



ONTARIO
SECURITIES
COMMISSION

Annual Summary Report for Dealers, Advisers and Investment Fund Managers

Compliance and Registrant Regulation

OSC Staff Notice 33-748

July 11, 2017

Table of Contents

Introduction	7
1. Outreach to registrants	12
1.1 Registrant Outreach program	12
1.2 OSC LaunchPad	14
1.3 Registrant Advisory Committee.....	17
1.4 Communication tools for registrants	17
1.5 Topical Guide for Registrants.....	18
1.6 Director's decisions by topic and by year	18
2. Registration of firms and individuals	20
2.1 Update on registration initiatives	20
2.2 Current trends in deficiencies and acceptable practices	22
3. Information for dealers, advisers and investment fund managers	32
3.1 All registrants.....	32
3.2 Dealers (EMDs and SPDs)	47
3.3 Advisers (PMs)	57
3.4 Investment fund managers	66
4. Acting on registrant misconduct	76
5. Key policy initiatives impacting registrants	90
5.1 Syndicated mortgages	90
5.2 Targeted reforms and best interest standard	90
5.3 Review of compensation practices.....	92
5.4 Proposed amendments to registration rules for dealers, advisers and investment fund managers.....	93
5.5 Derivatives regulation.....	94
5.6 Dealers and advisers servicing foreign resident clients from Ontario	96
5.7 Independent dispute resolution services for registrants.....	97
5.8 Proposed exemptions for distributions of securities outside of Canada	98
5.9 Efforts to move to T+2 settlement cycle	98
5.10 International Organization of Securities Commissions (IOSCO): Committee 3 – Market Intermediaries (C3).....	99
6. Additional resources	102
Appendix A – contact information for registrants	103



DIRECTOR'S MESSAGE

For the 2017-2018 fiscal year, the Compliance and Registrant Regulation (CRR) Branch continues to focus on conducting compliance reviews, our registrant outreach program, and various policy initiatives.

We continue to strive for strong and open lines of communication with registrants and look for ways to better achieve this goal. In the past year, the Ontario Securities Commission (OSC) introduced the OSC LaunchPad. OSC LaunchPad is the first dedicated team assembled by a securities regulator in Canada to provide direct support to eligible financial technology businesses in navigating the regulatory requirements. Additional information regarding the initiative can be found at OSC LaunchPad's [dedicated site](#).

Our Registrant Outreach program continues to be very popular and well attended by registrants. For those of you who may have missed a topic or would like to refresh what you previously heard, you can find the materials from past sessions on the [Registrant Outreach](#) web page.

We would like to take this opportunity and remind registrants that:

- Know your client (KYC) and suitability are fundamental obligations that registrants owe to their clients. However, these areas continue to be the top deficiencies noted in compliance reviews for all registrant categories. Firms need to do more to focus their resources in these areas to reduce the number of deficiencies.
- Firms play an important gatekeeper role in the registration regime. As such, firms need to provide complete and accurate information in all registration applications filed with us. Firms are also encouraged to assess their existing policies and procedures relating to the due diligence reviews they conduct on applicants that they put forward for registration. As gatekeepers, firms are responsible for assessing that the applicants they sponsor have the required proficiency, integrity and are a suitable candidate to represent their firm.
- Investors must always be a priority and we expect firms to process transfer requests in a timely and efficient manner without unnecessary delays. We will take issue with any anti-competitive practices in relation to requests from clients to transfer their assets to another firm.

This year, we are focusing our compliance reviews in the following areas:

- firms who have a significant number of senior investors as clients,
- compliance with the new prospectus exemptions that came into force in fiscal 2016,
- expenses charged by a fund manager to its funds,
- funds that have large holdings in illiquid securities and their valuation procedures,
- continue reviewing high-risk firms identified from our 2016 Risk Assessment Questionnaire (the 2016 RAQ), and
- firms that participated in the “Registration as the First Compliance Review” program to assess their compliance after participating in the program.

CRR is also involved in a number of projects that have impacted or will impact the regulatory landscape in Ontario. These initiatives include:

- Syndicated mortgages - as detailed in the 2017 Ontario Budget, the government plans to transfer regulatory oversight of syndicated mortgage investments from the Financial Services Commission of Ontario (FSCO) to the OSC. The OSC will be working with the government and FSCO to plan an orderly transfer of the oversight of these products.
- Targeted Reforms and Best Interest Standard projects – the objective of these projects are to enhance the obligations that dealers and advisers owe to their clients.
- Review of compensation practices - we will continue to review the compensation practices of firms to inform our views of the potential material conflicts of interest that arise from certain compensation arrangements.
- Publication of amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* pertaining to custody requirements, CRM 2 and exempt market dealer activities - these amendments are designed to provide further clarity to registrants and enhance compliance.
- Financial planning – On November 1, 2016, the Final Report from the Expert Committee appointed by the Minister of Finance was published with policy recommendations on regulating financial planning. The OSC is working with the government and other stakeholders to respond to the recommendations of the Expert Committee.

Over the course of the last few years we have increased the number of compliance reviews, provided additional guidance to industry on various topics and areas of concern and introduced and enhanced our Registrant Outreach program. We are hopeful that these additional activities have had a positive impact on overall compliance by registrants. There appears to be some evidence of this as the firms selected for review last year had fewer significant deficiencies than in the prior year. We are encouraged that firms are more aware of compliance issues and are responding to them more effectively.

We look forward to continuing to build on these improvements and our relationship with firms in the current year.

Debra Foubert
Director, Compliance and Registrant Regulation Branch



INTRODUCTION

Introduction

This annual summary report prepared by the CRR Branch (this annual report or report) provides information for registered firms and individuals (collectively, registrants) that are directly regulated by the OSC. These registrants primarily include:

- exempt market dealers (EMDs),
- scholarship plan dealers (SPDs),
- advisers (portfolio managers or PMs), and
- investment fund managers (IFMs).

The CRR Branch registers and oversees firms and individuals that trade or advise in securities or act as IFMs in Ontario.

Individuals	Firms			
67,793	1,010 ¹			
	PMs	EMDs	SPDs	IFMs
	296 ²	215 ³	5	494 ⁴

Registrants overseen by the OSC

Although the OSC registers firms and individuals in the category of mutual fund dealer and dealing representatives and firms in the category of investment dealer, these firms and their registered individuals are directly overseen by their SROs, the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC), respectively. This report focuses primarily on registered firms and individuals directly overseen by the OSC, but the firms directly overseen by the SROs should review the [registration section](#) of this report (Section 2).

Executive Summary

In this annual report, Section 1 provides an update on our Registrant Outreach program that helps strengthen our communication with registrants on compliance practices. This annual report is a key component of our outreach to registrants.

¹This number excludes firms registered as mutual fund dealers or firms registered solely in the category of investment dealer or other registration categories (commodity trading manager, futures commission merchant, restricted PM, and restricted dealer).

² This number includes firms registered as sole PMs and PMs also registered as EMDs, and in other registration categories.

³ This number includes firms registered as sole EMDs and EMDs also registered in other registration categories.

⁴ This number includes sole IFMs and IFMs registered in multiple registration categories.

We strongly encourage registrants to read and use this annual report:

- to enhance their understanding of our expectations of registrants and our interpretation of regulatory requirements,
- to understand the initial and ongoing registration and compliance requirements,
- to review and be made aware of new and proposed rules and other regulatory initiatives, and
- as a self-assessment tool to strengthen their compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls, and supervision.⁵

Sections 2 and 3 of this report respectively summarize current trends in registration and in deficiencies identified through compliance reviews of registrants (including acceptable practices to address them and unacceptable practices to prevent them). A summary of these matters and where more information can be found in this annual report are outlined in the table below:

Current Trends in Registration – Section 2

Deficiency Trends	Update on Initiatives
<ul style="list-style-type: none"> • Firms failing to know the applicants they sponsor (pg.23) • Use of misleading titles (pg.23) • Late Item 5 updates for notices of termination filings (pg.24) • Incorrect Item 5 updates for notice of termination filings (pg.25) • Incomplete information with respect to surrender applications or category removals (pg.25) • Unclear/evolving business models at time of application for registration (pg.28) • Delayed or no response to staff inquiries (pg.28) • Lack of information provided with respect to wire transfer payments for EFT exempt firms (pg.28) • Estimate as to the proportion of the fees attributable to registerable activities in Ontario (pg.29) • Chief compliance officers for international firms (pg.29) 	<ul style="list-style-type: none"> • Registration Outreach Roadshow (pg.20) • Review of insurance requirements (pg.21) • Automatic acceptance of notices of termination and update/correct termination information submissions on NRD (pg.22) • OSC responsibility for registration of MFDA member firms and individuals (pg.22)

⁵ The content of this annual report is provided as guidance for information purposes and not as advice. We encourage firms to seek advice from a professional advisor as they conduct their self-assessment and/or implement any changes to address issues raised in this annual report.

Current Trends in Compliance Reviews of Registrants – Section 3

	Deficiency Trends	Update on Initiatives
All Firms	<ul style="list-style-type: none"> Inadequate collection/documentation of KYC/suitability information (pg.35) Client account statement common deficiencies and missing information in trade confirmations (pg.36) Common deficiencies and previously published guidance (pg.37) 	<ul style="list-style-type: none"> Seniors and vulnerable investors (pg.38) “One-person” firms and business continuity/succession planning (pg.39) Lending firms (pg.40) High impact sweep (pg.41) Marketing in public places (pg.43) Cybersecurity (pg.44) Excessive fees (pg.44) Whistleblower review (pg.45)
EMDs	<ul style="list-style-type: none"> Inadequate documentation to support assessment of products (pg.47) Individuals trading without appropriate registration (pg.48) Applications for dealer registration relief in connection with leverage employee share offering (pg.49) 	<ul style="list-style-type: none"> Dealers distributing securities in reliance of the new prospectus exemptions (pg.50) Derivatives – trade repository and data reporting compliance reviews (pg.55) U.S. online equity funding portals (pg.56) Registration and oversight of foreign broker dealers (pg.56)
PMs	<ul style="list-style-type: none"> Vulnerable investors – lack of policies and procedures (pg.57) PMs with inappropriate access to client’s custody accounts (pg.58) 	<ul style="list-style-type: none"> PM-IIROC member dealer service arrangements (pg.59) Online advisers (pg.60) PM with IIROC affiliate compliance reviews (pg.63)
IFMs	<ul style="list-style-type: none"> Repeat common deficiencies (pg.66) Holding client assets (pg.67) Prohibited investments resulting in a fund becoming a substantial security holder (pg.69) 	<ul style="list-style-type: none"> Focused reviews on mutual fund sales practices (pg.70) Advisor discount fee arrangements survey (pg.72) Summary of Investment Funds and Structured Products Branch policy initiatives (pg.73)

Section 4 highlights the types of regulatory action we take when we find serious non-compliance and misconduct at registered firms and by registered individuals. A summary of these matters and where more information can be found in this annual report is included in the following table:

Summary of Registrant Misconduct – Section 4

Registrant Misconduct	Topics
Regulatory actions taken during April 1, 2016 – March 31, 2017	<ul style="list-style-type: none"> • Summary chart of regulatory actions taken (pg.76)
Cases of interest	<ul style="list-style-type: none"> • Novel dealer business model, conflicts of interest, controls and supervision (pg.78) • Disclosure of outside business activity including community involvement / positions of influence (pg.81) • Registration of individuals with prior disciplinary history (pg.82)
Contested opportunity to be heard decisions by topic	<ul style="list-style-type: none"> • False client documentation (pg.84) • Misleading staff or sponsoring firm (pg.85) • Compliance system and culture of compliance (pg.86) • Outside business activity (including off-book dealing) (pg.88)

Section 5 summarizes new and proposed rules and policy initiatives impacting registrants. Section 6 concludes with details of where registrants can obtain more information about their regulatory obligations and provides CRR Branch contact information.



OUTREACH TO REGISTRANTS

- 1.1 Registrant Outreach program**
 - a) Registrant Outreach web page**
 - b) Educational seminars**
 - c) Registrant Outreach community**
 - d) Registrant resources**
- 1.2 OSC LaunchPad**
- 1.3 Registrant Advisory Committee**
- 1.4 Communication tools for registrants**
- 1.5 Topical Guide for Registrants**
- 1.6 Director's decisions by topic and by year**

1 Outreach to registrants

We continue to interact with our stakeholders through our Registrant Outreach program, which was launched in 2013. The objectives of our Registrant Outreach program are to strengthen our communication with Ontario registrants that we directly regulate and other industry participants (such as lawyers and compliance consultants), to promote stronger compliance practices and to enhance investor protection.

