

The logo for the Ontario Securities Commission (OSC) consists of the letters "OSC" in white, bold, sans-serif font, centered within a dark teal square.

ONTARIO  
SECURITIES  
COMMISSION

# OSC Staff Notice 33-755

Compliance and Registrant Regulation Branch

Summary Report for Dealers, Advisers and Investment Fund Managers

**July 27, 2023**



Ontario

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## Director's Message

We are pleased to share this year's Summary Report for Dealers, Advisers and Investment Fund Managers, which provides an overview of our work during the 2022-2023 fiscal year.

As of May 1, 2023, we have reincorporated an in-person component to our compliance reviews. Being mindful of hybrid work arrangements, we will continue to use electronic means for the collection of materials and other aspects of our work, but you can expect to have in-person meetings at various stages of the review process. If we are not able to attend in-person at the registrant's offices, then we will ask the registrant to attend meetings in our offices.

Highlights from the past year include compliance sweeps of high-impact firms, firms with limited compliance staff, registered firms that distribute mortgage investment entities, and reviews of Crypto Asset Trading Platform custody arrangements.

Additionally, together with the Canadian Securities Administrators and Canadian Investment Regulatory Organization, the OSC conducted reviews focused on the implementation of the Client Focused Reforms (**CFRs**) conflicts of interest requirements. The findings from these reviews, along with guidance, is expected to be published shortly. However, I want to emphasize that the regulatory expectation is that registrants have taken steps to review all aspects of their operations to fully implement the CFRs. As stated previously, if we do not see the intended outcomes, then further regulatory action may be required.

As the complexity of business models and products continues to increase, we formed a new operational team that is focused on specialized dealer business models such as derivatives dealers and restricted dealers.

Looking ahead, our compliance review activity for 2023-2024 will prioritize:

- review of know-your-client (**KYC**), know-your-product and suitability determination to assess the effectiveness of the implementation of the CFRs
- compliance reviews of high-risk firms, following the analysis of the data collected in response to the 2022 Risk Assessment Questionnaire (**RAQ**)
- compliance reviews of crypto asset trading platforms

Our Registrant Outreach program remains a priority, and we continue to provide tools and programs to help registrants with their compliance obligations. Visit the [Registrant Outreach](#) webpage to access the Topical Guide for Registrants, Director's decisions, and calendar of events for past and upcoming educational webinars.

If you have a question, comment, or would like to discuss regulatory matters, please feel free to reach out to us. As always, we look forward to engaging with you.

Debra Foubert  
Director, Compliance and Registrant Regulation

## Glossary of legislative references

**Act:** *Securities Act*, RSO 1990, c. S. 5

**Form 13-502F4:** Form 13-502F4 *Capital Markets Participation Fee Calculation*

**Form 13-503F1:** Form 13-503F1 (*Commodity Futures Act*) *Participation Fee Calculation*

**Form 33-109F3:** Form 33-109F3 *Business Locations Other Than Head Office*

**Form 33-109F4:** Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*

**Form 33-109F5:** Form 33-109F5 *Change of Registration Information*

**Form 33-109F6:** Form 33-109F6 *Firm Registration*

**Form 45-106F1:** Form 45-106F1 *Report of Exempt Distribution*

**NI 31-103:** National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

**NI 31-103CP:** Companion Policy to NI 31-103

**NI 33-109:** National Instrument 33-109 *Registration Information*

**NI 33-109CP:** Companion Policy to NI 33-109

**NI 45-106:** National Instrument 45-106 *Prospectus Exemptions*

**NI 45-106CP:** Companion Policy to NI 45-106

**NI 45-110:** National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*

**NI 81-102:** National Instrument 81-102 *Investment Funds*

**MI 32-102CP:** Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*

**OSC Rule 13-502:** OSC Rule 13-502 *Fees*

**OSC Rule 13-503:** OSC Rule 13-503 *Commodity Futures Act Fees*

**OSC Rule 31-505:** OSC Rule 31-505 *Conditions of Registration*

**OSC Rule 32-505:** OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*

**OSC Rule 72-503:** OSC Rule 72-503 *Distributions Outside Canada*

## Introduction

### Who we are

The Compliance and Registrant Regulation (**CRR**) Branch of the Ontario Securities Commission (**OSC, Commission**) is responsible for the registration and ongoing regulation of firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair, efficient and competitive capital markets and confidence in capital markets,
- foster capital formation, and
- contribute to the stability of the financial system and the reduction of systemic risk.

CRR's activities are integral to the OSC's vision of being an effective and responsive securities regulator, fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

### The purpose of this report

This Summary Report for Dealers, Advisers and Investment Fund Managers (**Summary Report**), prepared by staff of the CRR Branch, is designed to assist registrants by providing information about:

#### Education and outreach

[Part 1](#) of this report provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.

#### Regulatory oversight activities and guidance

[Part 2](#) of this report can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.

#### Impact of upcoming initiatives

[Part 3](#) of this report provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

#### Registrant conduct activities

[Part 4](#) of this report is intended to enhance a registrant's understanding of our expectations for conduct of registrants and applicants for registration. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

## Who this report is relevant to

This Summary Report provides information for registrants that are directly regulated by the OSC. These registrants primarily include investment fund managers (**IFMs**), portfolio managers (**PMs**), exempt market dealers (**EMDs**) and scholarship plan dealers (**SPDs**). At present, registrants overseen by the OSC include:

Firms	Individuals
1,161 <sup>1</sup>	70,077

IFMs	PMs	EMDs	SPDs
546 <sup>2</sup>	334 <sup>3</sup>	277 <sup>4</sup>	4 <sup>5</sup>

In general, firms must register with the OSC if they conduct any of these activities in Ontario:

- are in the business of trading in, or advising on, securities (this is referred to as the “business trigger” for registration)
- direct the business, operations or affairs of an investment fund
- act as an underwriter
- conduct trading or advising activities involving commodity futures contracts or commodity futures options

Individuals must register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the Ultimate Designated Person (**UDP**) or Chief Compliance Officer (**CCO**) of a registered firm.

There are seven dealer and adviser categories for firms trading in or advising on securities, or acting as an underwriter, as applicable:

- EMD

<sup>1</sup> Excludes firms registered solely in the category of MFD, ID, commodity trading adviser, commodity trading counsel, commodity trading manager and futures commission merchant.

<sup>2</sup> Includes firms registered only as IFMs and IFMs also registered in other registration categories (other than SPD).

<sup>3</sup> Includes firms registered only as PMs, RPMs, and PMs/RPMs also registered in other registration categories (other than IFM).

<sup>4</sup> Includes firms registered only as EMDs, RDs, and EMDs/RDs also registered in other registration categories (other than IFM or PM).

<sup>5</sup> Includes firms registered only as SPDs and SPDs also registered in other registration categories.

- SPD
- restricted dealer (**RD**)
- PM
- restricted portfolio manager (**RPM**)
- investment dealer (**ID**) – firms in this category must be a member of the Canadian Investment Regulatory Organization (**CIRO**) (previously the Investment Industry Regulatory Organization of Canada (**IIROC**))
- mutual fund dealer (**MFD**) – firms in this category must, except in Quebec, be a member of CIRO (previously the Mutual Fund Dealers Association of Canada (**MFDA**))

There are four dealer and adviser categories for firms trading in or advising on commodity futures:

- commodity trading adviser
- commodity trading counsel
- commodity trading manager
- futures commission merchant

IFM is a separate category for firms that direct the business, operations or affairs of investment funds.

Although firms registered in the category of MFD, ID or futures commission merchant and their registered individuals, are directly overseen by the self-regulatory organization CIRO, the OSC approves the registration of firms in these categories and approves the registration of individuals sponsored by a MFD. Applications for firm registration are reviewed by CRR staff, but we remind firms seeking registration in the category of MFD, ID or futures commission merchant to also apply separately for membership with CIRO.

While this report focuses primarily on registered firms and individuals directly overseen by the OSC, firms directly overseen by CIRO are encouraged to review the Summary Report as certain information is applicable to them as well.



## Service standards

The CRR Branch is committed to accountability and transparency, and to ensuring services are delivered in the most efficient and effective ways possible. All CRR service standards and timelines are incorporated into the [OSC Service Commitment](#). Information about CRR-specific service standards and timelines can also be accessed at:

- [Exemption Application](#)
- [Registration Materials](#)
- [Notices of End of Individual Registration or Permitted Individual Status](#)
- [Compliance Reviews: Registrants](#)

## Organizational structure

The CRR Branch is led by the Director, Debra Foubert. The Director is supported by:

- Elizabeth King, Deputy Director, Registrant Conduct
- Felicia Tedesco, Deputy Director, Operations

The CRR Branch consists of seven teams:

- Operations, which comprises four compliance teams
- Registrant Conduct Team
- Data Strategy and Risk Team
- Registration Team

### Operations

Operations is comprised of four teams of lawyers and accountants and is responsible for conducting compliance field reviews, reviewing applications for exemptive relief and working on policy initiatives. The four teams are:

- Investment Fund Manager Team
- Portfolio Manager Team
- Dealer Team
- Specialized Dealer Team

Operations staff are subject matter experts and provide support to the Registration team.

### Registrant Conduct Team

The Registrant Conduct Team handles files referred from other CRR teams and other OSC branches for matters that require further regulatory action to remediate registrant misconduct or to review higher-risk registration applications.

Registrant misconduct may be addressed by applying terms and conditions to registration, suspension of registration or being referred to the Enforcement Branch. This team is also responsible for working on policy initiatives.

### Data Strategy and Risk Team

The Data Strategy and Risk Team performs financial analysis of registrants' interim and annual financial statements and capital calculations, leads the Capital Markets Participation Fee process and oversees all fee matters. This team also supports CRR's data requirements and conducts data analytics.

### Registration Team

The Registration Team focuses on the initial registration of firms and individuals, subsequent changes to registration, including the surrender of registration, and ongoing maintenance of registration information.

This team is also responsible for processing registration-related applications for exemptive relief and working on registration-related policy initiatives.

## Staff contact information

Name	Title	Phone
Debra Foubert	Director	416-593-8101
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Felicia Tedesco	Deputy Director, Operations	416-593-8273
Michael Denyszyn	Manager, Registrant Conduct Team	416-595-8775
Alizeh Khorasanee	Manager, Dealer Team	416-593-8129
Vera Nunes	Manager, Investment Fund Manager Team	416-593-2311
Jeff Sockett	Manager, Data Strategy and Risk Team	416-593-8162
Dena Staikos	Manager, Specialized Dealer Team	416-593-8058
Jason Tan	Manager, Registration Team	416-593-2312
Elizabeth Topp	Manager, Portfolio Manager Team	416-593-2377

The format for our email addresses is first initial and last name: First Last, [flast@osc.gov.on.ca](mailto:flast@osc.gov.on.ca).

For registration or fee inquiries, please use the following contact information:

- Registration inquiries: [registrations@osc.gov.on.ca](mailto:registrations@osc.gov.on.ca)
- Fees inquiries: [annualfees@osc.gov.on.ca](mailto:annualfees@osc.gov.on.ca)

# Part 1: Outreach

**1.1**        **Outreach program and resources**

**1.2**        **Registration Outreach Roadshow**

**1.3**        **Registrant Advisory Committee**

## 1.1 Outreach program and resources

We interact with our stakeholders through our Registrant Outreach program. The objectives of our Registrant Outreach program are to strengthen communication with Ontario registrants that we directly regulate and with other industry participants (such as lawyers and compliance consultants), to promote strong compliance practices and to enhance investor protection.

Registrant Outreach statistics since inception

Sessions (in-person and webinars)	Replays viewed	Individual attendance	Topical Guide for Registrants – annual page views
73	11,607	15,766	> 8,600

Interested in attending an upcoming Registrant Outreach seminar?

Click [here](#) for our calendar of upcoming events.

Looking for information about regulation matters?

Take a look at our [Registrant Outreach program](#) webpage or our [Topical Guide for Registrants](#) for help with key compliance issues and policy initiatives.

