite 101, Toronto ON, M5A 4L4  
Tel: 416 637 3244 ■ Fax: 416 637 3243 ■ [www.babinbessnerspry.com](http://www.babinbessnerspry.com)



# Why care about changes to regulations?

Three questions to ask to protect yourself and your business

**By Ellen Bessner, BABIN BESSNER SPRY LLP**

(Published by Investment Executive | July 9, 2021)

Did you know that clients, regulators, judges, dealers and criminal prosecutors are watching you for non-compliance with new regulations? Are you someone who thinks “I will just continue doing what I am doing and it will be fine,” comfortable in knowing you have never been in trouble in the past, so it won’t happen to you now?

You would be wrong and misguided to think that. Most of my clients who get into trouble with their clients, regulators, courts or their own dealers have engaged in this misguided thinking until a regulatory investigation or client complaint catches them by surprise. In this article, I will explain why you need to change as the regulations change by asking yourself the following questions and considering the suggested solutions.

**Question #1:** Under the new NI 31-103 regulations — referred to as the client-focused reforms — your firm is required to explain its conflicts through disclosure. Do you think about the information delivered by your dealer to prospective and existing clients and their potential reactions to that information? Do you think clients just toss that stuff into the recycling or delete the email before reading it? Think again — they read it. Further, clients have far more self-serve options available if they don't see value in their human advisor. If they are concerned about potential conflicts of interest by working with you, they may decide to use one of those self-serve options instead.

**My suggested solution:** I urge you to read your firm's disclosures, preferably before they are delivered to clients. Place yourself into a prospective or existing client's shoes and consider a plan on how this communication should be managed.

**Question #2:** Has your dealer helped you anticipate your clients' and prospects' reactions to this disclosure? If clients ask about the materials they've been sent by head office, has your dealer cautioned you against saying "Oh, don't worry about those — they are just standard materials our firm must send and don't pertain to me or you."

**My suggested solution:** Instead of brushing off any client questions, consider understanding why your firm is making the disclosure. Get behind the reason the regulation exists, then determine why and how the disclosure pertains to you and your firm's relationship with your clients. Only then can you develop a plan to stickhandle client questions or decide if you want to be proactive in your approach to ensure that when clients or prospects read these materials, they are not tempted to run for the hills. Each firm's disclosure is different and each of the advisors reading this article is different, so you need to develop a bespoke plan.

**Question #3:** Do you think about how much easier it is now for clients to issue a complaint — whether it's legitimate or not? Clients are educating themselves now more than ever before and know what their rights are. You are vulnerable if you do not keep this top of mind with all client interactions.

**My suggested solution:** If you are not already taking notes of all client communications and confirming all key information in writing, you will instantly be motivated to do so after spending two minutes looking at the client-friendly

and easy-to-use web pages for investors who want to file a complaint with [OBSI](#), [IIROC](#) and the [MFDA](#). The provincial securities regulators are considering giving more authority to OBSI so it may be able to enforce its decisions — clients won't even have to spend a dime on a lawyer. Advisors [need to retain lawyers](#) when faced with a client complaint to ensure they are responding in a manner that reduces, rather than increases, their exposure. Furthermore, regulators are more closely connected to the RCMP, provincial police fraud squads and U.S. authorities than ever before. Finally, remember that a settlement with the provincial regulators or SROs triggers a review by regulatory authorities and organizations that provide you with other licences (e.g., insurance or accounting licences) and certifications (e.g., FP Canada or the CFA Institute).

So, if you are tempted to continue to go full steam ahead and ignore the regulatory noise of change around you, please reconsider to protect yourself, your business, your reputation, your licence, your certifications and your livelihood.

END