1.1 Registrant Outreach program

REGISTRANT OUTREACH STATISTICS (since inception)		
48 <ul style="list-style-type: none">in-person and webinar seminars provided to June 30, 2017	8,997 <ul style="list-style-type: none">individuals that attended outreach sessions to June 30, 2017	Key features <ul style="list-style-type: none">dedicated web pageeducational seminarsRegistrant Outreach communityregistrant resources

The Registrant Outreach program continues to provide Ontario registrants with practical knowledge on compliance-related matters and the opportunity to hear directly from us on the latest issues impacting them. Since the launch of the Registrant Outreach program in July 2013, approximately 8,997 individuals have attended registrant outreach sessions, either in-person or via a webinar. The feedback from these participants has remained very positive.

The Registrant Outreach program is interactive and has the following features to enhance dialogue with registrants:

a) Registrant Outreach web page

We set up a [Registrant Outreach](http://www.osc.gov.on.ca) web page on the OSC's website at www.osc.gov.on.ca, which is designed to enhance awareness of key compliance issues and policy initiatives.

Registrants are encouraged to check the web page on a regular basis for updates on regulatory issues impacting them.

b) Educational seminars

Anyone interested in attending an event can go to the [Calendar of Events](#) section of the Registrant Outreach web page on the OSC’s website for upcoming seminar descriptions and sign-up. A summary of the seminars we have conducted in the past fiscal year is included in the table below (along with links to the recordings where available):

Date of Seminar	Topic
June 14, 2017	Effective oversight of service providers and Modernization of Investment Fund Product Regulation – Alternative Funds (webinar)
April 13, 2017	CSA Consultation Paper 81-408 – <i>Consultation on the Option of Discontinuing Embedded Commissions</i> (webinar)
February 23, 2017	CRM2 Reporting to Clients and Portfolio Managers – IIROC Member Service Arrangements (webinar)
November 22, 2016	Communicating with clients in a compliant manner (webinar)

c) Registrant Outreach community

Registrants and other individuals (heads of business lines, in house legal counsel, compliance staff, etc.) are also encouraged to join our [Registrant Outreach community](#) to receive regular e-mail updates on OSC policies and initiatives impacting registrants, as well as the latest publications and guidance on our expectations regarding compliance issues and topics.

d) Registrant resources

The registrant resources section of the web page provides registrants and other industry participants with easy, centralized access to recent compliance materials. If you have questions related directly to the Registrant Outreach program or have suggestions for seminar topics, please send an e-mail to RegistrantOutreach@osc.gov.on.ca.

1.2 OSC LaunchPad



“The OSC is committed to providing a tech and innovation-friendly environment where we work with entrepreneurs to give them the opportunity to flourish in a regulated industry.”

October 24, 2016 – Maureen Jensen, Ontario Securities Commission, Chair & CEO

Created as a pilot initiative in October 2016, OSC LaunchPad is the first dedicated team assembled by a securities regulator in Canada to provide direct support to eligible financial technology (fintech) businesses in navigating the regulatory requirements. Additional

information can be found at OSC LaunchPad’s [dedicated site](#).

Mandate

The overall purpose of OSC LaunchPad is to modernize regulation to support digital innovation, while protecting investors and promoting confidence in our markets. The team achieves this through three main focuses, namely:

- engaging with the fintech community,
- offering the opportunity for direct support in navigating the rules, and
- taking learnings and applying them to similar businesses going forward.

The OSC LaunchPad team consists of core members and an extended team of dedicated staff from each of the OSC’s operational branches, namely CRR, Corporate Finance, Investment Funds and Structured Products, Derivatives and Market Regulation.

Focus areas

(i) Engagement

The OSC LaunchPad team engages with the fintech community in various ways, including by hosting and attending events. These events have included #RegHackTO (discussed further below); Information Days for fintech businesses to attend our office to meet the team and discuss how OSC LaunchPad can provide guidance; and speaking engagements at events hosted by various law firms, innovation hubs and other fintech industry participants.

(ii) Direct support

OSC LaunchPad provides the opportunity for businesses that have innovative products, services or applications that benefit investors to apply for dedicated support from the team. The level and duration of support received will depend on a variety of factors, including the stage of the fintech’s business, the novel aspects of the product, service, or

application, and the complexity of the regulatory issues raised. Types of support include one or more meetings with the team, informal guidance on potential securities regulation implications, and/or support during the registration or application process.

Depending on the circumstances, the direct support process may include the opportunity for businesses to obtain time-limited registration and/or exemptive relief in order to test their products, services or applications in a live environment.

Fintech businesses can visit the [Request Support tab](#) of the OSC LaunchPad site to obtain additional details on eligibility criteria and the types of support that may be provided, as well as the Request for Support form.

(iii) Applying learnings

As trends, barriers, challenges, and acceptable practices are identified through the engagement and direct support we provide to firms, we will consider how similar businesses can benefit from our learnings going forward. This may result in more streamlined processes, standardized terms and conditions on registration and/or exemptive relief orders and possibly rule and policy changes.

Co-operation and co-ordination with Canadian and global securities regulators

On February 23, 2017, the Canadian Securities Administrators (CSA) launched the [CSA Regulatory Sandbox](#). The CSA Regulatory Sandbox committee is dedicated to working with innovative fintech businesses whose activities trigger the application of securities law. One of the key objectives of the CSA Regulatory Sandbox committee is to foster fintech businesses' ability to efficiently bring innovative products, services or applications to market, not only in their local jurisdictions, but nationally. To apply to the CSA Regulatory Sandbox, an Ontario business should first submit a Request for Support to OSC LaunchPad, since the OSC would be its principal regulator.

On November 1, 2016, the OSC entered into a [co-operation agreement with the Australian Securities and Investments Commission](#) (ASIC), which in March 2015 established an innovation hub to assist innovative fintech businesses to navigate ASIC's regulatory system. This agreement facilitates information sharing between the regulators and the referral of fintech businesses between ASIC and the OSC. On February 22, 2017, the OSC entered into a similar [co-operation agreement with the UK Financial Conduct](#)

[Authority](#) (FCA), which achieves the same objectives. Like ASIC, the FCA has a well-established innovation hub in its jurisdiction.

#RegHackTO

Over the weekend of November 25 to 27, 2016, the OSC hosted the first securities regulatory “hackathon” in Canada, #RegHackTO. #RegHackTO brought together over a hundred members of the fintech community to collaborate on solutions to everyday problems that impact the ongoing work of the OSC.

OSC LaunchPad organized #RegHackTO in recognition of the fact that the regulatory environment is becoming increasingly complex. Solutions that help to streamline the regulatory environment are beneficial for both the OSC and fintech businesses in the securities industry. The hackathon included strategists, subject matter experts, developers and UX designers, and provided them with the opportunity to contribute to a more efficient Canadian regulatory ecosystem by responding to problem statements in the areas of RegTech, know your client (KYC) / identity authentication, financial literacy and transparency in the capital markets.

This event was attended by the Honourable Charles Sousa, the Minister of Finance, Yvan Baker, Parliamentary Assistant (Digital Government and Finance), senior and executive management from the OSC, and numerous notable representatives from the fintech community. Forty OSC staff volunteers were also in attendance at the event. The official whitepaper and video for the event are available on the [OSC LaunchPad site](#).

Fintech Advisory Committee

OSC LaunchPad has established a [Fintech Advisory Committee](#), which will advise the OSC on developments in the fintech space and the unique challenges faced by fintech businesses in the securities industry. Members were selected based on their direct business experience in one or more of digital platforms (e.g. crowdfunding portals, online advisers); cryptocurrency or distributed ledger technology (e.g. blockchain); venture capital, financial services and/or securities, with a focus on fintech; data science and/or artificial intelligence; or fintech entrepreneurship.

News release on distributed ledger technologies

On March 8, 2017, the OSC issued a [news release](#) to highlight potential securities law requirements for businesses using distributed ledger technologies, such as blockchain, as part of their investment product or service offerings. Businesses with questions about securities law requirements that may apply to their activities are encouraged to contact the OSC LaunchPad team.

1.3 Registrant Advisory Committee

The OSC's Registrant Advisory Committee (RAC) was established in January 2013. The RAC, which is currently comprised of 10 external members, advises us on issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including registration and compliance related matters. The RAC also acts as a source of feedback on the development and implementation of policy and rule making initiatives that promote investor protection and fair and efficient capital markets. The RAC meets quarterly and members serve a minimum two year term. A call for new members was made in the fall of 2016 and the new RAC members were officially appointed in January of 2017. You can find a list of [current RAC members](#) on the OSC website.

Topics of discussion with the new RAC members over the past fiscal year have included:

- experiences and feedback regarding the implementation of [CRM2](#) to date,
- cybersecurity and the [Best Practices Guide](#) issued for IIROC members,
- the CSA's review of [National Instrument 45-102 - Resale of Securities](#) (NI 45-102) and the resale regime, and
- the [proposed custody amendments](#).

1.4 Communication tools for registrants

We use a number of tools to communicate initiatives that we are working on and the findings of those initiatives to registrants, including CRR annual reports, Staff Notices (OSC and CSA) and e-mail blasts. The information provided to registrants via e-mail blasts may also be discussed in various sections of this annual report.

The table below provides a listing of recent e-mail blasts sent to registrants.

Date of e-mail blast	E-mail blast topic and additional information
November 17, 2016	CSA Staff Notice 31-347 – <i>Guidance for Portfolio Managers for Service Arrangements with IIROC Dealer Members</i>
November 4, 2016	OSC Capital Markets Participation Fees (Registrant firms in Ontario)
November 4, 2016	OSC Capital Markets Participation Fees (Firms relying on an exemption from registration in Ontario)
August 29, 2016	Automatic Acceptance of Notices of Termination and Update/Correct Termination Information Submission on National Registration Database (NRD)
July 21, 2016	Annual Summary Report for Dealers, Advisers and Investment Fund Managers
July 18, 2016	Ontario Securities Commission Update on Prospectus-Exempt Market Initiatives

For more information, see [OSC e-mail blasts](#).

1.5 Topical Guide for Registrants

In October 2014, we published a [Topical Guide for Registrants](#) that is designed to assist registrants and other stakeholders to locate topical guidance regarding compliance and registrant regulation matters. We continue to update the Topical Guide as new information becomes available.

1.6 Director’s decisions by topic and by year

Director’s decisions on registration matters are published in the OSC Bulletin and on the OSC website at [Director’s decisions](#). The decisions are presented by year and by topic. These published decisions are an important resource for registrants and their advisers as they highlight matters of concern to the OSC and the regulatory action that may be taken as a result of misconduct.



REGISTRATION OF FIRMS AND INDIVIDUALS

2.1 Update on registration initiatives

- a) Registration Outreach Roadshow**
- b) Review of insurance requirements**
- c) Automatic acceptance of notices of termination and update and correct termination information submissions on NRD**
- d) OSC responsibility for registration of MFDA member firms and individuals**

2.2 Current trends in deficiencies and acceptable practices

- a) Common deficiencies in individual registration filings**
- b) Common deficiencies in firm registration filings**

2 Registration of firms and individuals



“Regulation is never easy, but certainly it is not when the business models you are regulating are changing on a daily basis.”

November 2, 2016 – Monica Kowal, Ontario Securities Commission, Vice-Chair at OSC Dialogue

The registration requirements under securities law help protect investors from unfair, improper or fraudulent practices. The information required to support a registration application allows us to assess a firm’s and an individual’s fitness for registration. When evaluating a firm’s or individual’s fitness for registration, we consider

whether they are able to carry out their obligations under securities law. We use three fundamental criteria to assess a firm’s or individual’s fitness for registration: proficiency, integrity and solvency. These fitness requirements are the cornerstone of the registration regime.

In this section, we provide an update on current registration initiatives and discuss common deficiencies noted in firm and individual registration filings.

2.1 Update on registration initiatives

a) Registration Outreach Roadshow

We undertook the Registration Outreach Roadshow (the Roadshow) initiative in the fall of 2016. OSC Registration staff visited the offices of the largest registered firms to share ideas, discuss common issues, and impart information about trends that we are seeing.

This initiative gave all participants the opportunity to interact in a meaningful way with counterparts on general areas of registration. It also allowed us to share insights about the registration process.

We visited six firms over one and a half months. We gained useful information about the registration processes of registered firms and have taken that into account as we carry out our own internal processes.