Want to be informed about newly released guidance?

Register to receive our email alerts [here](#).

Looking for a listing of recent email alerts and links to each?

Refer to the [Compliance-related reports, staff notices and email notifications](#) webpage.

Interested in reading previously published Director's decisions?

Refer to the [Opportunity to be heard and Director's decisions](#) webpage.

If you have questions related to the Registrant Outreach program or have suggestions for seminar topics, please send an email to [RegistrantOutreach@osc.gov.on.ca](mailto:RegistrantOutreach@osc.gov.on.ca).

## 1.2 Registration Outreach Roadshow

The Registration Team held its annual Registration Outreach Roadshow in early 2023 with various registered firms and law firms. These outreach sessions are aimed at continuing to strengthen working relationships with the registration teams of the registered firms we frequently interact with, as well as disseminating information to legal counsel who work with firms that we do not interact with as often.

The OSC reviewed deficiencies frequently seen in filings to offer insights to firms on how to avoid filing pitfalls and inefficiencies. We provided tips and commentary on the main individual registration form (Form 33-109F4), as well as the form for changes in registration information (Form 33-109F5) and the main firm application form (Form 33-109F6). Other topics included the new ability to open virtual business locations through Form 33-109F3, an approach developed to assist registered firms by providing added flexibility on National Registration Database (**NRD**) to reflect evolving work arrangements – see the [Virtual Business Locations on NRD](#) webpage. We discussed the implementation year ending June 6, 2023 for filing information updates on NRD for individual registrants or permitted individuals under the amendments to NI 33-109. We also reviewed statistics showing areas of success attending firms had on certain registration-related processes, as well as areas that could benefit from additional focus.

We continue to see the benefits of these outreach sessions. We received positive feedback from firms on the value of the sessions to their businesses. We also received feedback through our Roadshow participation survey which will help us develop future outreach sessions.

## 1.3 Registrant Advisory Committee

Established in January 2013, the [Registrant Advisory Committee \(RAC\)](#) is in its sixth term, and is chaired by the Director of CRR, Debra Foubert. In 2022, it was comprised of nine external members whose term ended on December 31, 2022. In January 2023, new RAC membership began with 14 external members. The RAC meets quarterly, with members serving a minimum two-year term.

The RAC's objectives are to:

- advise on issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including matters related to registration and compliance
- provide feedback on the development and implementation of policy and rule-making initiatives that promote investor protection, fair and efficient capital markets, and contribute to the stability of the financial system

Discussion topics during the fiscal year (April 1, 2022 – March 31, 2023) included:

- CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure*
- 2022 CRR RAQ - discussion of content changes, completion process and general registrant feedback after RAQ delivery
- CSA and Canadian Council of Insurance Regulators Joint Notice and Request for Comment on Total Cost Reporting for Investment Funds and Segregated Funds
- Amendments to NI 33-109

# Part 2: Information for dealers, advisers and investment fund managers

## 2.1 Annual highlights

## 2.2 Registration and compliance deficiencies

### How to navigate Part 2 of the Summary Report

Part 2 of the Summary Report provides an overview of the key findings and outcomes from compliance reviews conducted during the 2022-2023 fiscal year:

- [Section 2.1](#) discusses the annual highlights of the work completed by CRR during the 2022 – 2023 fiscal year
- [Section 2.2](#) discusses key or novel issues, suggests best practices, and specifies applicable legislation and relevant guidance to assist firms in addressing each of the topic areas. For ease of reference, registration categories are listed beside each deficiency heading to indicate that the information is relevant to firms registered in those categories

We encourage registrants to review all the information set out in Part 2 of this report as the guidance presented may be helpful to registration categories other than those listed.



## **2.1 Annual highlights**

**2.1.1 High-impact firms**

**2.1.2 Conflicts of interest sweep**

**2.1.3 Mortgage investment entities**

**2.1.4 Firms with limited compliance staff sweep**

**2.1.5 High-risk firms identified through “Registration as the First Compliance Review” program**

**2.1.6 Registration of Crypto Asset Trading Platforms (CTPs)**

### 2.1.1 High-impact firms

As part of our risk-based approach to selecting firms for review, we select firms that, given the size of their assets under management (**AUM**), could have a significant impact on the capital markets if there was a breakdown in their compliance structure or key operations (**high-impact firms**).

In 2023, we commenced compliance reviews of four high-impact firms with a combined AUM of approximately \$530 billion as of December 31, 2022. We apply a modified approach to reviewing high-impact firms as part of our continued efforts to assess the most effective way to oversee our registrant population. Specifically, the reviews for high-impact firms focus on assessing each firm's ability to identify and effectively manage its regulatory and compliance risks by reviewing each firm's:

- governance structure
- risk framework, including the risk identification and risk management process
- compliance issues identified during the review period, including how any non-compliance was remediated and what steps were put in place to prevent re-occurrence

### 2.1.2 Conflicts of interest sweep

The CFRs are a set of amendments to NI 31-103 designed to better align the interests of registrants, both firms and individuals, with the interests of their clients, improve outcomes for clients, and make clearer to clients the nature and the terms of their relationship with registrants. The CFRs introduced requirements for registrants to address material conflicts of interest in the best interest of the client. The amendments that relate to conflicts of interest came into effect on June 30, 2021.

The key concept that the CFRs introduced into the conflicts of interest requirements is the obligation to address material conflicts of interest in the best interest of the client. Registrants are required to take reasonable steps to identify existing and reasonably foreseeable material conflicts of interest and address them in the best interest of the client. If it is not possible to address a material conflict in the best interest of the client, then the conflict must be avoided.

In 2022, we commenced a review of registered firms to assess their compliance with the conflicts of interest requirements, including reviewing the conflicts disclosure that the firms provide to their clients. These reviews were done in conjunction with the Canadian Securities Administrators (**CSA**) and CIRO. The OSC reviewed 46 firms to assess their compliance with the conflicts of interest amendments. The findings of our review will be summarized in a joint CSA/CIRO staff notice which we expect to publish shortly.

### 2.1.3 Mortgage investment entities

Staff conducted a desk review of registered firms that distribute mortgage investment entities (**MIEs**) to obtain a better understanding of any recent trends noted, given the rising interest rate environment and potential effect on mortgage defaults.

The review consisted of a series of questions related to the MIEs distributed by the firms. Questions focused on gathering background information about the MIE issuer and current information related to the MIE's loan portfolio performance.

The desk review is on-going, and staff may perform an in-depth review of certain firms in the coming months.

### 2.1.4 Firms with limited compliance staff sweep

As reported in [last year's summary report](#), we continued our sweep of firms with a small number of compliance staff (less than or equal to one full-time employee) and AUM of at least \$25 million.

The purpose of the sweep was to determine whether:

- these firms have adequate resources and an effective compliance system to provide reasonable assurance that the firm and each individual acting on the firm's behalf complies with securities law
- these firms pose a higher risk of non-compliance with securities law
- there are trends in the type of deficiencies arising from this business model

While most of the firms in the sample for this sweep had adequate resources and an effective compliance system, we found that non-compliance with securities law spanned some key operational areas. We also identified trends in the deficient areas raised for these firms. These deficiencies were common to at least 40% of the firms in the sample. The trends included deficiencies in the following areas:

- Compliance system
  - inadequate written policies and procedures covering cyber security, key person risk, portfolio management and trusted contact person
  - language in employment agreements that precludes employees from reporting securities-related misconduct to authorities
- Reporting to clients
  - some relationship disclosure required by subsection 14.2(2) of NI 31-103 was missing
  - trade confirmations were missing information required by subsection 14.12(1) of NI 31-103

- investment performance reports were missing information required by subsection 14.19(1) of NI 31-103
- various statements to clients did not include the firm's letterhead or legal name
- KYC - inadequate collection and documentation of KYC information
- Portfolio management
  - investment management agreements were not in place for all clients
  - investment management agreements were missing certain information such as the party responsible for insider reporting and proxy voting
- Books and records - missing or inadequate documentation to support the firm's client asset reconciliation between its records and custodian records
- Use of service providers - no or inadequate oversight procedures to ensure that the service providers are adequately performing the business functions that have been outsourced to them. For example, no oversight procedures of the calculation of net asset value (**NAV**), income and expense accruals, performance fee calculation, valuation of securities, etc.
- Client assets - not holding client assets in trust
- Accredited investor exemption - adequate documentation to support the reliance on an accredited investor exemption was not maintained

### 2.1.5 High-risk firms identified through "Registration as the First Compliance Review" program

As part of our "Registration as the First Compliance Review" program, certain firms may be categorized as high-risk firms. Through the program, we gather information on the firms' proposed business operations, compliance systems and proficiency of the firms' individuals. As a result, targeted reviews of these firms may be scheduled within a certain period of time following the commencement of operations.

During the year, we conducted compliance reviews of these firms categorized as high-risk to assess their compliance with Ontario securities law.

For more information on the "Registration as the First Compliance Review" program, please refer to section 3.1 a) of [OSC Staff Notice 33-745 2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers](#).

### 2.1.6 Registration of Crypto Asset Trading Platforms (CTPs)

As reported in [last year's summary report](#), we continue to review CTPs seeking registration as part of the "Registration as the First Compliance Review" or pre-registration review process.

Additionally, in February 2023, we began a desk review of registered restricted dealer CTPs where the OSC is the principal regulator. The purpose of the desk review is to understand key practices and controls around custody arrangements over clients' crypto assets, corporate governance structures, insurance bonding policies, and management of conflicts of interest.

## 2.2 Registration and compliance deficiencies

- 2.2.1 Common issues identified in Crypto Asset Trading Platform reviews (CTP)
- 2.2.2 IFM registration considerations
- 2.2.3 Online advice
- 2.2.4 Hypothetical performance data that is widely disseminated
- 2.2.5 Marketing partnerships with third parties
- 2.2.6 Registered firms operating start-up funding portals
- 2.2.7 Onboarding registered representatives from other firms
- 2.2.8 Custody
- 2.2.9 Outbound advice
- 2.2.10 Surrender applications by entities that have failed to cease registerable activity
- 2.2.11 Recordkeeping obligations of registered firms based outside Canada
- 2.2.12 Registration filings

### 2.2.1 Common issues identified in Crypto Asset Trading Platform reviews (CTP)

In February 2023, we began a desk review of registered restricted dealer CTPs, where the OSC is the principal regulator, to understand key practices and controls around custody arrangements over clients' crypto assets, corporate governance structures, insurance bonding policies and management of conflicts of interest.

The following sections highlight common areas where we have identified issues during our reviews, and includes guidance for CTPs applying for registration or those who are already registered.

#### a) Custody

In [last year's summary report](#), we highlighted that section 14.6 of NI 31-103 requires CTPs to hold assets with an appropriate custodian, separate and apart from its own property and in trust for its clients. However, we continued to find CTPs that did not:

- hold client assets separate and apart from their own property and in trust for their clients
- have policies and procedures related to custodial arrangements and how the CTPs will oversee outsourced functions such as custody
- maintain an effective system of controls and supervision to address custodial risks and safeguard crypto assets held in their custody

Specifically, we noted instances where the CTPs:

- did not have policies to regularly monitor that the third-party custodian continues to be acceptable
- entered into agreements with third-party custodians where the custodians held client assets in trust for the CTPs rather than in trust for the CTPs' clients
- did not implement adequate policies and procedures to ensure that the CTP did not breach the threshold of clients' crypto assets that may be held in self-custodial wallets, as required by exemptive relief granted to CTPs

In [CSA Staff Notice 21-332 \*Crypto Asset Trading Platforms: Pre-Registration Undertakings\*](#), published in February 2023, we set out provisions for the custody and segregation of crypto assets held on behalf of Canadian clients that must be provided in the pre-registration undertakings given by unregistered CTPs. These commitments are generally consistent with requirements currently applicable to registered CTPs and are intended to address investor protection and level-playing-field concerns. CSA Staff Notice 21-332 includes enhanced guidance for the use of

third-party custodians that hold clients' crypto assets (**Acceptable Third-party Custodian** or **Custodian**).

Registered CTP dealers and CTP dealer applicants should:

- ✓ review custodial arrangements with Acceptable Third-party Custodians to:
  - check that written custody agreements contain language that clearly sets out that the Custodian cannot pledge, re-hypothecate or otherwise use any crypto assets held in custody
  - confirm that the books and records maintained by the Custodian reflect that the CTP's clients' crypto assets are held separate and apart from any other crypto assets custodied by the Custodian, including its own or any of its affiliates' property
  - verify that the Custodian is holding the CTPs' clients' crypto assets "in trust for" or "for the benefit of" the CTPs' clients (as opposed to being in trust for, or for the benefit of, the CTP itself) and that each account with the Custodian is clearly designated as such in the books and records maintained by the Custodian
  - develop and maintain ongoing monitoring procedures to evaluate whether the Custodian continues to qualify as an Acceptable Third-party Custodian and continues to maintain effective safekeeping controls for the proper segregation of custodied crypto assets
- ✓ maintain an effective system of controls and supervision to address custodial risks and safeguard clients' crypto assets, including:
  - implementing and maintaining an adequate process to recover clients' assets custodied in the event of a bankruptcy, insolvency, or other business disruptions at any Custodian or self-custodial service provider used by the CTP
  - clearly disclosing the details of the custody arrangement to clients, including how clients' assets are held; who acts as the Custodian or self-custodial service provider; that the assets are held in trust (or equivalent status) separate and apart from the CTP's own property; and that the clients' crypto assets cannot be pledged, re-hypothecated or otherwise used by the CTP, Custodian, or any of their affiliates
- ✓ perform reconciliations on a regular basis of the crypto assets held in custody for clients to the clients' crypto asset liabilities. Reconciliations should:
  - have complete coverage over the clients' crypto assets held by each CTP on their platform, including assets held in self-custodial solutions and held with Custodians
  - be performed using the CTP's own records of client holdings compared against third-party records, such as those maintained by any of its Custodians and liquidity providers, and using blockchain records



- identify any discrepancies that must be escalated for review, and remediated in a timely manner
- be designed to have appropriate segregation of duties, including maintaining evidence of the reconciliation approval process
- ✓ maintain written policies and procedures that address custodial arrangements, including documentation of the:
  - reconciliation controls, including frequency, coverage, records compared, escalation process, segregation of duties and evidence maintained of reviews and approvals
  - controls and procedures adopted to:
    - identify, escalate and remediate any instances of potential commingling of the CTP's own crypto assets with clients' crypto assets
    - monitor and approve transfers of clients' crypto assets between wallets used by the CTP and the Custodian's crypto asset wallets
    - to monitor and manage access controls to all crypto asset wallets containing clients' crypto assets
  - ongoing review and monitoring procedures of service providers utilized by the CTP, including Custodians

#### Legislative reference and guidance

- [NI 31-103](#) and related [NI 31-103CP](#), s. 14.6 *Client and investment fund assets held by a registered firm in trust*
- [OSC Staff Notice 33-754 2022 Summary Report for Dealers, Advisers and Investment Fund Managers](#), pages 30-31
- [CSA Staff Notice 21-332 Crypto Asset Trading Platforms: Pre-Registration Undertakings Changes to Enhance Canadian Investor Protection](#), pages 5-6

#### b) Compliance and Supervision Structure

During our reviews, we identified instances where the CCO either:

- did not prepare an annual compliance report for the CTP's board of directors (or individuals acting in a similar capacity for the CTP), or
- prepared a report which lacked sufficient detail to support the CCO's assessment of the CTP's compliance function given the context of the CTP's business as a crypto-asset trading platform.

The CCO must assess and report on the overall compliance structure and internal controls at least annually. We observed that key matters, such as compliance

reporting and communications with regulators, were not discussed in detail or appeared as a lower risk item in the report (refer below for examples of key matters that should be considered for discussion in the CCO's report). In some instances, Board of Director meeting minutes were used, in lieu of a standalone report, to evidence that the CCO has met their obligations. While this may be appropriate for smaller firms with minimal activity, where there is significant registerable activity and compliance matters, this type of reporting may not be appropriate. The CCO must consider the nature, size and operations of the CTP when determining how to report and document their annual compliance assessment (e.g. via a CCO report or simply relying on Board of Director meeting minutes).

We also remind CTPs to implement adequate business continuity plans (**BCPs**) which will establish a system of controls and supervision to manage the risks associated with their business. The recent string of bankruptcies and insolvencies in the crypto asset sector (most notably throughout 2022) highlight the importance of implementing robust BCPs that cover potential business interruptions and potential downstream implications of failures arising from various market participants in the crypto asset sector.

CTPs must adequately oversee their third-party service providers as the CTP firms remain responsible for all functions they have outsourced. We identified instances where CTPs did not review and approve marketing materials prepared by their third-party service providers prior to publication to make certain that the marketing materials did not contain misleading or inaccurate statements.

#### Registered CTP dealers and CTP dealer applicants should:

- ✓ assess the overall compliance structure and internal controls of CTPs at least annually, and keep board members up to date regarding any key compliance matters which impact the CTP's operations and compliance with securities law
- ✓ review and assess the CTP's internal controls and compliance with securities obligations, including:
  - discussion of key compliance risk areas identified during the reporting period
  - any significant areas or instances of non-compliance by the CTP or individuals acting on behalf of the CTP, including any steps taken to deal with the non-compliance and/or to prevent future non-compliance
  - effectiveness of the CTP's internal controls, monitoring and supervision
  - status and outcome of regulatory reviews and correspondence
  - impact of lawsuits or complaints against or filed by the CTP or its individuals

- changes to the legal or regulatory environment, and potential impact to the CTPs' operations and processes
- ✓ prepare and submit the annual CCO's report in a timely manner and in a reasonable format given the nature, size, and operations of the CTP
- ✓ develop a BCP that clearly outlines the steps individuals must take when responding to different scenarios caused by business disruptions and other potential disturbances that could disrupt the CTP's day-to-day operations; potential disturbances may include any instances or events outside of the CTP's control, which could have a contagion effect on the CTP's operations
- ✓ implement BCP procedures to address the handling of clients' assets in the event of a disturbance at the CTP or at the Custodian, including methods to recover clients' assets and migration of clients' assets to another Custodian
- ✓ test its BCP at least annually (or on a more frequent basis depending on the CTP's risk assessment of its business) to assess if the plan continues to be effective
- ✓ ensure adequate analysis has been conducted to address any contingencies or risks which may be considered difficult to test, such as legal processes related to a bankruptcy or insolvency situation, or not contemplated at the time the BCP was initially developed
- ✓ implement ongoing review and monitoring procedures of service providers utilized by the CTP, including the review and approval of marketing materials prepared by service providers prior to publication

#### Legislative reference and guidance

- [NI 31-103](#) and related [NI 31-103CP](#), s. 5.2 *Responsibilities of the chief compliance officer*
- [NI 31-103](#) and related [NI 31-103CP](#) s. 11.1 *Compliance system and training*
- [NI 31-103](#) and related [NI 31-103CP](#) s. 11.5 *General requirements for records*
- [OSC Staff Notice 33-752 2021 Summary Report for Dealers, Advisers and Investment Fund Managers](#), page 17
- [OSC Staff Notice 33-751 2020 Summary Report for Dealers, Advisers and Investment Fund Managers](#), page 28
- [OSC Staff Notice 33-746 2015 Annual Summary Report for Dealers, Advisers and Investment Fund Managers](#), page 41

#### 2.2.2 IFM registration considerations (All)

A firm is required to register as an IFM if it directs or manages the business, operations or affairs of an investment fund. The companion policy to MI 32-102 provides guidance on the functions and activities that are typically performed by an IFM. While the list in the guidance is not exhaustive, it includes the following:

- establishing a distribution channel for the fund
- marketing the fund
- establishing and overseeing the fund's compliance and risk management programs
- overseeing the day-to-day administration of the fund
- retaining the portfolio manager, custodian and other service providers of the fund
- overseeing advisers' compliance with investment objectives
- preparing the fund's offering documents
- preparing and delivering security holder reports
- calculating the NAV of the fund
- calculating, confirming and arranging payment of subscriptions and redemptions

The standard of care in s. 116 of the Act requires IFMs to “exercise the powers and discharge the duties of their office honestly, in good faith and in the best interest of the investment fund” and to “exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances”. We are of the view that arrangements or agreements that restrict an IFM from exercising its standard of care are not in compliance with securities law. This includes agreements or arrangements that:

- limit or restrict the IFM’s ability to change service providers, including portfolio managers and sub-advisers, for the funds
- limit or restrict the IFM’s ability to make decisions on the operation of a fund (e.g. whether to terminate a fund, or to merge funds)
- require the IFM to obtain permission from another firm to direct or manage the business, operations or affairs of the fund

Subsection 25(4) of the Act prohibits a person or company from acting as an IFM unless the person or company is registered as an IFM or is exempt from the registration requirement. Staff is of the view that a firm that is not registered as an IFM but attempts to direct the business, operations or affairs of an investment fund by either taking on the responsibilities of an IFM, or by entering into agreements that impose restrictions on the registered IFM from exercising its powers, is not in compliance with the Act.

## Legislative reference and guidance

- [Act](#), s. 25(4) *Registration, investment fund managers*
- [Act](#), s. 116 *Standard of care, investment fund managers*
- [MI 32-102CP](#), under *Requirement to register as an investment fund manager of Part 1 Fundamental Concepts*

### 2.2.3 Online advice (PM)

#### a) Online adviser limiting available products to clients

This past year we became aware of problems in the way that some online advisers registered in the category of portfolio manager offered third-party securities through their online platforms.

In one situation, clients were only offered securities associated with a third-party's business. In this case, the online adviser did not consider a reasonable range of alternative products available through the online adviser when making a recommendation to the client.

Staff is of the view that the practice of limiting products offered to clients, depending on how the client is being referred to the online adviser, is inconsistent with the online adviser's obligations to address material conflicts in the best interest of the client and to make suitability determinations that put the client's interests first. The limiting of products deepens the extent of the firm's referral arrangement conflicts because the online adviser is aligning its services with the third-party's (i.e. referral party's) interests rather than with the interests of its clients.

Section 13.7 of NI 31-103 defines "referral arrangement" and "referral fee" in broad terms. The definition of "referral fee" includes any benefit provided for the referral of a client to or from a registrant. As such, the business arrangement between the online adviser and the third-party is a referral arrangement that involves a form of benefit even though the third-party does not receive a referral fee directly from the online adviser. Both the online adviser and the third-party benefit from the arrangement: in this case, the third-party received management fees from the investment by the online adviser's clients in its products, and the online adviser received management fees on its management of model portfolios that included the third-party's securities.

Registered firms are required to have a process in place for identifying material conflicts of interest that arise at both firm and individual registrant levels and must address those material conflicts of interest in the best interest of their clients. Registrants must also have a process in place for suitability determinations that ensures any investment actions taken for clients, such as the selection of securities, are suitable for those clients (with regard to the specific suitability factors in section 13.3(1)(a) of NI 31-103) and that put the clients' interests first.