Given the success of this initiative, we expect to conduct a second installment of the Roadshow this fiscal year.

b) Review of insurance requirements

We conducted a desk review of insurance requirements prescribed for registered firms in Part 12, Division 2 – Insurance of [National Instrument 31-103 – Registration Requirements and Exemptions](#) (NI 31-103). Our objectives were to review the fidelity and insurance bonding policies maintained by firms to determine whether the policies:

- contained the required clauses listed in Appendix A of NI 31-103,
- were sufficient in the covered limits for each clause and in aggregate, and
- were appropriate if covering multiple insured parties as a global bonding or insurance policy.

We selected a sample of 67 registered firms. These firms varied in size and business activity, and included PMs, EMDs and IFMs.

Overall, the majority of the registered firms in our sample had adequate and sufficient policies, although not all firms fully understood the insurance requirements of NI 31-103. Some registered firms in our sample had deficient policies as a result of having insufficient coverage amounts per clause and no provision for a double aggregate limit or full reinstatement of coverage.

Registrants should review their fidelity and insurance bonding policies in detail for compliance with NI 31-103 insurance requirements, and specifically we recommend that:

- Registrants should review the adequacy of coverage limits regularly and at the time of policy renewal at a minimum, by recalculating the limits required if they might be affected by the firm’s assets under management or assets the firm may hold or have access to. Additionally, firms should review section 12.4 of the Companion Policy to NI 31-103 (NI 31-103CP), which provides guidance on situations in which a firm may be considered to hold or have access to client assets.
- Firms relying on global insurance and bonding policies should review the language of their policies to ensure that they comply with the global bonding or insurance requirements. This includes the requirement that the firm can claim directly against the insurer and that the individual or aggregate limits can only be affected by the registered firm or its subsidiaries. Registrants should carefully examine their policies to ensure that they do not contain contradictory language limiting their right to claim directly or otherwise affecting their limits inappropriately.
- Firms should ensure that their policies contain a provision for a double aggregate limit or full reinstatement of coverage.

c) Automatic acceptance of notices of termination and update/correct termination information submission on NRD

We introduced an NRD productivity enhancement that automatically accepts Notice of Termination and Update/Correct Termination filings submitted by registered firms in Ontario. This change has allowed for more efficient processing and helps to ensure the public record remains up-to-date and accurate with respect to an individual's registration status. Though these submissions are automatically accepted on NRD, the OSC continues to review them. Pursuant to [National Instrument 33-109 - Registration Information](#) (NI 33-109), firms must provide accurate and complete information and submit the filings within the time periods prescribed. These requirements have not changed.

d) OSC responsibility for registration of MFDA member firms and individuals

We remind MFDA member firms and individuals that the OSC has jurisdiction over and responsibility for MFDA firm (Members) and individual (Approved Persons) registrations. The OSC is required to assess suitability for registration on an initial and ongoing basis based on the three primary criteria of proficiency, solvency and integrity. Applicants and registrants must also meet the requirements set out in NI 31-103. The outcome of an MFDA proceeding, including settlement, is not binding on the OSC, and we may conduct an independent suitability review of existing MFDA registrants or applicants for registration. The Commission has commented on the registration jurisdiction in two recent cases: see [Re Sawh and Trkulja, August 1, 2012 at para. 311](#); and, [Re Reaney, July 13, 2015 at paras. 159-161](#).

2.2 Current trends in deficiencies and acceptable practices

Common deficiencies for registration filings were identified in section 3.2 of [OSC Staff Notice 33-746 - 2015 Annual Summary Report for Dealers, Advisers and Investment Fund Managers](#) (OSC Staff Notice 33-746) and section 2.2 of [OSC Staff Notice 33-747 - 2016 Annual Summary Report for Dealers, Advisers and Investment Fund Managers](#) (OSC Staff Notice 33-747). Additional trends that we have identified recently are outlined below.

a) Common deficiencies in individual registration filings



(i) Firms failing to know the applicants they sponsor

We continue to see non-disclosure of, or incorrect and incomplete information on, individual filings. We remind firms that it is their responsibility to know the applicants they put forward for registration and to keep abreast of changes to the information previously submitted by the individuals they sponsor.

Item 22 - *Certification* of Form [33-109F4](#) creates an obligation on both firms and individual registrants to ensure that applicants and existing registrants fully understand the disclosure obligations required by the form and have been presented with an opportunity to discuss the form with an officer, branch manager, or supervisor. In submitting the form, individuals are certifying that they fully understand the questions and have discussed the form with a responsible person at their firm. Concurrently, in submitting the form, firms are certifying that they discussed the form with the individual and to the best of their knowledge, the individual fully understood the disclosure questions.

We emphasize that it is the responsibility of the firm to explain the form to applicants and existing registrants and to discuss the required disclosure obligations with these persons. It is also the responsibility of individual registrants to discuss their disclosure obligations with an officer, branch manager, or supervisor and to inquire with their sponsoring firm if they are unsure as to how to respond to a question or complete the form. Firms and individuals who certify that they have fulfilled the obligations required by Item 22 – *Certification*, but have not, may be submitting false or misleading information to us.

(ii) Use of misleading titles

We have identified individuals who are not yet registered and who are using titles in social media, and in some cases, on the sponsoring firm's website, that imply that they are registered or are registered in a specific category when they are not. For example, some individuals have been using the title, "Portfolio Manager" or "Associate Portfolio Manager" despite not being registered as either an Advising Representative or Associate Advising Representative. Firms must ensure their personnel are aware that section 25 of the Securities Act (Ontario) prohibits holding oneself out to be in the business of trading or advising in securities unless the individual is registered or exempt from registration in accordance with Ontario securities law.

Acceptable practices for firms with respect to the use of titles:

Registrants must:

- Have adequate policies and procedures in place to address the granting and use of titles by individuals sponsored by the firm.
- Ensure titles do not suggest that individuals are permitted to perform activities that they are not registered to perform.
- Have adequate policies and procedures in place relating to the use of social media that address the use of titles and how firm personnel are holding themselves out to the public.

Unacceptable practices

Registrants must not:

- Post titles such as Portfolio Manager or Associate Portfolio Manager on the firm's website or allow an individual to post such titles on social media prior to the individual's registration being approved.
- Grant or allow an individual to use a title that suggests that an individual is permitted to conduct activities that require registration or is able to rely on a registration exemption when the individual is not registered in a category that permits such activities or is not exempt from registration to conduct those activities.

(iii) Late Item 5 updates for notice of termination filings

We continue to receive late filings of [Form 33-109F1](#) - *Notice of Termination of Registered Individuals and Permitted Individuals* (Notice of Termination Filing). Where a registered individual or permitted individual has left their sponsoring firm or has ceased to act in a registerable capacity or be a permitted individual, the sponsoring firm is required to file a Notice of Termination Filing within 10 days of the cessation or termination date.

In addition, we continue to identify late filings for the "Update/Correct Termination Information" with respect to Item 5 of the Notice of Termination filings. When completing the Notice of Termination Filing on NRD, a firm's Authorized Firm Representative (AFR) may defer the completion of the information in Item 5 of the Notice of Termination Filing by checking a box indicating that the information will be filed within 30 days of the cessation or termination date. We noted that in some instances firms are not completing the "Update/Correct Termination Information" submission on NRD within 30 days.

Completing this information is important as we rely upon this information for determining whether the applicant remains suitable for registration. Depending on the information provided, we may request additional information from the firm and/or individual to assist in making a determination of whether to reactivate the registration of the individual or if terms and conditions would be required.

As set out in [OSC Rule 13-502 – Fees](#) (OSC Rule 13-502), late fees apply for late filings of the Notice of Termination Filings and updates with respect to Item 5 of the Notice of Termination Filings.

Acceptable practices in Item 5 filings:

Registrants must:

- Ensure the registrant and AFR carefully reviews the Notice of Termination Filing for completeness and accuracy before submitting on NRD. This will reduce the need for subsequent NRD submissions and requests for further information.
- Ensure information is filed on time when the AFR checks off the box in Item 5 of the Notice of Termination Filing to indicate that the information in Item 5 will be filed within 30 days. Firms should put in place to follow up and ensure that the information is filed within 30 days of the cessation or termination date.

(iv) Incorrect Item 5 updates for notice of termination filings

In reviewing Notice of Termination Filings, some firms indicate under Item 5 – *reason for the cessation / termination* that the individual “resigned voluntarily” or “in good standing”. However upon further review we have determined that this is not always the case.

Given the importance of keeping the public record up-to-date and ensuring that only persons who are fit for registration are registered, it is critically important that firms provide accurate and complete information regarding any Notice of Termination Filing.

b) Common deficiencies in firm registration filings



(i) Incomplete information with respect to surrender applications or category removals

We have noted that some registrants filing a voluntary surrender application or a change of registration category update are not providing complete or adequate information for us to

accept the voluntary surrender or approve the category removal. We have also noted that in some cases, it is not clear that the registrant has ceased registerable activities in Ontario.

With respect to the full surrender of a registrant's registration in Ontario, section 30(1) of the Securities Act provides for the surrender of a registrant's registration as follows:

On application by a person or company for the surrender of his, her or its registration, the Director may accept the application and revoke the registration if the Director is satisfied,

- a) that all financial obligations of the person or company to his, her or its clients have been discharged;
- b) that all requirements, if any, prescribed by the regulations for the surrender of registration have been fulfilled or the Director is satisfied that they will be fulfilled in an appropriate manner; and
- c) that the surrender of the registration is not prejudicial to the public interest.

When considering a registrant's application to voluntarily surrender its registration or to remove one or more of its registration categories, we consider:

- a firm's past and current activities,
- its future plans,
- the future plans of a firm's key principals,
- documentation to demonstrate that a registrant's clients have been dealt with appropriately, and
- other supporting documentation.

Acceptable practices for registrants removing one or more categories of registration (and still maintaining one or more categories of registration)

At a minimum, registrants must:

- Identify the correct category(ies) being removed and identify the category(ies) remaining.
- Identify the date that the registrant ceased registerable activities for the category(ies) being removed.
- For each category of registration, describe why the firm is removing the category.

- Provide a written “consent to suspension of its registration” for the applicable registration category(ies) and jurisdictions.
- Describe the past and current business activities of the registrant and the registrant’s key principals (identify both registerable and non-registerable activities).
- Describe the future plans of the registrant (including non-registerable activities) and how the registrant will ensure it will not be performing registerable activities in the future for which it may require the category(ies) it is seeking to surrender.
- Describe the future plans of each of the registrant’s key principals (including non-registerable activities) and ensure the registrant’s key principals will not be performing registerable activities in the future for which they may require the category(ies) they are seeking to surrender.
- Identify the number of clients serviced under each registration category being removed.
- Describe what happened to the registrant’s clients (e.g. accounts transferred to another registrant firm, assets liquidated, returned to clients and accounts closed, etc.).
- Provide an executed Officer’s/Director’s Certificate with specific representations.
- Provide additional information as requested by OSC staff.

Acceptable practices for registrants surrendering all registration categories

At a minimum, registrants must, in the course of the surrender process:

- Provide all of the information described above that is required for removing one or more categories of registration.
- Ensure that the registrant’s key principal (Chief Compliance Officer (CCO) or Ultimate Designated Person (UDP)) remains with the registrant to complete the surrender.
- Ensure that any outstanding fees owing to the OSC have been paid.
- Provide the most recent audited financial statements, and if the audited financial statements are as at a date prior to the date that the registrant ceased registerable activities, provide unaudited interim financial information dated after the registrant has ceased registerable activities.
- Provide documentation to evidence that all financial obligations have been discharged in accordance with section 30 of the Securities Act and/or section 24

of the Commodity Futures Act by providing one of the following:

- (a) Auditor's comfort letter dated after registerable activities have ceased, or
- (b) Specified procedures report performed by a licensed public accounting firm.

- Provide additional information as requested by OSC staff.

(ii) Unclear or evolving business models at time of application for registration

We have received a number of firm applications where the applicant has been unclear as to their intended business model or applications where the business model changes significantly during the course of the registration process. It is critical to the review process that we have a clear understanding of the business model. Many important initial and ongoing registration requirements are tied to the business model. When submitting the application for registration, the firm must clearly articulate what its business model will be.

If the firm's plans change significantly after an application is submitted, we will require the firm to withdraw the application and resubmit a new application with the associated application fees.