#### PMs should:

- ✓ develop policies and procedures for identifying, addressing and disclosing material conflicts of interest that arise at both firm and individual registrant levels
- ✓ develop a process for suitability determinations that ensure that investment actions proposed or taken for clients are suitable for those clients and put the clients' interests first
- ✓ implement a process and controls to monitor and supervise business arrangements, including referral arrangements

#### Legislative reference and guidance

- [NI 31-103](#) and related [NI 31-103CP](#) s. 11.1 *Compliance system and training*
- [NI 31-103](#) and related [NI 31-103CP](#) s. 13.3 *Suitability determination*
- [NI 31-103](#) and related [NI 31-103CP](#), s. 13.4 *Identifying, addressing and disclosing material conflicts of interest – registered firm*
- [NI 31-103](#) and related [NI 31-103CP](#), s. 13.4.1 *Identifying, addressing and disclosing material conflicts of interest – registered individual*
- [NI 31-103](#) and related [NI 31-103CP](#), s. 13.7 *Definitions – referral arrangements*
- [NI 31-103](#), and related [NI 31-103CP](#), s. 13.10 *Disclosing referral arrangement to clients*
- [Client Focused Reforms – Frequently Asked Questions \(updated April 29, 2022\)](#)
- [OSC Staff Notice 33-750 2019 Summary Report for Dealers, Advisers and Investment Fund Managers](#), pages 41-42

#### b) Onboarding process if not calling every client

We have found inadequacies in the online KYC questionnaires used by some online advisers that operate under the “call-as-needed” model<sup>6</sup>. In some cases, the software for the KYC questionnaire, as part of the onboarding process, did not include adequate mechanisms (such as a feature or capability coded in the software) to identify inconsistencies in responses and other triggers that would require an advising representative (**AR**) to contact a client.

Generally, under the “call-as-needed” model, a firm will only require an AR to have a direct interaction with a client during the onboarding process if the AR has questions or concerns about the information gathered through the questionnaire or

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<sup>6</sup> The “call-as-needed” model refers to online advisers whose onboarding process does not require an AR to always communicate with the client before its KYC information gathering is completed. In this model, the firm will only require an AR to have direct communications with a client or prospective client if the AR has questions or concerns about the information gathered through the online platform. For firms using this model, we may recommend terms and conditions be imposed on their registration limiting them to using relatively simple investment products.

if a client wishes to communicate with an AR (there must always be means for clients to initiate direct interaction with an AR). As such, the online KYC questionnaire must include mechanisms to identify inconsistencies in responses and other triggers that signal that an AR must contact the client.

Firms operating in this way must do so under terms and conditions limiting them to offering model portfolios of relatively simple investment funds. We stress that a “call-as-needed” onboarding process is not acceptable for services and investments that are not contemplated in a firm’s terms and conditions. If a “call-as-needed” online adviser wishes to offer a client services or investments that are not contemplated in its terms and conditions, such as investments in securities other than relatively simple investment funds (e.g. unleveraged exchange-traded funds and simple mutual funds), it must always have a direct interaction with the client based on a questionnaire tailored to the nature of the offering and it must open a separate account for those services or investments.

We remind firms to refer to previous guidance in CSA Staff Notice 31-342 on the design of online KYC questionnaires.

#### Online advisers operating under the call-as-needed model should:

- ✓ ensure that their KYC questionnaires have an adequate number of triggers to identify when an AR must initiate a direct interaction with a client
- ✓ have ARs and other applicable staff regularly conduct representative sample-testing and regularly review exception reports to ensure that sufficient KYC is being gathered and suitable investments are being made, and take appropriate steps to address items noted as exceptions
- ✓ take timely corrective action when the testing processes finds deficiencies to ensure the effectiveness of the mechanisms and other triggers are kept up to date, particularly since the online KYC questionnaires are used by clients on an on-going basis without direct interaction with an AR, unless required

#### Legislative reference and guidance

- [NI 31-103](#) and related [NI 31-103CP](#), s. 11.1 *Compliance system and training*
- [NI 31-103](#) and related [NI 31-103CP](#), s. 13.3 *Suitability determination*
- [CSA Staff Notice 31-342](#) *Guidance for Portfolio Managers Regarding Online Advice*

#### 2.2.4 Hypothetical performance data that is widely disseminated (PM)

We continue to see instances of PMs presenting hypothetical performance data that is widely disseminated (e.g. on the firm’s website that is accessible to all investors including retail investors). Hypothetical performance data is performance data that is not the performance of actual client portfolios. It consists of either back-tested

performance data (i.e. past period) or model performance data (i.e. real time or future periods). As highlighted in CSA Staff Notice 31-325, we have concerns with the presentation of hypothetical performance data on a widely disseminated basis to clients that lack the sophisticated investment knowledge to fully understand the inherent risks and limitations of this type of performance presentation. In cases where performance data is widely disseminated on a public website, it is often done in an effort to attract new clients. In these circumstances, it is not possible to ascertain the prospective client's level of investment knowledge or sophistication. In these cases, we expect PMs to present their actual client performance returns.

We remind firms that, in limited cases where it may be appropriate to present hypothetical performance data in marketing materials, the presentation must be fair and not misleading by providing the hypothetical performance data to clients who have the sophisticated knowledge sufficient to fully understand the risks and limitations of the hypothetical performance data, as part of a one-on-one presentation. The hypothetical performance data should be calculated on a reasonable basis and be accompanied with clear and meaningful disclosure that the data is hypothetical and not actual, as well as the underlying assumptions used, the calculation methodology, the risks and limitations of the hypothetical performance data and other relevant factors.

#### PMs should:

- ✓ present actual performance returns for clients of the firm
- ✓ establish and maintain policies and procedures to ensure the actual performance returns are calculated accurately and that the presentation is not misleading
- ✓ verify that performance return presentations are accompanied by clear and meaningful disclosure explaining the calculation methodology and whether the returns are presented net or gross of fees
- ✓ provide adequate disclaimers regarding past performance returns
- ✓ present hypothetical performance data only in very limited circumstances considering the factors noted in CSA Staff Notice 31-325
- ✓ have written policies and procedures for the calculation, presentation and disclosure of performance returns

#### Legislative reference and guidance

- [Act](#), s. 44(2) *Representation prohibited*
- [OSC Rule 31-505](#), s. 2.1(1) *General Duties*
- [CSA Staff Notice 31-325 Marketing Practices of Portfolio Managers](#), pages 4-5



### 2.2.5 Marketing partnerships with third parties (All)

As expected, with the continued adoption of digitized marketing within the industry, a number of registered firms have engaged the services of third parties (**marketing partners**) to assist them in establishing a digital presence in an effort to promote the firm's products and services. The marketing partners, which are corporations or individual bloggers/influencers with an established online audience or following, use their own digital footprint to share information (often via posts, videos, and podcasts on popular social media platforms) about the registered firm and are remunerated for their services.

Registered firms must establish policies, procedures and controls to monitor and oversee their arrangements with marketing partners and to verify that claims and statements made about the firm's products and services are fair, substantiated and not misleading.

Registered firms should:

- ✓ prior to engaging a third-party for their services, perform adequate due diligence to verify that the firm will be working with a reputable third-party who will share information about the registered firm's products and services in a competent manner
- ✓ establish written agreements with the marketing partner that clearly sets out the purpose of the arrangement and each party's roles and responsibilities
- ✓ develop written policies and procedures that establish an adequate process, including maintaining adequate books and records, allowing the firm to oversee and monitor the marketing partner and to verify that any claims or statements made by it about the registered firm's products and services are fair, substantiated and not misleading
- ✓ provide sufficient disclosure to make clients aware of the arrangement between the firm and the marketing partner, any associated conflicts of interest, including compensation paid to the marketing partner, and to help clients make an informed decision about engaging the firm's services and products

Legislative reference and guidance

- [NI 31-103](#), s. 11.1 *Compliance system and training*

### 2.2.6 Registered firms operating start-up funding portals (All)

Staff reviewed firms registered as EMDs with online portals, where issuers are offering securities via the portal in reliance on the crowdfunding prospectus exemption in NI 45-110 in addition to other prospectus exemptions. Staff noted issues specific to this business model.

### a) Insurance

The duration of a typical crowdfunding campaign is 90 days. Funds raised for investments during the 90-day campaign are held by the firm in trust until the end of the campaign. If the campaign is successful, the firm sends the money to the issuer, and if the campaign is not successful, the money is returned to the investors. During the campaign, the EMD firm has access to the client assets which may affect the level of insurance required by the firm.

### b) Suitability

Registered EMDs that use an online crowdfunding portal must meet their existing registration obligations, including the requirement to make a suitability determination for transactions. For example, before accepting the transaction, the firm must consider factors such as the investor's concentration in exempt-market products after the transaction. We found that some firms did not assess the concentration of investments causing investors to be overconcentrated in the exempt market. It is not sufficient to limit the required suitability determination to a general assessment of whether start-up crowdfunding could be suitable for a potential investor.

### c) Other requirements for registered dealers that operate a funding portal

EMD firms are required to confirm to issuers that the portal is operated by a registered dealer. The firm's portal also has to prompt any person entering the portal to acknowledge the portal is operated by a registered dealer who will provide suitability advice.

#### Registered firms should:

- ✓ verify that they have sufficient insurance to cover material increases in client funds held in trust during a crowdfunding campaign
- ✓ have algorithms and dealing representatives adequately consider the KYC information provided to the firm for the suitability determination of each transaction
- ✓ obtain acknowledgment from any person entering the portal that they are aware the portal is operated by a registered dealer who will provide suitability advice

#### Legislative reference and guidance

- [NI 45-110, Part 3 Registered Funding Portals](#)
- [CSA Staff Notice 45-329: Guidance for using the start-up crowdfunding registration and prospectus exemptions](#) (see Annex D of NI 45-110)

### 2.2.7 Onboarding registered representatives from other firms (PM)

We have seen a number of examples of PM firms growing their business by attracting individuals or groups of individuals with books of business who were previously registered with CIIRO-member firms. Staff identified the following concerns during recent compliance reviews.

#### a) Registration in appropriate category to service managed accounts

All individuals conducting registerable activity at a PM firm must be appropriately registered in the category of AR or associate advising representative (**AAR**). In some cases, former CIIRO representatives did not have the proficiency required to be registered in the category of AR or AAR at a PM firm. It is not appropriate for individuals to conduct registerable activity at a PM firm unless they are appropriately registered to do so.

We also observed situations where, during the period between when an individual applied for registration at a PM firm and the time they obtained registration, the applicant continued to service their existing clients who had transferred to the PM firm. PM firms should put controls in place, such as assigning a temporary AR or AAR to service new clients during any transition period, to ensure that only appropriately registered individuals engage in registerable activity.

When considering a relationship with a new representative, PM firms should always assess the individual's relevant investment management experience (**RIME**) and qualifications to determine if sponsoring their application for registration to service managed accounts is appropriate.

#### b) Client relationship manager

In a number of reviews, we found that former CIIRO-registered individuals continued to service clients and conducted registerable activity without being appropriately registered as either an AR or AAR. Sometimes these unregistered individuals were called 'client relationship managers' or 'wealth advisors' and were responsible for client-facing activities that require registration, including:

- having meaningful discussions regarding the clients' personal and financial circumstances, including collecting and updating KYC information,
- explaining and discussing securities and investment models with clients, and
- discussing investment performance and conducting portfolio reviews with clients.

PM firms must ensure only individuals appropriately registered in the categories of AR or AAR are providing registerable activity to managed account clients. This is still the case, even if a properly registered AR is responsible for the portfolio management activity at the registered firm.

With respect to use of the 'client relationship manager' title, we remind firms that the CSA has published guidance on the appropriate use of this title in CSA Staff Notice 31-332. A sponsored individual who works directly with clients but does not select securities, may be registered as an AR who specializes in client relationship manager activity. These individuals must demonstrate that they meet all the other requirements required for registration as an AR (such as education requirements), in addition to significant experience relevant to client relationship manager activity.

#### c) Inappropriate registration as a dealing representative to service managed accounts

We noted that in some cases individuals that joined a PM/EMD firm were inappropriately registered in the category of dealing representative. In these situations, an individual was registered under the EMD category despite the fact that they were engaged in registerable activity that triggered adviser registration in the AR or AAR category.

It is not acceptable for PM firms to register an individual as a dealing representative when the individual's registerable activities are to service the firm's managed account clients. As noted above, when servicing managed account clients, all individuals must be registered as an AR or AAR. It is not appropriate for firms to sponsor an individual's registration in a specific category simply because the firm maintains registration in the corresponding firm category, or in the case of a PM, the individual does not meet the proficiency requirements to be approved in the category.