(iii) Delayed or no response to staff inquiries

Sometimes firms are not responsive to our requests for information necessary to move an application or filing forward (e.g. a registration application). While we recognize that some requests are more complex and require more time to respond to than others, in some cases there are very long delays before firms provide us with the requested information and even then, the information provided may be substantially incomplete.

If firms are unresponsive or we experience significant delays in receiving responses from firms we will require the firm to withdraw the application or filing and resubmit a new application or filing with the associated application fees.

(iv) Lack of information provided with respect to wire transfer payments for EFT exempt firms

We regularly receive wire transfer payments from firms without the required payment details or specific filing details to which the payment relates (e.g. fees for a particular

filing, participation fees or late fees). Without adequate payment and filing information we may be unable to allocate the payment to a firm's particular filing. As a result, resources are spent by both us and the firm in order to reconcile the payment to the firm and to a particular filing.

Acceptable practices for firms making payment through wire transfer:

- In order to assist us in processing the firm's wire transfer payment promptly and to ensure the firm's account is appropriately credited, please email wtp@osc.gov.on.ca with the following details on the day the firm's wire transfer payment is made:
 - Submission number (if your form was filed electronically)
 - Payor name
 - Registrant/Firm name
 - Wire transfer payment amount CAD\$ (Add CAD \$15 to payment for bank charges)
 - Description of fee(s): (e.g. YYYY Capital Markets Participation Fees, Payment of MM/DD/YYYY late fee invoice or Fee for Submission # _____)
 - Name of your contact at the OSC
 - NRD number (if applicable)

(v) Estimate as to the proportion of the fees attributable to registerable activities in Ontario

Where fees relating to capital markets activities in Ontario are encompassed in an overall management/advisory/administration fee (which may also include non-registerable activities such as insurance), we will consider an estimate as to the proportion of the fees attributable to registerable activities in Ontario, provided it is reasonable.

(vi) Chief compliance officers for international firms

We have streamlined our process for a firm based outside of Canada to appoint someone other than its global head of compliance as CCO for Canadian registration purposes. Firms will no longer need to file an application for an exemption order permitting it to have a CCO for registerable operations in Canada who is not the singular CCO for the firm as a whole.

The firm will now only be required to file a [Form 33-109F4](#) – *Registration of Individuals and Review of Permitted Individuals* (33-109F4) and indicate that the individual is not also head

of compliance for the firm's global operations. Staff reviewing the filing may require submissions concerning the ability of the individual to discharge the obligations of a CCO for purposes of Canadian securities legislation. Relief from the proficiency requirements prescribed in NI 31-103 may be available where the applicant can demonstrate equivalent alternatives or compensating experience, although it remains extremely rare for any CCO to be exempted from having to complete the CCO Qualifying Exam or Partners, Directors and Seniors Officers Course (PDO) exam.

Please note that any registered firm, whether it is based in Canada or outside of Canada, that wishes to appoint more than one individual as CCO for its registerable operations within Canada is still required to obtain an exemption order permitting it do so.

INFORMATION FOR DEALERS, ADVISERS AND INVESTMENT FUND MANAGERS



- 3.1 All registrants**
 - a) Compliance review process**
 - b) Current trends in deficiencies and acceptable practices**
 - c) Update on initiatives impacting all registrants**

- 3.2 Dealers (EMDs and SPDs)**
 - a) Current trends in deficiencies and acceptable practices**
 - b) Update on initiatives impacting EMDs**

- 3.3 Advisers (PMs)**
 - a) Current trends in deficiencies and acceptable practices**
 - b) Update on initiatives impacting PMs**

- 3.4 Investment fund managers**
 - a) Current trends in deficiencies and acceptable practices**
 - b) Update on initiatives impacting IFMs**

3 Information for dealers, advisers and investment fund managers



“What has not changed at the OSC is our focus on our touchstone mandate: to protect investors from unfair, improper or fraudulent practices and foster fair and efficient capital markets.”

September 27, 2016 – Maureen Jensen, Ontario Securities Commission, Chair & CEO, Keynote address at the Toronto Board of Trade

The information in this section includes the key findings and outcomes from our ongoing compliance reviews of the registrants we directly regulate. We highlight current trends in deficiencies from our reviews and provide acceptable practices to address the deficiencies. We also discuss new or proposed

rules and initiatives impacting registrants.

This part of the report is divided into four main sections. The first section contains general information that is relevant for all registrants. The other sections contain information specific to dealers (EMDs and SPDs), advisers (PMs) and IFMs, respectively. This report is organized to allow a registrant to focus on reading the section for all registrants and the sections that apply to their registration categories. *However, we recommend that registrants review all sections in this part, as some of the information presented for one type of registrant may be relevant to other types of registrants.*

3.1 All registrants

This section discusses our compliance review process, current trends in deficiencies resulting from compliance reviews applicable to all registrants (and acceptable practices to address them) and an update on initiatives impacting all registrants.

a) Compliance review process

We conduct compliance reviews of registered firms on a continuous basis. The purpose of compliance reviews is primarily to assess compliance with Ontario securities law; but they also help registrants improve their understanding of regulatory requirements and our expectations, and help us focus on a specific industry topic or practice that we may have concerns with. We conduct compliance reviews on-site at a registrant’s premises, but we also perform desk reviews from our office. For information on “What to expect from and how to prepare for an OSC compliance review,” see the slides from the Registrant

Outreach session provided on October 22, 2013 titled "[Start to finish: Getting through an OSC compliance review](#)".

(i) Risk-based approach

Firms are generally selected for review using a risk-based approach. This approach is intended to identify:

- firms that are most likely to have material compliance issues or practices requiring review (including risk of harm to investors) and that are therefore considered to be higher risk, and
- firms that could have a significant impact to the capital markets if compliance breaches exist.

To determine which firms should be reviewed, we consider a number of factors, including firms' responses to the most recent risk assessment questionnaire, their compliance history, complaints or tips from external parties, and intelligence information from our own or another OSC branch, an SRO or another regulator.

(ii) Risk Assessment Questionnaire

In May 2016, firms registered with the OSC in the categories of PM, restricted PM, IFM, EMD and restricted dealer were asked to complete a comprehensive risk assessment questionnaire (the [2016 RAQ](#)) consisting of questions covering various business operations related to the different registration categories. The RAQ supports our risk-based approach to select firms for on-site compliance reviews or targeted reviews.

The data collected from the 2016 RAQ was analyzed using a risk assessment model. Every registrant's response is risk-ranked and a risk score is generated. Those firms that are risk-ranked as high are recommended for a compliance review. In addition, we may focus on a certain area of interest and select firms for review based on their responses to the questions in the area of interest. The RAQ is issued on a two-year cycle, thus you can anticipate the next version will be distributed in 2018.

(iii) Sweep reviews

In addition to reviewing firms based on risk-ranking, we also conduct sweeps which are compliance reviews on a specific topic. Sweeps, which can be on-site reviews or desk reviews, allow us to respond on a timely basis to industry-wide concerns or issues. In the past year, we performed sweeps of the following topics:

- high risk firms,
- high impact firms (see [section 3.1\(c\)\(iv\)](#) of this report),
- one-person shops (see [section 3.1 \(c\)\(iii\)](#) of this report),
- new prospectus exemptions (see [section 3.2\(b\)\(i\)](#) of this report), and
- mutual fund sales practices (see [section 3.4 \(b\)\(i\)](#) of this report).

(iv) Outcomes of compliance reviews

In most cases, the deficiencies found in a compliance review are set out in a written report to the firm so that they can take appropriate corrective action. After a firm addresses its deficiencies, the expected outcome is that they have enhanced their compliance. If a firm has significant deficiencies, once addressed, the expected outcome is that they have significantly enhanced their compliance.

In addition to issuing compliance deficiency reports, we take additional regulatory action when we identify more serious registrant misconduct.

The outcomes of our compliance reviews in fiscal 2017 and fiscal 2016, are presented in the following table and are listed in their increasing order of seriousness. Firms are shown under the most serious outcome for a particular review. The percentages in the table are based on the registered firms we reviewed during the year and not the population of all registered firms.

Outcomes of compliance reviews (all registration categories)	Fiscal 2017	Fiscal 2016
Enhanced compliance	56%	45%
Significantly enhanced compliance	34%	49%
Terms and conditions on registration ⁶	5%	5%
Surrender of registration	0%	0%
Referral to the Enforcement Branch ⁷	5%	1%
Suspension of registration ⁸	0%	0%

⁶This percentage includes some registrants reviewed in the prior period.

⁷This percentage includes some registrants reviewed in the prior period.

⁸This percentage includes some registrants reviewed in the prior period.

For an explanation of each outcome, see Appendix A in [OSC Staff Notice 33-738 - 2012 OSC Annual Summary Report for Dealers, Advisers and Investment Fund Managers](#) (OSC Staff Notice 33-738).



b) Current trends in deficiencies and acceptable practices

In this section, we summarize key trends in deficiencies from recent compliance reviews of EMDs, PMs, and IFMs. These deficiencies were noted as common deficiencies across all three registration categories.

For each deficiency, we summarize the applicable requirements under Ontario securities law which must be followed. In addition, where applicable, we provide acceptable and unacceptable practices relating to the deficiency discussed. ***The acceptable and unacceptable practices throughout this report are intended to give guidance to help registrants address the deficiencies and provide our expectations of registrants. While the best practices set out in this report are intended to present acceptable methods registrants can use to prevent or rectify a deficiency, they are not the only acceptable methods. Registrants may use alternative methods, provided those methods adequately demonstrate that registrants have met their responsibility under the spirit and letter of securities law.***

We strongly recommend registrants review the deficiencies and acceptable practices in this report that apply to their registration categories and operations to assess and, as needed, implement enhancements to their compliance systems and internal controls.

(i) Inadequate collection, documentation and updating of KYC and suitability information

Once again the inadequate collection, documentation, and updating of KYC information is the most significant and common deficiency identified. KYC, know your product (KYP), and suitability obligations are a cornerstone of our investor protection regime (see sections 13.2 and 13.3 of NI 31-103) and are basic obligations of a registrant. On a year-over-year basis, we continue to find that registrants are failing to comply with these obligations. We strongly encourage all registrants to review their practices regarding how they:

- collect, document, and update a client's financial circumstances, including for example, the client's risk tolerance, investment needs and objectives, and time horizon,

- conduct and document due diligence on the investments offered, including how the registrant concluded that a security is meeting its investment objectives and that the security is a suitable investment for some clients,
- explain to a client a security’s risks, key features, and initial and ongoing costs and fees,
- consider all relevant KYC information for a client when assessing the suitability of an investment, and
- determine if a client meets the requirement of a prospectus exemption.

Please review [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* (CSA Staff Notice 31-336), section 3.1(b)(i) of [OSC Staff Notice 33-747](#) and section 4.3 (a)(iii) of [OSC Staff Notice 33-746](#) for further information regarding KYC, KYP and suitability obligations.

(ii) Client account statement common deficiencies and missing information in trade confirmations

Sections 14.14 and 14.14.1 of NI 31-103 require registered dealers and advisers to deliver statements to clients at least once every three months. If applicable, the statements must contain the information referred to in subsections 14.14(4), (5) and 14.14.1(2). If applicable, section 14.14.2 also requires firms to deliver security position cost information at least once every three months.

The following are the common deficiencies that we found during our review of client statements. The chart highlights the common deficiency and provides information on where guidance related to this deficiency can be found.

Deficiency	Information source
<p>1) Clients statements missing information:</p> <ul style="list-style-type: none"> • the name of the party that holds or controls each security and a description of the way it is held • the definition of either “book cost” or “original cost” 	<ul style="list-style-type: none"> • Subsection 14.14.1(2) of NI 31-103 • Question 24 of CSA Staff Notice 31-345 – <i>Cost disclosure, performance reporting and client statements</i> (CSA Staff Notice 31-345) • Subsection 14.14.2(3) of NI 31-103 and section 14.14.2 of 31-103CP

2) Use of closing price when determining the market value of a security for which a reliable price is quoted on a marketplace	<ul style="list-style-type: none"> • Subparagraph 14.11.1(1)(b)(i) of NI 31-103 and section 14.11.1 of 31-103CP • Question 15 of CSA Staff Notice 31-345
3) Consolidated client statements	<ul style="list-style-type: none"> • Subsections 14.14(3) and 14.14.1(3) of NI 31-103 and section 14.14 of 31-103CP • Question 22 of CSA Staff Notice 31-345
4) Inappropriate disclaimers in client statements	<ul style="list-style-type: none"> • Subsection 2.1(1) of OSC Rule 31-505 – <i>Conditions of Registration</i> (OSC Rule 31-505)

(iii) Common deficiencies and previously published guidance

The following chart highlights common deficiencies and provides information on where guidance related to the deficiency can be found. We encourage you to review the information sources provided as the previously published guidance is still applicable to these issues.

Repeat Common Deficiency	Information Source
1) Inadequate written policies and procedures	<ul style="list-style-type: none"> • Section 4.1 (c)(ii) of OSC Staff Notice 33-745 • Elements of an effective compliance system registrant outreach and accompanying slides
2) Inadequate or misleading marketing material	<ul style="list-style-type: none"> • Communicating with clients in a compliant manner and accompanying slides 6 - 22 • Section 3.1(b) of OSC Staff Notice 33-747 under the heading <i>Inappropriate use of client testimonials in marketing materials</i> • CSA Staff Notice 31-325 – <i>Marketing Practices of Portfolio Managers</i> (CSA Staff Notice 31-325)
3) Inadequate or no annual compliance report to the board	<ul style="list-style-type: none"> • Section 4.1.2 in OSC Staff Notice 33-742 under the heading <i>Inadequate or no annual compliance report</i> • Section 5.1.2 in OSC Staff Notice 33-738 under the heading <i>Failure by CCO to submit an annual</i>

	<p><i>compliance report</i></p> <ul style="list-style-type: none"> • Elements of an effective compliance system registrant outreach and accompanying example of an inadequate report to the board
4) Inaccurate calculation of excess working capital	<ul style="list-style-type: none"> • Section 4.1.2 in OSC Staff Notice 33-742 under the heading <i>Inaccurate calculations of excess working capital</i> • Registrant outreach seminar: working capital calculations slides
5) Inadequate relationship disclosure information	<ul style="list-style-type: none"> • CSA Staff Notice 31-334 – <i>CSA Review of Relationship Disclosure Practices</i> (CSA Staff Notice 31-334) • Section 5.1.2 in OSC Staff Notice 33-738 under the heading <i>Inadequate relationship disclosure information</i> • Communicating with clients in a compliant manner and accompanying slides 28 - 37
6) No notice of or inadequate filing of outside business activities	<ul style="list-style-type: none"> • Section 4.1(c)(iv) in OSC Staff Notice 33-746 under the heading <i>Outside business activities – late filings and fees</i> • Section 3.2 in OSC Staff Notice 33-745 under the heading <i>Registration related conflicts of interest</i> • Section 3.2 in OSC Staff Notice 33-742 under the heading <i>Outside business activities</i> • Section 5.2.1 of OSC Staff Notice 33-738 under the heading <i>Not disclosing outside business activities</i>
7) Referral arrangements – inadequate disclosure or lack of agreements	<ul style="list-style-type: none"> • Section 4.2(a) in OSC Staff Notice 33-745 under the heading <i>Referral arrangements and finders</i> • Section 5.2A of OSC Staff Notice 33-736 • Section 4.3.1 of OSC Staff Notice 33-742



c) Update on initiatives impacting all registrants

(i) Seniors and vulnerable investors

With seniors representing the fastest growing demographic in Canada, we continue to be concerned about the provision of investment advisory services or sales of products to this

investors segment, and our focus continues to be on issues relevant to senior investors. During our compliance reviews, we continue to focus on understanding the challenges firms are facing and practices that they have implemented to service these investors. We are focusing our compliance resources on conducting focused reviews of firms doing business with senior investors. Once our compliance work is completed, we will draft and publish guidance on our work and provide best practices for registrants who are dealing with senior investors to address the particular needs and issues unique to them.

You should review and assess your firm's business model and policies and procedures and the adequacy of your processes to identify and respond to issues unique to working with senior investors. [Section 3.3\(a\)\(i\)](#) of this annual report provides some suggested practices you should consider incorporating into your firm's policies and procedures to enhance your policies and procedures for dealing with these investors.

(ii) "One person" firms and business continuity/succession planning

From October 1, 2014 to June 30, 2016, participating CSA jurisdictions conducted compliance reviews of 65 small firms registered with the CSA in one or more of the following categories: IFM, PM, and EMD. The firms selected were primarily firms with one registered individual (i.e., one individual who was registered in a category that authorizes the individual to act as a dealer or an adviser on behalf of the registered firm, or in the case of an IFM, one individual registered as the CCO). As a result of the compliance reviews, CSA staff concluded that additional guidance would assist small firms in meeting their compliance and regulatory obligations and on May 18, 2017 published [CSA Staff Notice 31-350](#) - *Guidance on Small Firms Compliance and Regulatory Obligations* (Staff Notice 31-350).

Staff Notice 31-350 provides details and guidance with respect to some of the deficiencies noted during our reviews. Specifically, we identified that small firms can be at risk of failing to meet requirements of applicable securities legislation if they do not have: (i) a comprehensive plan to address significant business interruptions and succession issues; and (ii) monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner. Staff Notice 31-350 highlights five key areas:

- significant business interruptions and succession planning
- monitoring systems
- CCO annual report
- interim financial statements and accounting principles
- inadequate excess working capital

Although we intend Staff Notice 31-350 to provide guidance to small firms, we strongly encourage all firms to use this notice as a self-assessment tool to strengthen their compliance with securities legislation.

(iii) Lending firms

During the year, we conducted reviews of a sample of “lending firms” as part of a sweep. Lending firms are characterized as firms that operate as a lending institution or as a lending business would. These firms raise capital from permitted clients and/or accredited investors, pool the capital raised into a ‘loan vehicle’, redeploying it in a lending operation, with the goal of receiving interest payments, and ultimately, repayment of the loan(s).

From our reviews, we noted a number of different unique lending business models. For example, one firm we reviewed provides financial assistance in the form of loans to registered charities and not-for-profit foundations to assist them in raising capital to fund on-going operations or special projects/campaigns. Other firms focused on providing alternative financing options to small and mid-sized firms or private issuers. In certain situations, the lending firms reviewed were responsible for providing some or all of the following services to the loan vehicle: identifying borrowers, conducting credit analysis, and sourcing, originating, administering and monitoring the loans.

We focused our work on these business models to assess whether these firms are registered in the appropriate registration categories. At a minimum, these firms require registration as EMDs or Restricted Dealers. Further, due to the limited portfolio management services they provide, these firms may also be registered as Restricted PMs. Lastly, certain firms may also require registration as an IFM if the loan vehicle(s) meets the definition of an investment fund.

Two of the firms reviewed were registered as IFMs, but based on their business model, did not need to be registered as an IFM. In both cases, we applied the analysis discussed in [CSA Staff Notice 31-323](#) – *Guidance Relating to the Registration Obligations of Mortgage*

Investment Entities and [OSC Staff Notice 81-722 – Mortgage Investment Entities and Investment Funds](#), to determine whether the loan vehicles, managed and directed by the lending firms, were in fact investment funds. We considered factors gathered through an understanding of how the firm operated the loan vehicles and the review of constituting documents (subscription agreement) and, in both cases, concluded that the loan vehicles did not meet the definition of an investment fund. As such, IFM registration was not required.

Firms that operate, or intend to operate, in a similar fashion to the lending firms, should consult with legal counsel to assess what categories of registration are necessary given their business model.

(iv) High impact sweep

As part of our risk-based approach for selecting firms for review, we include large firms that could have a significant impact to the capital markets if there are compliance breaches. For example, significant impact may be due to the broad nature of their business activities, high amount of client assets under management, or large number of clients. We refer to these as “impact” firms.

This fiscal year, we reviewed a sample of impact firms registered as PMs and/or IFMs. Overall, these firms generally had effective compliance systems, internal controls, and policies and procedures given their size and the nature of their business activities. Typically, the types of deficiencies we identified during these reviews were similar to those deficiencies from reviews of other firms in our registrant population.

However, we found that impact firms more frequently used an automated compliance system (ACS) to monitor and manage compliance for their trading and portfolio management practices. This includes assessing if trades and portfolio holdings were in compliance with clients’ (including investment funds) investment objectives and instructions, regulatory requirements, and any applicable firm controls or policies.

Firms that use an ACS, program their compliance rules to their electronic trading and/or portfolio management systems. The rules are automatically applied and assessed against clients’ trades and investment holdings. For example, a particular rule may reject a proposed trade in a type of security not permitted for certain clients, or identify when a client’s investment holdings are off-side their asset allocation targets. Firms place reliance

on the rules programmed to the system in order to reduce the need for individuals to manually check for compliance. In some cases, there are thousands of different compliance rules programmed by a firm to their system, which may result in the system identifying dozens of rule exceptions each day. As such, it is important that:

- the rules are programmed accurately and timely into the system,
- the rules are regularly tested to assess if they are working as intended,
- the rules are updated for changes in regulatory requirements or to clients' (including investment funds) investment instructions or restrictions, and
- compliance exceptions identified by the system are investigated and addressed by qualified personnel.

An ACS can play an integral part in a registered firm maintaining an effective compliance system as required by section 11.1 of NI 31-103. However, we identified that some impact firms needed to improve their practices and controls for their use of an ACS, as follows:

- some clients' guidelines from their investment policy statements, or some investment funds' investment restrictions in Part 2 of [National Instrument 81-102 – Investment Funds](#) (NI 81-102) (such as on concentration, control and illiquid assets), were not programmed as rules into the ACS and were not otherwise being monitored (manually),
- some investment restrictions were not updated after a change to a fund's or product's features,
- some exception reports, warnings or alerts identified by the ACS were not investigated by staff, and
- in some cases there were inadequate records to evidence how exceptions, alerts and warnings were investigated and addressed.

With the increase in lower cost technology solutions, more firms (not just impact firms) are using an ACS and we expect to see increased use in the future. The following are acceptable and unacceptable practices that apply to all registered firms that use an ACS:

Acceptable practices for registered firms using an ACS

Firms must:

- Develop a rule set-up/authorization process to ensure the rules for the ACS are developed by qualified staff familiar with the firm's system, clients, trading, portfolio management, and compliance.
- Assign responsibility for ACS development and maintenance to specific staff,

including staff from the compliance function and other key functional groups such as trading, portfolio management, and operations.

- Ensure the rules are accurately added, amended or deleted to/from the system by having a second individual review and approve them.
- Test new rules to assess if they are working as intended (such as by placing a mock trade for a security that a compliance rule prohibits to be traded to see if the system identifies and rejects the trade) and also periodically test existing rules.
- Regularly update the rules, such as when there are changes to clients' instructions or investment mandate, or for changes in regulatory requirements or the firm's policies or controls.
- Have a process for system exception reports, warnings or alerts to be investigated and addressed on a timely basis by qualified staff, and for records to be kept of the exception and of how and when the exceptions were addressed.
- Have a process for high risk or high impact exceptions, warnings or alerts to be escalated for immediate attention by appropriate personnel.
- Ensure that any compliance rules that are not programmed to the ACS are monitored manually by a qualified individual.

Unacceptable practices

Firms must not:

- Rely on having an ACS as a substitute for having an adequate number of competent, qualified compliance staff based on the size, nature and risk of the firm's business activities.
- Assume that once the ACS is operational, there is no further on-going monitoring or adjustments required.

(v) Marketing in public places

Registrants must provide clear, accurate, and non-misleading marketing materials to prospective clients, inclusive of advertisements that are in public places (such as a billboard or a poster) or otherwise appear in the media. All claims made in marketing materials must be substantiated. We have seen advertisements with statements made that lack sufficient context or detail.

It is not reasonable to rely upon the “small print” at the bottom of an advertisement as a way to cure a potentially misleading marketing statement, particularly when the small print would only be seen briefly, partially, or if the person is directed to the firm’s website for essential clarification. The eye-catching “hook” in an advertisement must still comply with regulatory requirements, including [CSA Staff Notice 31-325](#).

(vi) Cybersecurity

Cybersecurity has been identified as a priority for the CSA. In order to help us understand cybersecurity practices currently used in the industry, the OSC participated with other CSA jurisdictions in a cybersecurity practices survey, of firms registered as IFMs, PMs and EMDs.

The survey questions were structured to gather information about:

- a firm’s policies and procedures with respect to cybersecurity, including details about who is responsible for cybersecurity and training provided to a firm’s employees,
- risk assessments conducted by a firm to identify cybersecurity threats, vulnerabilities, and potential consequences,
- cybersecurity incidents and a firm’s cybersecurity incident response plan,
- due diligence conducted by a firm of the cybersecurity practices of third party vendors, consultants, or other service providers,
- access to a firm’s data or systems by third parties, including clients of the firm, and
- a firm’s data or system encryption policies and procedures and its backup process.