Firms are reminded to seek registration in the correct category for any sponsored individual based on the firm's determination of what category is applicable to the individual's registerable activities.

#### d) Inadequate number of AR and AARs

Certain PM firms experienced rapid growth that, due to inadequate planning and risk management, led to staff identifying an insufficient number of ARs or AARs based on the number of clients.

We noted from our compliance reviews that each AR or AAR provided managed account services for an unreasonably large number of clients. This caused us to raise questions as to how each registered AR or AAR has the capacity to discharge its respective duties and obligations (e.g. KYC, suitability, and supervision and monitoring) under Ontario securities law and properly and adequately service clients given the high ratio of AR and AAR to clients.

PM firms must adequately plan to have a sufficient number of ARs and AARs to manage their growth and meet their regulatory obligations while maintaining appropriate service levels to its clients.

#### PMs should:

- ✓ perform due diligence to understand the experience and qualifications of a representative that wish to join the PM firm and address the lack of proficiency, if any, before applying for registration
- ✓ confirm that only people that meet the proficiency required for the PM firm can service its managed account clients
- ✓ if the firm is registered in multiple categories and/or Canadian jurisdictions, determine whether the representative will require registration in multiple individual categories and in which jurisdictions
- ✓ assess whether any other factors (for example, where the representative will provide non-registerable client-facing services such as financial planning) present unique supervisory or oversight risks that would require the firm to develop new policies and procedures above and beyond what has already been established
- ✓ establish internal controls to monitor and oversee the activities of all individuals acting on behalf of the firm
- ✓ develop processes to confirm all registerable activities are performed by individuals registered in the correct category, and that the firm implements an adequate documentation process to evidence that a clear delineation between registerable and non-registerable activity is made across the firm's operations
- ✓ provide adequate training to employees on the registration requirements, including activities they are permitted to perform (and restrictions, if applicable) under their category of registration or position
- ✓ clearly communicate the role of the registered individuals and the unregistered individuals to clients and prospective clients
- ✓ review appropriateness of titles used to avoid confusion or misleading representations
- ✓ assess, as part of its business risk, whether the firm has an adequate number of ARs or AARs to manage its business growth and service its clients
- ✓ have written policies and procedures to address all the above

#### Legislative reference and guidance

- [Act](#), s. 25(3) *Registration*
- [Act](#), s. 32(2) *Duty to establish controls, etc.*
- [NI 31-103](#) and related [NI 31-103CP](#), s. 11.1 *Compliance system and training*
- [NI 31-103CP](#), s 1.3 *Fundamental concepts*

- [CSA Staff Notice 31-332 Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers](#)
- [CSA Staff Notice 31-336 Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations](#)
- [OSC Staff Notice 33-747 2016 Annual Summary Report for Dealers, Advisers and Investment Fund Managers, pages 52-54](#)
- [OSC Staff Notice 33-750 2019 Summary Report for Dealers, Advisers and Investment Fund Managers, pages 27-28](#)
- [OSC Staff Notice 33-751, 2020 Summary Report for Dealers, Advisers, and Investment Fund Managers, page 54](#)
- [OSC Staff Notice 33-752, 2021 Summary Report for Dealers, Advisers, and Investment Fund Managers, page 20](#)
- [Client Relationship Management specialists](#), webpage on osc.ca

### 2.2.8 Custody

#### a) Reconciling client assets between PM's internal system and custodian records (PM)

We noted instances where PMs did not perform, or adequately perform, reconciliations of clients' cash and security positions in the firm's portfolio management system as compared to the custodian's records. This reconciliation is necessary to confirm that client assets are properly custodied and that client accounts are complete and accurate for the purposes of client reporting.

In some cases, PMs stated that performing asset reconciliations of the clients' entire cash and security position holdings were not necessary given their established process to reconcile trades when trades are made. Although trade reconciliations help PMs reconcile that trades entered on behalf of client accounts were appropriately executed and settled in the correct client account and at the correct quantity and amount, these trade reconciliations do not capture all transactions. For example, corporate actions or transfers resulting in changes to a security position or the quantity held in a security position within a client account, do not stem from a trade order previously executed by a PM. Due to the limited nature of such trade reconciliations, PMs must perform additional reconciliations to regularly monitor that client assets are safely custodied and that positions reported on client account statements are complete and accurate before they are delivered.

#### PMs should:

- ✓ implement a process to regularly reconcile clients' cash and security positions recorded in its portfolio management system with those in the custodian's records
- ✓ perform reconciliations on a timely basis (e.g. timely with the firm's delivery of client account statements)

- ✓ maintain adequate documentation to evidence the reconciliation process including its preparation, review and approval
- ✓ maintain documentation detailing both reconciled and/or unreconciled balances, explanations of any unreconciled balances and the steps taken to remediate unreconciled balances
- ✓ have written policies and procedures on the firm’s reconciliation process

#### Legislative reference and guidance

- [NI 31-103](#) and related [NI 31-103CP](#), s. 11.1 *Compliance system and training*

#### b) Client asset records not maintained in order to perform asset reconciliation (PM)

We noted instances where PMs did not maintain their own records of their clients’ cash and security positions and relied entirely on the clients’ custodian as a substitute for their own records. This practice raises regulatory concerns. Without maintaining their own independent records, PMs have not complied with their books and records obligation under securities law. PMs are not able to reconcile client assets between their internal system and custodian records to demonstrate that client assets are adequately safeguarded. In addition, without an independent book of records, PMs are not able to verify the completeness and accuracy of cash and security positions reported on client account statements or confirm the accuracy of management fees charged to clients.

#### PMs should:

- ✓ maintain independent records to demonstrate the extent of the firm’s compliance with applicable requirements of securities legislation

#### c) Custody requirements for cash-in-transit to and from a fund (All)

In reviewing the process used by dealers that distribute units of investment funds which are not subject to the terms of NI 81-102, we noted that cash in transit (client monies pending subscription on the next valuation date) is not being held in a manner that shows the beneficial ownership of those assets (which is with the dealer’s clients). In these cases, the cash in transit was held in the investment fund’s operating account until the subscription date rather than being separately designated in a manner that shows that the beneficial ownership of the cash is vested in the dealer’s clients, as is required by section 14.5.3 of NI 31-103.

#### Firms should:

- ✓ hold client monies pending subscription showing the beneficial ownership of those assets

## Legislative reference and guidance

- [NI 31-103](#), s. 14.5.3 *Cash and Securities held by a qualified custodian*
- [NI 31-103CP](#), Part 14, Division 3 *Client assets and investment fund assets*

### 2.2.9 Outbound advice (PM)

The requirement to register as an adviser applies to any firm or individual located in Ontario who advises in securities for a business purpose or holds themselves out as an adviser. This requirement applies regardless of whether they have clients in Ontario.

OSC Rule 32-505 provides a registration exemption for advisers located in Ontario that advise only United States persons if the adviser is registered or exempt from registration under U.S. federal securities law. There is no comparable relief available under Ontario securities law for advisers whose clients are located elsewhere outside of Canada. However, exemptive relief may be granted on broadly similar conditions where clients are located in a jurisdiction that is a “specified foreign jurisdiction,” as defined in OSC Rule 72-503. Exemptive relief may also be granted on certain conditions in respect of an investment fund incorporated in a jurisdiction that is not a specified foreign jurisdiction if the fund is controlled by the principals of the adviser, so that they are effectively advising themselves, and all the investors in the fund will be residents of a specified foreign jurisdiction.

For more information, see [In the Matter of Fountainhead Pte. Ltd.](#) dated June 16, 2022.

Firms and individuals located in Ontario that plan to provide advice should:

- ✓ consider whether they are providing registerable advice, regardless of the location of their clients and if so, must either register as an adviser, identify an available exemption, or apply for and receive exemptive relief

## Legislative reference and guidance

- [Act](#), s. 25(3) *Registration, advisers*
- [NI 31-103CP](#), s.1.3 *Fundamental concepts*
- [OSC Rule 32-505](#)
- [OSC Rule 72-503](#)
- [OSC Staff Notice 32-505 Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario](#)

### 2.2.10 Surrender applications by entities that have failed to cease registerable activity (All)

We have received a number of applications by firms registered as EMDs seeking to surrender their registration as an EMD. These surrender applications are typically accompanied by an Officer’s Certificate in which an officer has represented that the



firm “ceased registerable activities” as of a specified date. However, we have noted some cases where firms have continued operating on substantially the same basis as before they filed the surrender application.

In Ontario, a surrender application is made under section 30 of the Act, which provides that “the Director may accept the application and revoke the registration if the Director is satisfied ... that the surrender of the registration is not prejudicial to the public interest”. As explained in Part 10 of NI 31-103CP, the Director may consider, among other things, “whether the firm has stopped carrying on activity requiring registration”.

Accordingly, where an EMD files a surrender application but has indicated to us that the firm intends to continue operating on substantially the same basis as before it filed the application, we may request additional information from the firm including:

- a description of all activities conducted by the firm and its principals over a specified period that may reasonably be considered to constitute or involve a “trade” (including solicitations and other activities that may be considered “acts in furtherance” of a sale as set out in clause (e) of the definition of “trade” under section 1 of the Act)
- a list of all investors (including prospective investors) solicited or otherwise contacted by the firm and its principals during the specified period, and:
  - whether the solicitation or other contact resulted in a sale of securities to the investor
  - whether the investor was a permitted client as defined in section 1.1 of NI 31-103
  - the prospectus exemption relied on for such solicitation, contact and/or sale
  - all compensation and fees, including finder’s fees, referral fees, investor relations fees, advisory fees and broker-type compensation (e.g., commissions, options or warrants) paid to the firm or its principals directly or indirectly in connection with the financing

We will also generally refer the firm to relevant Commission guidance and caselaw in relation to the concept of “registerable activities” including these recent Tribunal decisions:

- Re [First Global Data Ltd. dated September 15, 2022](#)
- Re [Paramount Equity Financial Corporation et al dated April 25, 2022](#)
- Re [Moskowitz Capital Management Inc. and Brian Moskowitz dated February 22, 2021](#)
- Re [Kuber Mortgage Investment Corporation et al dated March 23, 2020](#)

Where a firm provides additional information about the nature of its current and proposed activities, and staff are satisfied that the firm will either not be conducting registerable activities after the surrender is accepted and/or will take reasonable steps to confirm that such registerable activities are conducted in reliance on registration exemptions, such as the exemption in section 8.5 of NI 31-103, staff may require a supplemental Officer's Certificate confirming the factual representations that support the legal conclusion that "the firm ceased registerable activities".

Staff may also request certain disclosure on the firm's website and in client relationship disclosure explaining that the firm is no longer registered and is no longer permitted to conduct registerable activities except in accordance with exemptions from the registration requirement.

#### Legislative reference and guidance

- [Act](#), s. 30 *Surrender of registration*
- [NI 31-103](#), s. 8.5 *Trades through or to a registered dealer*
- [NI 31-103CP](#), s. 1.3 *Fundamental concepts*
- [NI 31-103CP](#), Part 10 *Suspension and Revocation of Registration - Firms*
- [NI 45-106CP](#), s. 1.6 *Registration business trigger for trading and advising*
- [NI 45-106CP](#), s. 3.2 *Soliciting purchasers - Ontario*

#### 2.2.11 Recordkeeping obligations of registered firms based outside Canada (All)

Staff is aware of potential challenges in obtaining complete books and records of registered firms located outside of Canada. These issues may arise because of conflicting legal and regulatory requirements (for example, confidentiality, privacy and data protection) between the firm's domestic jurisdiction and the Canadian jurisdiction where the firm seeks registration. This type of conflict may impact the registered firm's ability to respond in a timely and complete manner to the OSC's books and records request.

In some cases for example, registered firms must seek permission from third parties, such as their clients or service providers, before sharing information with the OSC. In other circumstances, registered firms may conclude that certain information must be redacted where the firm has determined that it is necessary or where consent from relevant parties may not have been obtained, to ensure the registered firm remains in compliance with the legal and regulatory requirements applicable in the firm's domestic jurisdiction.

It is the registered firm's responsibility to comply with its local rules and regulations and assess their impact on compliance with Ontario securities laws. Registered firms must establish, maintain and apply policies, procedures and controls that are sufficient to provide reasonable assurance that the firm is able to respond promptly

to any requests for information from the OSC and comply with the OSC's books and records request, including in the context of a compliance examination and targeted sweeps by OSC staff to assess the firm's compliance with Ontario securities law.

Unrestricted access to the firm's books and records is necessary for the OSC to meet its oversight responsibilities and for the firm to demonstrate compliance with Ontario securities legislation. We may impose terms and conditions on the registration of a firm located outside Canada if necessary to secure access to books and records so that our ability to effectively oversee the firm is not hindered.

#### Foreign-based firms registered in Ontario should:

- ✓ identify as part of their business risk assessment, any conflicts of laws issues that may impact their ability to comply with Ontario securities law
- ✓ implement policies, procedures and controls that are sufficient to provide reasonable assurance that the registrant is able to respond promptly to any requests for information from the OSC

#### Legislative reference and guidance

- [NI 31-103](#), s. 11.1(1)(b) *Compliance system and training*
- [NI 31-103](#), s. 11.5 *General requirements for records*

#### 2.2.12 Registration filings

##### Novel applications and pre-filing application process

We encourage applicants to contact the Registration Team to identify novel or challenging elements of an application for registration at the earliest time in the registration process. Where exemptive relief may be required and the matter is complicated or novel, applicants should consider using the pre-filing application process to obtain the OSC's perspective before the firm or individual files a formal application.

We have observed a trend where firm and individual applicants apply for registration, and it is questionable as to whether they meet the applicable requirements or may require exemptive relief. Three examples are:

- it is unclear that the individual meets the prescribed proficiency requirements or the general proficiency principle in accordance with section 3.4 of NI 31-103
- the individual has acquired non-traditional or unconventional RIME
- a firm's business model is novel or contains unique risks

There has also been a trend of applicants making inquiries with the OSC in advance of filing a registration application which should be the subject of a pre-filing

application given novel or complex elements and the likelihood of exemptive relief being required.

Bringing unique or challenging issues to the outset of the registration process can assist applicants in understanding or addressing any registration concerns earlier in the process and can create efficiencies in the registration review process. When identifying such issues, applicants should include their analysis on the matter, and may include supporting documents, such as the individual's resume, reference letters or a slide deck of a proposed novel/complex business model.

Please note that when the OSC reviews a pre-filing application, registration is not guaranteed. We will not perform a full suitability review until a formal application has been filed for review.

# Part 3: Initiatives impacting registrants

- 3.1 [2024 Risk Assessment Questionnaire](#)
- 3.2 [Total Cost Reporting](#)
- 3.3 [Changes to fee rules: OSC Rule 13-502 and OSC Rule 13-503](#)
- 3.4 [Dual registered firms and CIRO](#)
- 3.5 [Information updates under NI 33-109](#)
- 3.6 [OSC & Financial Services Regulatory Authority of Ontario \(FSRA\) co-ordination on syndicated mortgages](#)
- 3.7 [Institutional Trade Matching and Settlement Blanket Orders](#)

### 3.1 2024 Risk Assessment Questionnaire

Preparation for the 2024 RAQ is well underway. Firms registered with the OSC in the categories of IFM, PM, RPM, EMD and RD will receive the RAQ in May 2024. Key information about the RAQ, such as the date firms will receive the RAQ, the deadline to submit the RAQ and any changes made to the RAQ questions, will be provided to firms in advance when we get closer to the 2024 launch date.

Communications about the RAQ will be sent to a firm's UDP and CCO using their email address reported on NRD. It is important that firms keep this information up to date to avoid missing RAQ related emails or delays in receiving the RAQ.

We continue to modify the RAQ process based on feedback we receive from firms. This includes continuing to pre-populate certain non-financial information in the RAQ based on a firm's previous responses, enhancing security by requiring both the firm's CCO and UDP to each create their own unique account in our system to access the RAQ, and continuing to review the RAQ to determine if any questions can be removed based on information already received through other OSC filings.

### 3.2 Total Cost Reporting

Total Cost Reporting (**TCR**) amendments to NI 31-103 were published on April 20, 2023. The TCR amendments and corresponding changes to CIRO-member rules will expand the annual report on charges and other compensation (**ARCC**) to include information about the ongoing costs of owning prospectus-qualified investment funds. Insurance regulators, i.e. Canadian Council of Insurance Regulators (**CCIR**), are also adopting harmonized requirements and guidance applicable to segregated funds.

With this information, clients will be better equipped to assess the value of the advice provided by their dealers and advisers concerning investment funds, and also the value of the advice they receive indirectly from IFMs in consideration for the payment of embedded fees.

We recognize that implementing TCR will be a complex exercise requiring firms to invest significant time and resources. Firms will have until January 2026 to begin preparing TCR-enhanced ARCCs for delivery to clients in January 2027. Staff do not expect this implementation date to be extended.

We strongly encourage IFMs and dealers and advisers that distribute prospectus-qualified investment funds to begin work on implementing TCR without delay, including participation in the development of common industry standards and arrangements for the delivery of information wherever possible.

## The TCR Implementation Committee and your questions

The TCR Implementation Committee, composed of staff from the CSA, CIRO, CCIR and industry stakeholders, has been established to assist with the interpretation of TCR requirements and resolution of operational issues.

The TCR Implementation Committee will monitor industry stakeholders' progress toward implementing TCR on schedule. After the first delivery to clients of TCR-enhanced ARCC in January 2027, the CSA and CIRO will conduct reviews to test for compliance with the TCR requirements. As with all registrant conduct requirements, the compliance review process will be supported by the appropriate regulatory actions along the compliance-enforcement continuum.

### 3.3 Changes to fee rules: OSC Rule 13-502 and OSC Rule 13-503

Effective April 3, 2023, amendments were made to revise the fee rules: OSC Rule 13-502, OSC Rule 13-503 and their related companion policies, that included:

- a) changes in respect of capital markets participation fees;
- b) the elimination of duplicative activity fees in respect of investment fund families<sup>7</sup> and affiliated entities; and
- c) the elimination of late fees for certain late filings.

We refer to the revised OSC Rule 13-502 and OSC Rule 13-503, as the **New Fee Rules**. OSC Rule 13-502 and OSC Rule 13-503 that were in effect prior to April 3, 2023, are referred to as the **Previous Fee Rules**.

#### a) Changes in respect of capital markets participation fees

##### Calculation

The New Fee Rules simplify:

- the annual capital markets participation fee calculation for registrant firms and unregistered capital markets participants, and
- the definition of "unregistered investment fund manager" by referring directly to Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*.

The Previous Fee Rules had provided for estimates with subsequent adjustments based upon the firm's or participant's actual financial information. Under the New Fee Rules, the participation fee calculation has been simplified to eliminate the estimate procedure, with a single participation fee calculation based on the most recently audited financial statements of the firm or participant. With these changes,

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<sup>7</sup> Investment fund families are funds that are related because they are managed and/or created by the same entity.

we also introduced the new term “designated financial year,” and simplified the term “previous financial year”.

Forms 13-502F4 and 13-503F1 of the New Fee Rules are used to calculate participation fees and are posted on the OSC’s website for the corresponding year. We addressed areas of potential confusion that had been identified by filers. Particularly:

- “revenues” in line 1 is now replaced with “gross revenues”
- figures are to be expressed as whole numbers and are no longer recorded in thousands

### Filing and payment deadlines

The New Fee Rules require registrant firms and unregistered market participants to file, in each year, a completed Form 13-502F4 after August 31 and before November 2. This filing period now ends on November 2 (one month earlier than the December 1 deadline under the Previous Fee Rules) and was revised to reflect the elimination of the previous estimate procedure.

Registrant firms and unregistered capital markets participants are, in each year, required to pay their capital markets participation fees by December 31 for the upcoming calendar year. Updated versions of Form 13-502F4 *Capital Markets Participation Fee Calculation* for the 2024 calendar year are expected to be posted on the OSC website in August 2023.

The applicable participation fee amounts, in respect of the specified Ontario gross revenues of the firm or participant for their designated financial year, are identified in Appendix C of OSC Rule 13-502 and Appendix A of OSC Rule 13-503.

As in the previous OSC Rule 13-503, a firm registered under both the *Act* and the Commodity Futures Act that has paid its participation fee under the new OSC Rule 13-502, is not subject to participation fees under the new OSC Rule 13-503.

### Participation fee amounts

Participation fees under the New Fee Rules have been reduced for certain levels of specified Ontario revenues (illustrated in red):

Specified Ontario gross revenues for the designated financial year	Previous Fee Rules participation fee amounts	New Fee Rules participation fee amounts
Under \$250,000	\$835	<b>\$700</b>
\$250,000 to under \$500,000	\$1,085	<b>\$975</b>
\$500,000 to under \$1 million	\$3,550	<b>\$3,200</b>
\$1 million to under \$3 million	\$7,950	<b>\$7,150</b>
\$3 million to under \$5 million	\$17,900	<b>\$16,100</b>



Specified Ontario gross revenues for the designated financial year	Previous Fee Rules participation fee amounts	New Fee Rules participation fee amounts
\$5 million to under \$10 million	\$36,175	\$34,300
\$10 million to under \$25 million	\$74,000	\$70,000
\$25 million to under \$50 million	\$110,750	\$105,200
\$50 million to under \$100 million	\$221,500	\$217,000
\$100 million to under \$200 million	\$367,700	\$367,700
\$200 million to under \$500 million	\$745,300	\$745,300
\$500 million to under \$1 billion	\$962,500	\$962,500
\$1 billion to under \$2 billion	\$1,213,800	\$1,213,800
\$2 billion and over	\$2,037,000	\$2,037,000

The above participation fee reductions are aimed at small and medium-sized businesses as part of the OSC's ongoing efforts to reduce regulatory burden and to foster capital formation and competitive capital markets.

#### b) Elimination of duplicative activity fees in respect of investment fund families

The New Fee Rules incorporated changes intended to avoid the unnecessary duplication of activity fees for certain applications in respect of applicants affiliated with each other. See sections 34 and 35 of the new OSC Rule 13-502, and sections 8 to 10 of the new OSC Rule 13-503.

#### c) Elimination of late fees for certain late filings

In the New Fee Rules, many late fees for the late filing or delivery of forms or documents have been eliminated. For example, in new OSC Rule 13-502 we have removed the late fee for the late delivery of a notice under section 11.9 *Registrant acquiring a registered firm's securities or assets* of NI 31-103; and the late fee for the late filing of a Form 33-109F5 for the purpose of amending certain items of Form 33-109F4.

In addition, late fee calculations that had previously used business days have been revised in the New Fee Rules to use calendar days.

For the New Fee Rules and their updated Companion Policies, please see:

- [OSC Rule 13-502 Fees](#)
- [OSC Companion Policy 13-502CP Fees](#)
- [OSC Rule 13-503 \(Commodity Futures Act\) Fees](#)
- [OSC Companion Policy 13-503CP \(Commodity Futures Act\) Fees](#)

### 3.4 Dual registered firms and CIRO

Effective January 1, 2023, IIROC and MFDA amalgamated to form the New Self-Regulatory Organization of Canada (the **New SRO**). New SRO was the temporary

legal name of the amalgamated entity, which was replaced on June 1, 2023 with the name: the Canadian Investment Regulatory Organization (**CIRO**). CIRO is recognized by the Canadian securities regulators, including the OSC, as a self-regulatory organization.

A key feature of CIRO is that it enables separate mutual fund and investment dealer businesses to be carried on in one legal entity, which removes barriers for investors seeking a broader product offering and for dealers wishing to attract dealing representatives and grow their businesses, and provides other operational and efficiency advantages<sup>8</sup>. Prior to the creation of CIRO, dual registered dealer firms (conducting investment dealer and mutual fund dealer activity in one legal entity) were not permitted.