As part of a CSA-wide working group, we are currently reviewing the findings from the survey and will provide registered firms with guidance about cybersecurity and social media practices in the upcoming fiscal year.

(vii) Excessive fees

In 2014, we became aware of certain registrant practices that resulted in excessive fees being charged to clients over an extended period of time (the excessive fee issue). The excessive fee issue occurred in two different scenarios. Under the first scenario, assets with an embedded trailer fee were included in the total assets used to calculate a client’s advisory or managed account fee. As a result, clients were paying their adviser a ‘double’ fee on a portion of their assets. In the second scenario, clients who qualified for a lower management expense ratio (MER) series of an investment fund based on minimum investment thresholds were not being advised to purchase or switch into that series upon

becoming eligible and as a result, indirectly paid excess fees when they remained in the higher MER series of the same investment fund.

The second scenario described above is of particular concern for IFMs that are part of integrated organizations. The IFM, and its affiliated dealer and PM entities, are all earning fees from the same proprietary investment fund products. Therefore, there is an inherent conflict of interest. For clients that have invested in the higher MER product based on the recommendation of a registrant that is affiliated with the IFM, the IFM is earning a higher management fee on the assets of these clients who would otherwise qualify for a lower MER product. Although the excessive fee issue is not directly related to an IFM's responsibilities in relation to the daily operation of its investment funds, this conflict of interest has a direct effect on IFMs. Some IFMs have already taken steps to address this issue, for example by enhancing their internal controls to identify eligible clients in a timely manner or by amending their prospectuses and the product features of their investment funds to automatically move clients to the lower MER product once they become eligible.

We expect all registrants to have robust compliance systems that provide reasonable assurance that they are complying with securities laws, including the requirement to identify and manage conflicts of interest and to deal fairly with clients with regards to fees. Registrants should have appropriate procedures in place to allow them to identify and correct any non-compliance with securities law in a timely manner.

Although this issue was first identified in 2014, we are continuing to deal with the excessive fee issue in integrated organizations where the conflict of interest issues are greater. We completed a desk review of selected integrated firms on a coordinated basis with other participating CSA jurisdictions and in consultation with IIROC and the MFDA. We have also worked closely with the Enforcement Branch to complete five no-contest settlements related to the excessive fee issue since that time. During compliance reviews, we are also scrutinizing other types of fee arrangements which may be unfair to clients.

(viii) Whistleblower review

On July 14, 2016, the OSC launched the Office of the Whistleblower and implemented the Whistleblower Program (the Whistleblower Program) to target serious and hard to detect regulatory misconduct. Details of the Whistleblower Program are outlined in [OSC Policy 15-601 – Whistleblower Program](#) and can also be found at the [Office of the Whistleblower's website](#).

The Whistleblower Program is the first of its kind in Canada to offer financial incentives for information about securities law violations. The Whistleblower Program provides compensation of up to \$5 million to individuals who voluntarily come forward with tips that lead to enforcement action resulting in monetary sanctions of over \$1 million. It also provides whistleblower protections of which all registrants should be aware.

Whistleblower protections

Whistleblower protections have been built directly into section 121.5 of the Securities Act through legislative amendments. These protections, set out below, apply equally to whistleblowers who report internally, to the OSC, to a SRO or to a law enforcement agency:

- Protection from reprisals – The OSC may take enforcement action against employers who seek to retaliate or take reprisals against whistleblowers.
- Prohibition regarding agreements – Contractual provisions aimed at silencing whistleblowers are void.

Review of restrictive provisions

Registrants should be aware that the OSC will be working to identify restrictive provisions in employment contracts, severance agreements, confidentiality agreements and other related agreements, which seek to prevent employees from reporting violations to the OSC, SRO or law enforcement agency. In particular, the OSC is concerned about contractual language that:

- allows disclosure “only as required by law”,
- limits the types of information that an employee may report,
- prohibits any and all disclosure of information, without an exception for reporting potential violations of securities law,
- requires representations that an employee has not assisted in any investigation involving their employer, and
- requires notification or consent from an employer prior to reporting information.

Improving registrant compliance

Registrants should consider reviewing any and all such agreements to ensure that they do not contain provisions which prevent or discourage whistleblowers from coming forward.

We encourage registrants to look at their internal compliance systems to determine whether a culture of compliance is being fostered. As part of this exercise, registrants may

also want to assess the availability and appropriateness of employee reporting channels to encourage potential whistleblowers to report misconduct internally and to allow the organization to investigate and remediate as appropriate.

3.2 Dealers (EMDs and SPDs)

This section contains information specific to EMDs, including current trends in deficiencies from compliance reviews of EMDs (and acceptable practices to address them), and an update on initiatives impacting EMDs.



a) **Current trends in deficiencies and acceptable practices**

(i) **Inadequate documentation to support assessment of products**

During our most recent compliance reviews, while we found that EMDs are able to verbally describe their KYP due diligence process and demonstrate that they possess a detailed knowledge of a product, they are not maintaining adequate books and records to demonstrate that they have conducted their own product due diligence.

Dealers are required to maintain records to accurately record their business activities and to demonstrate compliance with applicable requirements of securities legislation (see section 11.5 of NI 31-103). This includes maintaining records that demonstrate compliance with KYC and suitability requirements. Adequate documentation of the suitability process (which includes KYC and KYP) is critical to ensuring that a registrant is meeting its securities law obligations. Firms are also encouraged to refer to [CSA Staff Notice 31-343](#) – *Conflicts of interest in distributing securities of related or connected issuers* where additional best practices related to KYP are discussed.

Acceptable practices to document an assessment of products (KYP):

EMD firms must:

- Document the due diligence conducted on an issuer prior to recommending the security to clients, including reviewing and assessing the information contained within an offering document provided by the issuer.
- Document the key features, financial information, and product risks of the securities being offered.
- Document the analysis and review of any third party assessment of the issuer for

completeness, reasonableness and accuracy.

- Document questions asked of the issuer or other third parties where appropriate.
- Document the training provided to dealing representatives on all product offerings approved for distribution on the firm's product list.
- Document how information about the product, including the meaning of terms, is explained and provided to clients.
- Have policies and procedures in place to require and maintain documentation to support the KYP due diligence completed.
- If competitive products are less risky or less costly, registrants should maintain adequate documentation to demonstrate the suitability of the product recommended.

Unacceptable practices

EMDs must not:

- Rely solely on the issuer's or a third party's documentation to fulfill their KYP obligation documentation, (i.e. no evidence of review and assessment of information in the issuer's offering documents by the registrant).

(ii) Individuals trading without appropriate registration

We have identified a number of individuals who act on behalf of a dealer and trade in securities without being registered to do so. A registered firm is responsible for the conduct of individuals employed or engaged by the firm, including determining when to register an individual. Failure of a registered firm to take reasonable steps to discharge these responsibilities may be relevant to the firm's own continued fitness for registration.

Individuals must be registered if they underwrite or trade in securities on behalf of a registered dealer. A person is prohibited from engaging in the business of trading in securities or acting as an underwriter unless the person is registered as a dealing representative of a registered dealer and is acting on behalf of the dealer. Furthermore, a person or company is prohibited from representing that it is registered under the Securities Act unless the representation is true.

Acceptable processes and practices

EMDs must:

- Have adequate internal controls in place to prevent unregistered individuals from trading in securities or acting as an underwriter on behalf of the registered dealer. The internal controls should include ongoing monitoring and supervision of unregistered individuals.
- Have a process in place to monitor individuals' social media websites (e.g. LinkedIn, Facebook, Twitter) to prevent unregistered individuals from holding themselves out as registered.
- Have adequate policies and procedures in place to review and approve the use of job titles used by individuals employed or engaged by the firm.
- Ensure that individuals use job titles that are appropriate.
- Undertake due diligence before sponsoring an individual to be registered to act on its behalf.

Unacceptable practices

EMDs must not:

- Allow individuals to trade in securities or act as an underwriter on behalf of the registered dealer when they are unregistered.

(iii) Applications for dealer registration relief in connection with leverage employee share offering

We have recently received a number of applications for dealer registration and prospectus relief in connection with global employee share offerings by foreign public companies to employees of the companies and their affiliates, including employees in Canada. The employee share offerings typically involve a special purpose investment vehicle (SPIV) administered by a foreign asset management company (the Foreign Manager). The employees subscribe for units of the SPIV typically at a discount to the public trading price of the foreign public company's shares and the SPIV subscribes for shares of the foreign public company on behalf of the employee participants in the offering. The foreign companies are typically not public companies in Canada and the Foreign Manager is typically not registered in Canada.

Under these types of offerings, employees are sometimes provided with an opportunity to participate in a "leveraged plan" under which the SPIV will enter into a swap (a type of

derivative) with a financial institution (the Bank) and use the funding to purchase an additional number of shares (e.g., 10 additional shares) on behalf of the employee.

We have historically had a number of policy concerns with recommending dealer registration relief in respect of leveraged plans, including the following:

- The nature of the leveraged plans, and in particular the swap with the Bank, can be highly complex and may not be well understood by Canadian participants,
- In a number of cases, we have seen leveraged plan disclosure materials that appear to be highly promotional, and overly focused on the potential for leveraged returns to employees without any discussion of concentration risk or the importance of portfolio diversification. This is particularly a concern where employees may invest a significant proportion of their annual salary in the leveraged plan, and
- In some cases, it appears that employees in Canada may be subject to a tax liability for any dividends paid on the shares but, since the employees do not actually receive the dividends because they are paid to the Bank under the terms of the swap, the employees will need to cover this liability out of other funds. This may be of particular concern in the event of a corporate reorganization or other event that results in an extraordinary dividend being paid on the shares.

We have generally recommended, as a condition of exemptive relief in respect of leveraged plans, that distributions of units of a SPIV to employees in Ontario be made through an investment dealer. The involvement of an investment dealer in a leveraged plan offering is an important safeguard for investors, helping to ensure an employee's investment in the leveraged plan is suitable. Accordingly, if a firm intends to apply for exemptive relief for an SPIV involving a leveraged plan but without the involvement of an investment dealer, we would recommend that the firm make a pre-filing sufficiently in advance of when the relief is required to allow staff a reasonable period of time to consider the matter. The pre-filing should include submissions that address the specific policy concerns noted above.



b) Update on initiatives impacting EMDs

(i) Dealers distributing securities in reliance of the new prospectus exemptions

We completed a sweep of registrants who distributed securities in reliance on the family, friends and business associates (FFBA) and/or the offering memorandum (OM) prospectus

exemptions. As a result of the findings from the sweep, we are providing additional guidance to registrants to assist in their understanding and the application of the provisions of these newer prospectus exemptions and to help firms meet their regulatory obligations.

Accepting client-directed trade instructions which exceed the prescribed investment limits

We found some registrants had assessed that a proposed transaction was unsuitable for their eligible investor clients. Despite this assessment, the registrants proceeded to accept client-directed trade instructions and processed transactions that exceeded the \$30,000 prescribed investment limit.

The acquisition cost of all securities acquired by a purchaser who is an individual and who qualifies as an eligible investor under the OM prospectus exemption, cannot exceed \$30,000 during a 12-month period, unless the purchaser has received advice from a PM, investment dealer or EMD that the investment is suitable. This means that the investor must receive positive suitability advice in order for an EMD to process a transaction which would cause the eligible investor to exceed the \$30,000 investment limit.

Paragraph 3.8(1.1)(c) of the Companion Policy to National Instrument 45-106 – *Prospectus Exemptions* ([NI 45-106](#)) clarifies that it is a condition of the OM exemption that unless a registrant determines that exceeding the \$30,000 investment limit is suitable for the purchaser, the issuer cannot accept a subscription in excess of \$30,000 from the purchaser. In this case, the EMD could also not proceed to take instructions from the purchaser to exceed the \$30,000 investment limit. We also refer you to the guidance published in [CSA Staff Notice 31-336](#) on the appropriate use of the client-directed trade instruction.

Processing trades which exceed the prescribed investment limits

We found some registrants had processed a single trade that on its own exceeded the investment limit for the investor, without considering any other investments made by the client under the OM exemption in the applicable 12-month period. It is a breach of the OM exemption requirements to proceed with a transaction that would exceed the prescribed investment limits for certain individuals in Ontario who are acquiring securities distributed in reliance on the OM exemption. Paragraph 2.9(2.1) (b) of [NI 45-106](#) provides the

investment limits in a 12-month period under the OM prospectus exemption for certain individual investors.