We have been working closely with CIRO on dual-registered firm applications. The OSC registered the first firm as both an investment dealer and mutual fund dealer on March 24, 2023.

### **3.5 Information updates under NI 33-109**

This was a key year in the efforts by the CSA to modernize the area of registration information. The implementation period for individual registrants and permitted individuals to file information updates on NRD, as required under amendments to NI 33-109, took place from June 6, 2022 to June 6, 2023. Overall, there has been success in having key and updated registration information inputted into NRD, which assists in regulatory oversight in the public interest.

We wish to acknowledge and thank Ontario registrants and their compliance and registration teams for their efforts in updating their registration information.

The amendments were an important initiative for securities regulation. The changes were adopted to help registrants provide current, accurate and complete registration information, while ensuring the CSA has the information it needs to carry out registrant oversight.

The amendments were also about regulatory burden reduction. For example, a new reporting framework for outside activities was established which reduces the scope of reporting on NRD. Deadlines were also extended for reporting changes in registration information and a new rule was introduced to reduce multiple filings of the same information by corporate groups (multiple affiliate filings).

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<sup>8</sup> For more information, see [CSA Position Paper 25-404 - New Self-Regulatory Organization Framework](#)

Under the amendments, individuals were required to provide two new information items:

- Business titles and professional designations. This information is important for ongoing regulatory oversight of business titles used by individual registrants as envisioned by the CFRs.
- Non-securities regulation license numbers, where individuals are licensed in a non-securities capacity to engage with the public.

They were also required to update on NRD all responses that state “there is no response to this question” in accordance with section 4.3 of NI 33-109.

During the implementation year, we engaged in outreach with registration stakeholders on their experiences with filing the information updates, including at our annual Registration Outreach Roadshow held in January 2023, meetings with registered firms and RAC meetings. Technical staff with NRD expertise were also made available to firms that requested assistance with filings.

The OSC generally experienced a high volume of these filings during the year. A higher volume of processing is expected to continue during our fiscal year 2023-2024.

Despite the higher volume, we focused our resources on processing new business applications and registration filings subject to service standards. We engaged in efforts to streamline processes with other regulators during the implementation year, aimed at helping firms focus on making the required filings by the deadline. We were also active with the CSA in issuing an email blast reminding registrants of the June 6, 2023 deadline for submitting information updates.

For additional information, please refer to:

- [NI 33-109](#) and related [NI 33-109CP](#)
- [Email blast - Reminder: Deadline approaching for Form 33-109F4 questions requiring a response](#), March 30, 2023
- [Amendments to NI 33-109 and Related Instruments - Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines](#), Annex A *Summary of Notable Changes to the Proposals*
- [Amendments to NI 33-109 and Related Instruments - Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines](#), Annex F *Blackline of National Instrument 33-109 Registration Information*

- [Implementation Guide to Amendments to National Instrument 33-109: Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting and Updating Filing Deadlines](#)
- [Annex C Frequently Asked Questions on Updating Registration Information on NRD](#)
- The Registrant Outreach webinar relating to the amendments entitled [Amendments Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines](#)

### 3.6 OSC & Financial Services Regulatory Authority of Ontario (FSRA) co-ordination on syndicated mortgages

#### a) Recent transfer of regulatory oversight of syndicated mortgages

On July 1, 2021, amendments to Ontario securities law came into force that resulted in the transfer of primary regulatory oversight of most syndicated mortgages, particularly non-qualified syndicated mortgages offered to retail clients (non-permitted clients), from FSRA to the OSC<sup>9,10</sup>.

The purpose of these amendments was to introduce additional investor protections related to the distribution of syndicated mortgages to retail investors and to increase harmonization regarding the regulatory framework for syndicated mortgages across all CSA jurisdictions.

The oversight of qualified syndicated mortgages (**QSMIs**) and syndicated mortgages distributed to permitted clients, by a person that is registered or licensed under the Mortgage Brokerages, Lenders and Administrators Act, 2006, remains with FSRA. In response to stakeholder comments received during the rule-making process to reflect this, the OSC introduced a new registration exemption in OSC Rule 45-501 *Prospectus and Registration Exemptions*<sup>11</sup> to exempt firms and individuals that distribute syndicated mortgages to permitted clients and QSMIs, from registration as a dealer, as long as they are FSRA-licensed mortgage brokers.

Compared to other syndicated mortgages, which may have more equity-like characteristics, QSMIs are less likely to give rise to the same level of investor protection issues.

<sup>9</sup> Refer to [Syndicated Mortgage Amendments](#) Outreach webpage

<sup>10</sup> Refer to [FSRA Syndicated Mortgage Investments – Information and Resources](#) webpage

<sup>11</sup> See the new exemptions in [Amendments to Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions](#)

## b) Co-ordination efforts between the OSC and FSRA

Since the new amendments came into force in July 2021, OSC staff have been consulting regularly with FSRA staff in relation to shared oversight matters. These consultations include:

- providing consistent guidance to help market participants navigate the new FSRA and OSC regimes
- assisting FSRA-licensed mortgage brokers and administrators that wish to apply for registration under the Act
- consulting on compliance reviews of entities that operate within both regimes

As one example of our co-ordination efforts, OSC staff have recently been consulted by FSRA staff on an ongoing matter in connection with a FSRA entity that had previously offered syndicated mortgages to retail investors and is now seeking to replace those syndicated mortgage investments with new investments by the same investors structured as:

- investments under the offering memorandum (**OM**) exemption,
- investments in units of a newly established fund managed by an affiliated entity, and
- investments made in reliance on other prospectus exemptions.

In addition, FSRA staff and OSC staff have discussed questions such as how conflicts of interest are managed by entities within the corporate group, suitability issues under the FSRA and OSC regimes, valuation issues in relation to the mortgages that are “transferred in” to the fund managed by the affiliated entity and disclosure issues in connection with distributions made under the OM exemption.

In another recent example, FSRA identified a FSRA mortgage brokerage that had purported to renew a syndicated mortgage transaction with investors, including retail investors, without being registered under the Act or making the required filings (such as Form 45-106F1) to the OSC. The brokerage told FSRA that they believed the mortgage renewal transaction was not a new “distribution” of the mortgage and therefore, the trigger to file a *Report of Exempt Distribution* on Form 45-106F1 had not been met. OSC staff advised FSRA that we generally view a renewal or rollover transaction to be a new distribution of a new security, for example, a mortgage or other debt security with a new maturity date and potentially other new terms. See the Tribunal decision dated January 15, 2020 [Re MOAG Copper Gold Resources Inc.](#), paragraphs 39 to 47.

OSC staff are currently consulting with FSRA as to an appropriate regulatory response for situations where FSRA firms have purported to make “renewals” of

syndicated mortgages without complying with the registration and prospectus requirements of Ontario securities law.

### 3.7 Institutional Trade Matching and Settlement Blanket Orders

On July 1, 2020, the OSC amended NI 24-101 to provide a three-year moratorium on the applicability of section 4.1 *Exception reporting requirement* (**2020 Moratorium**). Pursuant to this moratorium, registered dealers and advisers were not required to deliver Form 24-101F1 to the Commission from July 1, 2020 to July 1, 2023.

Proposed amendments to NI 24-101 (**Proposed 24-101 Amendments**), which if implemented, would include the permanent elimination of the exception reporting requirement, are expected to come into force on May 27, 2024 (**Proposed 24-101 Amendments**).

To extend the 2020 Moratorium until such time that the Proposed 24-101 Amendments come into force, local blanket orders, which became effective July 2, 2023, provide relief from section 4.1. The blanket orders will cease to be in effect on the earlier of the effective date of the Proposed 24-101 Amendments or 18 months from July 2, 2023.

# Part 4: Acting on registrant misconduct

- 4.1 [Annual trends and highlights](#)
- 4.2 [Prompt and effective regulatory action](#)
- 4.3 [Trading and advising prior to obtaining registration](#)
- 4.4 [Director's decisions and settlements](#)

## 4.1 Annual trends and highlights

The Registrant Conduct Team is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where appropriate, and conducting opportunity to be heard (**OTBH**) proceedings before the Director.

Before a Director of the OSC imposes terms and conditions on registration, suspends a registration, or refuses an application for registration, a registrant or an applicant has the right under section 31 of the Act to request an [OTBH](#) before the Director. A registrant or an applicant may also request a hearing and review by the Capital Markets Tribunal (the **Tribunal**) of a Director's decision under section 8 of the Act.

### Identifying and acting on registrant misconduct

Potential registrant misconduct is identified through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips. CRR also identifies registrant misconduct through background and solvency checks on individual registrants or individual applicants, responses to the RAQ, and referrals from SROs and other organizations.

Acting on registrant misconduct matters is central to effective compliance oversight. It also promotes confidence in Ontario's capital markets, both among the investing public and among the registrants who make best efforts to comply with Ontario securities law. Registrants must remain alert and monitor for potential misconduct by enacting and implementing appropriate policies and procedures, and ensuring that controls are in place to detect and address instances of misconduct.

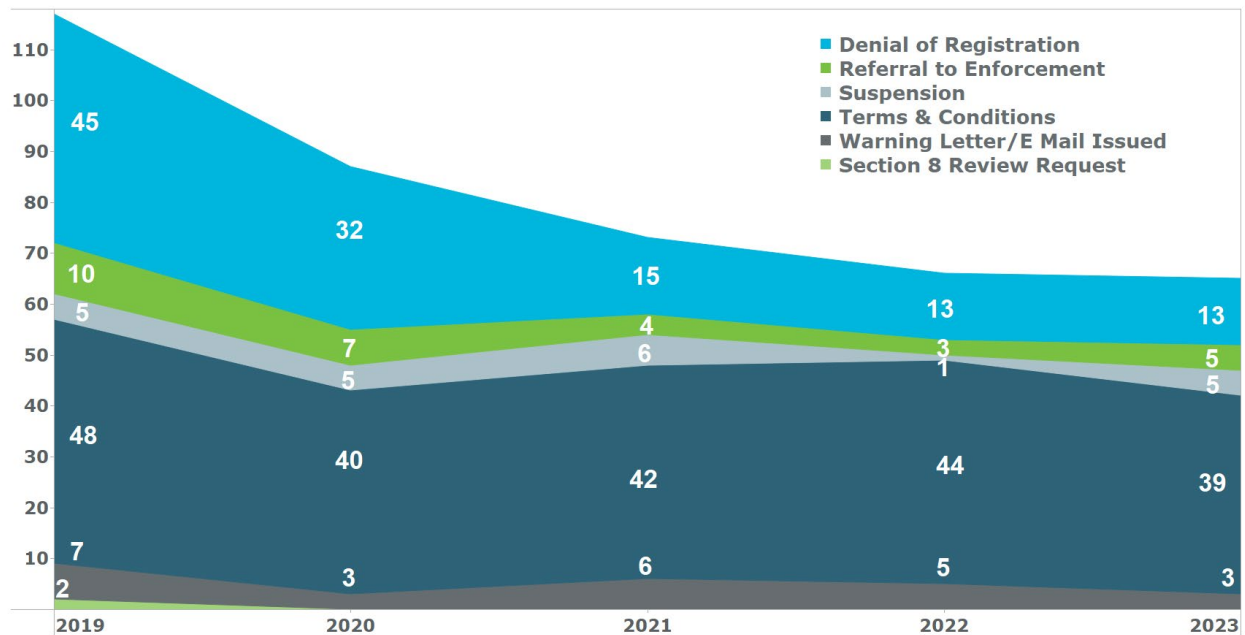
The Registrant Conduct Team is also responsible for overseeing terms and conditions on registered firms and individuals as a result of a regulatory decision, including a Director's decision or Tribunal Order. For registered firms, terms and conditions might require them to engage an independent compliance consultant or restrict business activity that is not compliant while remediation takes place. Terms and conditions might also require specific reporting by registered firms to the OSC.