Processing trades for clients who are not family members, close personal friends or close business associates

We are concerned that some EMDs do not understand that the FFBA exemption requires the existence of a specific relationship between the purchaser and a principal of the issuer. During our compliance reviews, we found some dealers had processed trades where:

- their client knew a principal of the issuer through social media contact only (e.g. Facebook),
- their client knew a principal of the issuer solely because they were employed by the issuer (e.g. same place of employment), and/or
- they only knew the client was a family member of a principal of the issuer, but did not know what the actual family relationship was (e.g. brother, sister, mother etc.).

We suggest registrants review the categories of specified relationships, including family relationships, which are stated in paragraphs (a) through (i) of subsection 2.5(1) of NI 45-106. Section 2.7 of NI 45-106CP provides guidance on the meaning of the term “close personal friend” and section 2.8 of NI 45-106CP provides guidance on the meaning of the term “close business associate”, including the factors considered relevant in making this determination.

Inadequate collection of information and documentation to support compliance with the conditions of the prospectus exemptions

We noted the inadequate collection and documentation of information by registrants to evidence the reasonable steps it had taken to confirm that the purchaser met the conditions of the exemption that they were relying on.

For clients who were relying on the OM exemption, we found that some EMDs did not collect and document adequate information to assess compliance with the prescribed investment limits. We found that some firms:

- asked questions about other investments, but did not inquire of their client as to whether or not they were made under the OM exemption during the 12-month period preceding the investment, and/or

- did not understand that the investment limits apply to the aggregate of all investments made by their client in reliance on the OM exemption during a 12-month period.

For clients who were relying on the FFBA exemption, we found that some firms did not collect and document adequate information about the relationship between the individuals.

We found that some firms:

- did not inquire about the nature of the relationship, the frequency of contact, and/or the level of trust and reliance between the individuals, and/or
- relied solely on self-certification representations made by their clients, including representations made by a purchaser in the risk acknowledgement form.

The seller (in this case, a dealer), should consider what documentation it needs to retain or collect from a purchaser to evidence the steps the seller followed to establish the purchaser met the conditions of the exemption. In addition, a registered firm must maintain records to accurately record its business activities, financial affairs, and client transactions, and be able to demonstrate the extent of the firm's compliance with applicable requirements of securities legislation. We also want to remind EMDs that information collected on a KYC form may be used to determine whether the client meets the definition of eligible investor.

Incorrect or incomplete risk acknowledgement form

Some dealers are asking their clients to complete an incorrect risk acknowledgement form for the exemption that they are relying on. We also found that some dealers are changing the language of the risk acknowledgement forms. The risk acknowledgement forms are prescribed forms which must not be amended.

The required form of risk acknowledgement under the OM exemption is [Form 45-106F4](#) – *Risk Acknowledgement Form* and the required form of risk acknowledgement under the FFBA exemption is [Form 45-106F12](#) – *Risk Acknowledgement Form for Family, Friends and Business Associate Investors*.

Outcome of compliance reviews

The compliance reviews resulted in the issuance of deficiency reports to certain registrants. We are currently in the process of reviewing the responses to the deficiency reports to determine follow-up steps that may be necessary in some instances.

Acceptable processes and practices

EMDs must:

- Know, understand and provide adequate training to registered individuals on the specific conditions of the prospectus exemption being relied on.
- Have a process in place to monitor transactions for non-eligible investors and eligible investors to prevent transactions occurring that exceed the investment limits set in Ontario, including client-directed trade instructions.
- Make inquiries of their clients and document the information they obtain with respect to (as applicable):
 - determining whether the client meets a certain definition.
 - other investments made under the OM exemption during the 12-month period preceding the current investment, when relying on the OM exemption.
 - the relationship between the individuals, when relying on the FFBA exemption.
- Have a process in place to review the information obtained from clients for consistency with the conditions of the exemption being relied on. For example, the information collected on the KYC form should be consistent with the meaning of “eligible investor” if relying on this definition under the OM exemption. When conflicting information exists, take appropriate follow-up steps to ensure that the investor meets the conditions of the exemption being relied on. Evidence of follow-up procedures should be documented and reviewed by the CCO.
- Where the EMD has determined that an investment for an eligible investor who is relying on the OM exemption:
 - is suitable - maintain adequate documentation of their advice that exceeding the investment limit of \$30,000 and the investment itself is suitable for the eligible investor client.
 - is unsuitable - document and inform the investor of their opinion that the proposed trade would not be suitable for the investor and provide the client with a written explanation of the basis for the registrant’s opinion.
- Establish policies and procedures to provide reasonable assurance of compliance with the FFBA and OM exemptions.

Unacceptable practices

EMDs must not:

- Process a transaction for a non-eligible investor, or an eligible investor, that would exceed the investment limits under the OM exemption.
- Take instructions from, or process a transaction for, an eligible investor to exceed the \$30,000 investment limit, when the advice provided is that exceeding the investment limit of \$30,000 and the investment itself is unsuitable, when relying on the OM exemption.
- Sell an exempt security if they do not have sufficient information to determine whether the client qualifies for the exemption being relied on. For example, a dealer may have insufficient information if they relied solely on self-certification representations made by their clients, including representations made by a purchaser in the schedules to the risk acknowledgment form. Information obtained from inquiries of their clients should be documented to support the determination of qualification.
- Change the language in the risk acknowledgement forms.

(ii) Derivatives – trade repository and data reporting compliance reviews

On June 29, 2015, we published [OSC Staff Notice 91-704](#) - *Compliance Review Plan for OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting* (OSC Staff Notice 91-704). OSC Staff Notice 91-704 describes how OSC staff intends to review compliance with reporting requirements of [OSC Rule 91-507](#) - *Trade Repositories and Derivatives Data Reporting* (the TR Rule). Since the publication of OSC Staff Notice 91-704, CRR staff together with Staff of the Derivatives branch have commenced reviews of large derivatives market participants to review and test their compliance with these new reporting requirements.

Initial reviews have focused on the requirements in Part 3 – Data Reporting of the TR Rule, by market participants that are most active in the market. Testing has been concentrated on derivatives data reporting obligations to verify that reported data is accurate, complete, and reported within the required timeframes. In addition, the reviews encompass assessments over the adequacy of internal controls and management oversight to ensure compliance with the TR Rule. Upon completion of each review, a written report is provided to the market participant outlining any observations identified from the review.

Market participants should take the necessary steps to ensure compliance with the reporting obligations for over-the-counter derivatives transactions. We will continue to conduct reviews of derivatives market participants to evaluate compliance with the requirements.

(iii) U.S. online equity funding portals

We are aware that a number of U.S.-based online equity funding portals are interested in offering investment opportunities in businesses located in Ontario and/or for investors resident in Ontario. We remind such entities that they must comply with applicable securities legislation, including registration prior to conducting business in Ontario. It is important to remember that registration is a separate requirement and the availability of a prospectus exemption to distribute securities does not mean there is a corresponding registration exemption.

Where a U.S. online funding portal facilitates the distribution of securities (including but not limited to engaging in activities that showcase investment opportunities to investors in return for fees from issuers and dealers that advertise on the portal), the entity is “in the business” of trading or advising and is subject to the dealer or adviser registration requirement under the Securities Act.

Please refer to the guidance in section 1.3 of NI 31-103CP and [Multilateral Instrument 45-108 - Crowdfunding](#). We also remind these entities that the definition of “trade” is very broad and includes “any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a trade. See [section 1.2 – OSC Launch Pad](#) of this annual report for more information.

(iv) Registration and oversight of foreign broker-dealers

Since publishing [CSA Staff Notice 31-333 - Follow-up to Broker-Dealer Registration in the EMD category](#) on February 7, 2013, we published amendments to NI 31-103 that prohibited EMDs from conducting brokerage activities (the [NI 31-103 Amendments](#)).

The [NI 31-103 Amendments](#) came into force on July 11, 2015. Since that date, only investment dealers that are dealer-members of IIROC or firms relying on an applicable exemption from the dealer registration requirement are permitted to engage in trading in a security if the security is listed, quoted or traded on a marketplace and if the trade in the security does not require reliance on a further exemption from the prospectus requirement.

We remind firms to consider how they conduct brokerage activities, including having a Canadian incorporated IIROC firm carrying out the brokerage activities, tailoring their activities to fit solely within the EMD category, or relying upon the international dealer exemption in section 8.18 of NI 31-103.

3.3 Advisers (PMs)

This section contains information specific to PMs, including current trends in deficiencies from compliance reviews of PMs (and acceptable practices to address them) and some current initiatives applicable to PMs.



a) Current trends in deficiencies and acceptable practices

(i) Vulnerable investors – lack of policies and procedures

Some PMs do not have written policies and procedures to adequately address the provision of investment advisory services to vulnerable investors - in particular, senior investors, but also investors with other vulnerabilities (e.g. a diminished cognitive capacity, a severe or long term illness, mental or physical impairment, a language barrier). Vulnerable investors, especially those who may have diminished mental capacity, can be vulnerable to investment advice that is unsuitable, investment fraud and financial abuse.

In section 3.1 (c)(i) of [OSC Staff Notice 33-747](#), we provided guidance:

- on the contents of a firm’s policies and procedures for servicing vulnerable investors, and
- that a firm is responsible for the adequacy of their firm’s policies and procedures for the protection of investors, including vulnerable investors.

As noted in section [3.1\(c\)\(i\) of this report](#), we continue to work on our vulnerable investor initiative. We anticipate that future compliance reviews of PMs will include a review of a firm’s policies and procedures that address the concerns related to the provision of investment advisory services to vulnerable investors.

Acceptable practices

Your written policies and procedures should address the following areas:

- How to identify investors in potentially vulnerable circumstances.

- Suitability of investments for accounts of senior investors (e.g., age-based heightened review criteria for certain investments or product concentration).
- Communicating with senior investors (e.g. documentation standards for marketing and communications).
- Identification and escalation of suspected or attempted financial elder abuse,
- Identification and escalation of concerns about an investor with diminished capacity (and how the account will continue to be managed).
- The importance of a power of attorney (POA) and consideration of when a POA may be necessary.
- Discussions with clients about the existence of a POA document and the retention of any POA documents.
- Identification and escalation of the misuse or abuse of POAs.
- Training of staff who interact with vulnerable investors.

(ii) PMs with inappropriate access to client’s custody accounts

It is inappropriate for PMs to ask their clients for, and to use, their client’s usernames and passwords to access their accounts at a custodian (such as an investment dealer) to conduct online trading in the client’s accounts. The custodian is likely not aware of this access, which effectively allows the PM to act as if they were the client and not only to conduct trading, but also to transfer cash out of the account. Although we have not found PM’s asking for and using their client’s usernames and passwords to access their accounts during compliance reviews, it has been noted as a compliance issue by U.S. securities regulators for U.S. investment advisers.

This type of custody account access is inappropriate, as the PM:

- has the same access as the client and therefore the ability to transfer client’s cash out of the account,
- is effectively impersonating the client and there is no audit trail to differentiate between actions of the PM and the client, and
- may void certain protections their client has, such as being reimbursed by the custodian for unauthorized transfers in their accounts (for example, from identity theft), if the client breached their agreement with the custodian by giving their username and password to the PM.

If we find this practice during a compliance review, this would raise significant concerns about whether the PM is meeting its obligations in section 2.1 of [OSC Rule 31-505](#) to deal fairly, honestly, and in good faith with clients.

Acceptable practices for PMs to access their client's custodial accounts

PMs should:

- Perform an assessment to determine if any advising representatives or traders at their firm are using clients' usernames and passwords to conduct online trading in clients' custody accounts, and if so, take immediate steps to stop this practice and instead obtain appropriate access, as outlined below.

PMs with trading authority over clients' portfolios should:

- Have their clients provide their custodians with written instructions giving the PM trading authority over their accounts.
- Obtain from their clients' custodians, and use, their own usernames and passwords to conduct online trading in their clients' custody accounts, but not have the ability to transfer cash out of the accounts.
- If offered by the clients' custodian, enter into an arrangement with the custodian for the PM to be given "master account" access over all of their clients' accounts at the custodian using their own username and password. This "master account" access allows the PM to trade securities and monitor and analyze its clients' trades and holdings, but not to transfer cash out of the account.