In cases where there appear to be issues with an application that could bear on the individual's suitability for registration, such as past misconduct or untrue or misleading information given in the application itself, the file may be referred by the Registration Team to the Registrant Conduct Team for further investigation, requiring a longer review time. Each phase in the registration process when applications transition from the Registration Team to the Registrant Conduct Team are illustrated in this [process chart](#).

The following chart summarizes the regulatory actions taken by CRR against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.



### CRR Regulatory Actions FYE 2019 - 2023<sup>12</sup>



The chart illustrates that CRR makes use of regulatory actions along the compliance-enforcement continuum, the action being commensurate with the magnitude of misconduct or non-compliance in a given situation. Terms and conditions, denials of registration, and suspensions or revocations of registration are all tools available to CRR to address serious non-compliance.

Most categories of CRR regulatory actions remained fairly constant in fiscal 2022-2023 compared to the previous fiscal year. CRR continued to use appropriate business restrictions and other terms and conditions to permit a firm which engaged in significant non-compliance to remediate its deficiencies, or to permit individuals to enhance their proficiency. However, CRR remains committed to taking timely and effective regulatory action where misconduct is identified, and will recommend suspension or revocation of registration, subject to a registrant’s right to request an OTBH before the Director, when warranted.

CRR continued to identify non-disclosure of material information by applicants and registrants, including instances where solvency events such as bankruptcies, requirements to pay and consumer proposals were not disclosed. In amendments to NI 33-109 that became effective on June 6, 2022, we updated our forms to further clarify that consumer proposals are among the solvency events that are required to be disclosed, and that any relevant solvency events must be disclosed regardless of how long ago they occurred. Sponsoring firms can expect that any application made using the new, clarified forms that fails to disclose solvency events will be taken out

<sup>12</sup> Figures for 2020 have been revised to correctly include the regulatory actions for the 2019 – 2020 fiscal year.

of the ordinary course and be subject to in-depth review by the Registrant Conduct Team.

The Registrant Conduct Team will conduct an in-depth review of applications when applicants fail to disclose any criminal convictions or charges, as required. We will also review the suitability for ongoing registration of any currently registered individual who has failed to disclose criminal charges or convictions. Additionally, even if criminal convictions or charges are appropriately disclosed, we may consider whether certain criminal charges or convictions bear on the integrity of an applicant or registered individual. For example, some *Criminal Code* offences relate to dishonest conduct, such as theft, fraud, identity theft, perjury or forgery. Other offences might reflect disregard for court orders, such as failure to comply with recognizance or driving while disqualified.

Although the most common concern with individual applicants and registrants is non-disclosure of material information, we continued to open a significant number of files based on dismissals for cause or other identified misconduct by individuals while registered with former sponsoring firms. In these cases, staff will make inquiries of both the applicant and the former sponsoring firm to determine whether the identified conduct bears on the applicant's suitability for registration. Typically, staff will conduct an interview of the applicant before making a recommendation. The timely co-operation of registered firms in these investigations is both appreciated and vitally important.

Referrals are made to the Enforcement Branch in cases where the appropriate tool is a power that can only be exercised by the Tribunal. In fiscal 2022-2023, there were five referrals to the Enforcement Branch.

## **4.2 Prompt and effective regulatory action**

Where appropriate, CRR will recommend that terms and conditions be placed on the registration of a firm where CRR has identified an inadequate compliance system, or an error or oversight that creates undue risks or losses for investors.

These are situations where CRR will not recommend suspension, but where terms and conditions are nonetheless necessary to protect investors and remediate identified compliance deficiencies.

Over the past fiscal year, CRR obtained, on consent, several sets of terms and conditions designed to address complex compliance concerns. These terms and conditions have been drafted to increase the likelihood of compliance remediation to the benefit of present and future clients of the firm, while promoting fairness in the capital markets.

Two examples of novel terms and conditions imposed on consent are:

- **Addressing fund accounting errors:** A firm improperly valued some of the investments in its fund's portfolio since its inception, resulting in material errors with the fund's NAV, which is used to value investor transactions in the fund, and to determine the fees to be paid by the fund to the firm. Terms and conditions were imposed which required the firm to engage an independent consultant to re-calculate the fund's NAVs for each of its valuation days since its inception, and to identify any necessary adjustments or compensation to the fund and its investors that are to be implemented by the firm.
- **Addressing activities of non-registered senior individual at firm, and lack of firm compliance:** Terms and conditions were imposed on a firm to restrict the activities of one of its senior, non-registered individuals who engaged in activities requiring registration, and to restrict the business activities of the firm due to significant non-compliance with the management of its funds and other clients' accounts. The terms and conditions also require the firm to engage an independent monitor to oversee and report to staff on the firm's compliance with the restrictions and on the firm's progress with remediation efforts regarding the management of its funds and other clients' accounts.

### 4.3 Trading and advising prior to obtaining registration

The Registrant Conduct Team has identified a trend where applicants for registration, or applicants to add a jurisdiction of registration, have engaged in dealing, advising and/or IFM activities prior to obtaining appropriate registration. We remind applicants that appropriate registration is required before firms and individuals engage in or hold themselves out as engaging in the business of trading or advising in securities or before firms act as an IFM.

#### Firm applicants

We have identified applicant firms who have raised a significant amount of capital from substantial numbers of investors in Ontario prior to obtaining registration. Applicants for registration can expect that, if this issue is found, their application for registration will be taken out of the normal course while the Registrant Conduct Team reviews the pre-registration capital raises in detail. We may do one or more of the following in response to identifying firms engaged in registerable activity prior to obtaining registration:

- require payment of capital market participation fees and/or late fees in respect of years where the firm has engaged in registerable activity
- require key compliance roles (such as the UDP or CCO) be filled by individuals other than those who engaged in or authorized improper activity

- require that the firm, or a registered third-party, collect KYC information and perform a suitability assessment for pre-registration capital raises, including rescinding trades with ineligible investors or offering the right to investors to redeem unsuitable investments
- potentially refer applicants to the Enforcement Branch if we believe that the firm has contravened the registration requirements in section 25 of the Act

In some cases, we identified unregistered firms offering securities in related or connected issuers without complying with the filing requirements of National Instrument 45-106 *Prospectus Exemptions*. We may require that filings be made in respect of prior capital raises, and late fees may apply.

### Individual applicants

We have identified individuals applying for registration who have engaged in registerable activity prior to obtaining registration in the correct individual category. Some examples include:

- providing investment advice while purportedly acting as a relationship manager, financial planner, or a party to a referral agreement
- collecting KYC information and performing suitability analyses despite not being registered

In addition, we have identified AARs applying for AR registration, who, while an AAR, have advised on securities without first getting the advice approved by an AR.

When we identify these types of conduct by an individual applicant, the application will be taken out of the normal course and referred to the Registrant Conduct Team for review. Pre-registration activity of this nature might result in terms and conditions requiring enhanced proficiency, or a potential refusal of registration.

### Adding jurisdictions

For applicants applying to add another Canadian jurisdiction, we have identified some cases where registerable activity was conducted in that jurisdiction prior to obtaining registration. When this concern arises, the Registrant Conduct Team consults with the other jurisdiction and works with them to make sure their concerns are addressed prior to recommending that the Director grant registration in the additional jurisdiction.

### Improper reliance on client mobility exemption

Some firms or individuals have attempted to rely on the client mobility exemptions set out in sections 2.2 and 8.30 of NI 31-103, by servicing clients in a jurisdiction where the firm or individual is not registered, without complying with the requirements of these exemptions. Use of the client mobility exemptions must be disclosed to the client *prior* to acting as a dealer or adviser to the client in the

client's new jurisdiction of residence where the firm or individual is not registered, and a Form 31-103F3 must be filed with the local jurisdiction. In addition, the client mobility exemption limits the number of eligible clients a firm or individual can service to 10 eligible clients per firm and 5 eligible clients per individual.

#### **4.4 Director's decisions and settlements**

Director's decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at [Opportunity to be heard and Director's decisions](#), where they are presented by topic and by year. Director's decisions can be used as an important resource for registrants, as they highlight matters of concern to the OSC, as well as the regulatory action that was taken as a result of misconduct and noncompliance. The publication of Director's decisions also ensures that CRR's response to serious misconduct is visible to market participants and investors.

Four Director's decisions were published in the fiscal year 2022-2023 on registrant conduct issues. Two decisions were issued in cases where CRR recommended suspension and the registrant did not request an OTBH, and two decisions approved settlement agreements between CRR and the registrant. A settlement agreement typically contains an agreed statement of facts and a joint recommendation to the Director. Proceeding by way of a settlement agreement with CRR allows the registrant to participate in setting out the factual narrative that becomes the basis for the Director's decision.

A summary of the Director's decisions and settlements for fiscal 2022-2023 follows:

##### [Caitlin Eloise Gossage \(March 29, 2023\)](#)

##### *Topics: Non-Securities-Related Conduct; Rehabilitation of Fitness for Registration*

Caitlin Gossage, a chief compliance officer with a firm registered in the categories of IFM, PM, and EMD, notified CRR in 2021 that she was the subject of a disciplinary proceeding brought by the Law Society of Ontario. In April 2022, as part of a joint settlement, Gossage was permitted to surrender her licence to practice law for conduct unbecoming a barrister and solicitor. Gossage had self-reported to the Law Society that she had submitted numerous false insurance claims through a former employer's insurance program over an extended period. Gossage had repaid the full amount falsely claimed on the insurer's request and cooperated with the investigation by her former employer. Gossage submitted a letter from her treating mental health professional who expressed an opinion regarding the cause of the behaviour and that Gossage is not at risk of engaging in similar behaviour in the future.

Gossage expressed remorse for and accepted responsibility for her conduct and, as set out in the Law Society Tribunal's decision, specific deterrence and rehabilitation have already been achieved. Gossage has also taken steps to ensure that she will not behave in a similar manner again. The Director approved a settlement

agreement which requires Gossage to meet continuing education requirements and be subject to supervisory terms and conditions for at least one year.

[Alexandre Galasso \(August 18, 2022\)](#)

*Topic: Compliance With Securities Laws of Foreign Jurisdictions*

Alexandre Galasso's registration as a dealing representative was suspended by his principal regulator, the Autorité des marchés financiers (**AMF**), for two months effective July 1, 2022. After he admitted that he failed to comply with certain regulatory obligations, including his KYC obligations under NI 31-103, terms and conditions were imposed on his registration requiring close supervision of his trading activities. Galasso consented to CRR staff's recommendation that his registration as an exempt market dealing representative also be suspended in Ontario until such time as his registration in Quebec was reactivated, and that substantially similar terms and conditions to those imposed in Quebec apply to his registration in Ontario.

[Gilberto Arrieche-Sayago \(July 12, 2022\)](#)

*Topic: Misleading Staff or Sponsor Firm*

Gilberto Arrieche-Sayago, a scholarship plan dealing representative, left one sponsoring firm to join another. As part of that process, he impersonated some of his clients in calls he placed to his former sponsoring firm and, posing as the client, asked that their contributions be paused or reduced. Arrieche-Sayago's spouse engaged in the same activity for some of his female clients. These calls were done so that the clients could begin investing with Arrieche-Sayago at his new firm. The clients had authorized Arrieche-Sayago to generally take the steps needed so they could follow him to his new firm, but some were not aware of the impersonation calls. When the matter came to the attention of the new and former sponsoring firms, Arrieche-Sayago falsely denied the conduct and offered a false alibi. The Director approved of a settlement agreement between CRR and Arrieche-Sayago whereby his registration was suspended for six months.

[Keven Rivard \(August 18, 2022\)](#)

*Topic: Compliance With Securities Laws of Foreign Jurisdictions*

Keven Rivard, a Quebec-based exempt market dealing representative, was suspended by the AMF, his principal regulator, for two months for not complying with his suitability obligations. The Director suspended Rivard's registration in Ontario on the basis that it would be objectionable for him to be registered in Ontario during such time as his registration in Quebec was suspended for disciplinary reasons.



ONTARIO  
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