Unacceptable practices

PMs must not:

- request or use their clients' usernames and passwords to conduct trading in their clients' custody accounts.



b) Update on initiatives impacting PMs

(i) PM-IIROC member dealer service arrangements

On November 17, 2016, CSA staff published [CSA Staff Notice 31-347](#) - *Guidance for Portfolio Managers for Service Arrangements with IIROC Dealer Members* (CSA Staff Notice 31-347) to provide guidance for PMs that enter into custody and trading service arrangements with IIROC dealer members (DMs). CSA Staff Notice 31-347 outlines acceptable practices for PMs with these arrangements so that they can comply with their

obligations in NI 31-103, such as books and records, disclosure, and client statement reporting (including when only the DM sends “custody” statements to clients). The key points in the notice are:

- the PM must maintain its own records of its clients’ investment positions and trades,
- the PM and DM are expected to have a written agreement on the arrangement,
- the PM is expected to provide written disclosure to its clients on the arrangement,
- if the PM holds any cash or investments for a client, it must issue its own client statements, and
- if all of the cash and investments that the PM is authorized to trade for a client are held by a DM, the PM may satisfy its client statement obligations if the DM delivers a “custody” statement to the client that is compliant with IIROC DM rules, provided that the PM takes the steps outlined in the notice to verify that the DM’s statement is complete, accurate and delivered on a timely basis.

(ii) Online advisers

In early 2016, we began the compliance reviews of Ontario-based online advisers that were operating for more than a year. Online advisers are portfolio managers that offer managed accounts comprised of portfolios of simple exchange-traded funds or investment funds to retail clients at a low cost primarily through an interactive website, but with the active involvement of an advising representative (AR) in the KYC and suitability process.

The purpose of our online adviser compliance reviews was to:

- further enhance our understanding of the registrants’ online business operations and to assess the effectiveness of their KYC and suitability processes, including online KYC questions, system logic, model portfolios, role of ARs and their discussions with clients,
- assess the registrant’s compliance with relevant sections of Ontario securities law, terms and conditions of registration (if applicable), and [CSA Staff Notice 31-342 – Guidance for Portfolio Managers Regarding Online Advice](#) (CSA Staff Notice 31-342),
- assess if the registrant’s current online business activities were consistent with the registrant’s representations in their pre-registration review, and
- determine whether there were any fitness for registration issues (e.g. going concern, proficiency issues).

As a result of the compliance reviews, we identified deficiencies:

- common among traditional portfolio managers, such as, inadequate written policies and procedures manual, inadequate client statements, incorrect calculation of excess

working capital, unsubstantiated marketing claims, an inadequate ratio of ARs to clients, and

- unique to online advisers, which are discussed in more detail below.

Inadequate online KYC questionnaire

The online KYC questionnaire used by some online advisers did not allow firms to obtain adequate or sufficient KYC information. For example, the questionnaire asked for liquid assets without inquiring about the amount of debt the client may have, therefore, the registrant did not obtain the client's true financial situation or net worth. In other circumstances, the registrant's online KYC questionnaire did not inquire about the client's financial circumstances, investment knowledge or investment restrictions.

Approval of model portfolios

Model portfolios are created using algorithmic software, however, an AR is responsible for assessing the suitability of each client's investments. In conducting our compliance reviews, we noted that some online advisers did not maintain evidence to support that the system-recommended model portfolio was reviewed and approved for suitability by an AR.

Meaningful discussions with clients

As noted in [CSA Staff Notice 31-342](#), an online adviser's KYC process must amount to a meaningful discussion with the client or prospective client, even if that discussion is not in the form of a face-to-face conversation. In circumstances where the online advisers reviewed did not have a well-designed KYC questionnaire and software mechanisms (as described in [CSA Staff Notice 31-342](#)) which would identify inconsistencies in responses and other triggers for the AR to contact the client or prospective client, we would expect an AR to contact the client or prospective client and have a meaningful discussion with them prior to opening an account. During the course of our compliance reviews, we noted that some online advisers who did not have a comprehensive KYC questionnaire and/or software mechanisms, as described in [CSA Staff Notice 31-342](#), did not always contact clients or prospective clients to have a meaningful discussion with them. In other cases, we noted that the online adviser did not maintain evidence to support that an AR had, in fact, had this meaningful discussion with clients or prospective clients.

KYC update process

Some of the online advisers reviewed did not have an adequate process in place to ensure client's KYC information is updated at least annually or when there has been a material

change in a client's circumstances (e.g. marriage, divorce, birth of child, loss or change in employment).

No notice to the OSC of material change to business model

During the course of our review, we noted that the OSC was not notified in circumstances where there was a material change to the online adviser's business model. As noted in [CSA Staff Notice 31-342](#), registrants are required to submit [Form 31-109F5](#) – *Change or Registration Information* (Form 31-109F5) if they change their primary business activities, target market or the products and services they provide to clients. The information provided in [Form 33-109F6](#) - *Firm Registration* (Form 33-109F6) must be kept current at all times. This would include making a significant change to an existing online advice platform's operation or the addition of a traditional portfolio manager model to the existing online advice business model.

Outcome of compliance reviews

The compliance reviews of online advisers resulted in one or more of the following outcomes:

- deficiency reports
- warning letters
- terms and conditions imposed on the firm

As noted in last year's annual report, the CSA-IIROC working group continues to discuss online advice topics, including:

- appropriate registration categories for different business models,
- appropriate terms and conditions of registration for different business models, and
- issues from compliance reviews.

Launching of online advice platforms

We have seen a number of new firms, as well as existing portfolio managers, launching online advice platforms and we are in the process of reviewing proposals from others. We remind anyone contemplating launching an online advice platform in Ontario that they must first submit their plans to us for review, and refer you to [CSA Staff Notice 31-342](#).

To facilitate our due diligence review of proposals for online advice platforms, the following information should be provided with the firm's [Form 33-109F6](#) or [Form 31-109F5](#) when it is filed:

- the proposed online KYC questionnaire,
- details of any other KYC information requested (personal information not collected through the KYC questionnaire),
- the system logic used to determine a client's investor profile and model portfolio based on how they answered the KYC questionnaire,
- details of the investor profiles and model portfolios (including proposed security holdings for each model portfolio and asset allocations),
- the role of registered ARs in the KYC collection and documentation process, assessing suitability of investments for clients, reviewing and approving new accounts, and communicating with clients,
- whether an AR has a live interaction with every client or only when AR deems it necessary or when client requests it,
- how and when KYC information will be updated,
- how client identification obligations will be met,
- how system and cybersecurity risks will be addressed,
- how trading and rebalancing will be performed,
- a sample client agreement with a custodian,
- the relationship disclosure information to be provided to clients at account-opening,
- the applicable fee schedule, including ETF/fund fees, custody and trading charges,
- a sample standard investment management agreement, and
- any conflicts of interest identified by the firm (e.g., use of affiliated investment funds) and, if so, how they will be addressed.

(iii) PM with IIROC affiliate compliance reviews

We conducted a sweep of PM firms who are affiliated with an IIROC member firm to assess their compliance with securities law. Specifically, we focused our reviews on a number of key areas such as conflicts of interest, portfolio management, and trading practices, including best execution and suitability of investments. Some of the major findings are highlighted below.

Conflicts of interest

Most PM firms reviewed during the sweep have full discretion in selecting brokers for executing trades on behalf of their managed account clients (including investment funds). However, they placed the majority of their managed account clients' equity and fixed income trades with their affiliated dealers. We have significant concerns with this practice since the PM firms did not have an adequate process in place to address the inherent

conflicts of interest that exist from their business relationship and integrated operations with the affiliated dealers. While some firms attempted to mitigate the conflict by providing general disclosure to their clients about the use of their affiliated dealers for trade execution, we do not consider such disclosure sufficient to manage the conflicts in these cases. PM firms must establish adequate procedures for identifying and responding to conflicts of interest consistent with their obligation to deal fairly, honestly, and in good faith with their clients.

Acceptable practices for dealing with conflicts of interest

PMs must:

- Provide sufficient evidence to demonstrate that their affiliated dealers have adequate execution capabilities.
- Conduct an analysis to support that the affiliated dealer is indeed providing services to their clients at prices and on terms that are at least favourable to other unrelated dealers.
- Maintain adequate documentation of such analysis.

Best execution obligation

In some cases, we noted that the PM firms relied solely on their affiliated dealers to achieve best execution for their clients. This is inappropriate as a PM has an obligation to make reasonable efforts to achieve best execution for its clients and to establish adequate policies and procedures to demonstrate compliance with this obligation. We also noted a number of instances where the affiliated dealers were charging commissions higher than other unrelated dealers and the firms were unable to satisfactorily explain how they achieved best execution for their clients under those circumstances.

While we understand that the transaction cost is not the only factor when assessing best execution, the firms were unable to explain what other qualitative and quantitative factors had been considered when determining best execution. In some cases, the PM firms had written policies and procedures on best execution, including the factors they consider when selecting a broker for executing trades. However, these procedures were not enforced by the firm.

We expect PM firms to establish adequate policies and procedures that describe how the firm evaluates that best execution was obtained and such procedures should be regularly and rigorously reviewed.

Acceptable practices in meeting the best execution obligation

PMs must:

- Establish a process to test and evaluate the quality of execution by performing periodic assessments of their affiliated dealers' execution capabilities (e.g. transaction price, speed and certainty of execution, overall cost of transactions, etc.).
- Compare execution performance of other unrelated dealers with the affiliated dealer.
- Establish a committee to oversee the firm's policies and procedures on trade management practices and assess the impact of technological changes on trade execution.
- Maintain adequate documentation of any assessments and analysis conducted.

Please also refer to Part 1.1.1 and Part 4 of the Companion Policy to [National Instrument 23-101 - Trading Rules](#) for a definition of best execution and guidance on the best execution requirement.

Delegation of advisory functions to affiliated dealer

In one instance, we noted that a PM firm inappropriately delegated some advisory functions to its affiliated dealer, such as collecting and updating KYC information, servicing clients on an on-going basis to deal with client questions regarding the managed account and discussing portfolio performance with the PM clients. We have significant concerns with this practice as KYC, KYP, and suitability obligations are a cornerstone of our investor protection regime (see sections 13.2 and 13.3 of [NI 31-103](#)). Without sufficient and current KYC information, registrants are not able to adequately fulfill their suitability obligations. To meet these obligations, the advising representative of the PM firm should have a meaningful discussion with the client on KYC and suitability of the investments and these activities cannot be delegated to other parties. For additional guidance, please refer to [CSA Staff Notice 31-336](#).

Apart from the above key findings, we also identified other deficiencies, for example, inadequate compliance system, outdated KYC information, and missing information on client statements. These deficiencies were not unique to PM firms with IIROC affiliates.

3.4 Investment fund managers

This section contains information specific to IFMs, including current trends in deficiencies from compliance reviews of IFMs (and acceptable practices to address them) and an update on current initiatives applicable to IFMs.



a) Current trends in deficiencies and acceptable practices

In this section, we summarize key trends in deficiencies from recent compliance reviews of IFMs.

(i) Repeat common deficiencies

The following includes deficiencies that we continued to find in reviews of registrants that have been reported on in previous annual reports or prior guidance. We encourage you to review the information sources provided below as the previously published guidance’s are still applicable to these issues.

Repeat common deficiency	Information source
1) Inadequate oversight of outsourced functions and service providers	<ul style="list-style-type: none"> Part V of OSC Staff Notice 33-743 Section 4.4.1 of OSC Staff Notice 33-742 under the heading <i>Inadequate oversight of outsourced functions and service providers</i> Section 11.1 of NI 31-103 and 11.1 of 31-103CP Registrant Outreach seminar - Oversight of service provider
2) Inappropriate mutual fund sponsored conferences	<ul style="list-style-type: none"> Part I of OSC Staff Notice 33-743 Section 5.2 of OSC Staff Notice 33-743 Section 3.4 (b)(i) below of this annual report
3) Inadequate insurance coverage	<ul style="list-style-type: none"> Section 4.1(c)(iii) of OSC Staff Notice 33-745 Sections 12.5 and 12.6 of NI 31-103 and section 12.6 of NI 31-103CP
4) Inappropriate use of trust accounts	<ul style="list-style-type: none"> Section 4.4(a)(ii) of OSC Staff Notice 33-746 Section 3.4(a)(ii) below of this annual report

(ii) Holding client assets

We noted instances of IFMs that were not complying with the requirement to hold fund assets separately from firm assets. Assets of the investment funds that they manage must be in designated trust accounts. Section 14.6 of [NI 31-103](#) provides specific requirements that a registrant must adhere to when holding client assets.

A registered firm that holds client assets must ensure that those client assets are:

- held separate and apart from the registrant's own property,
- held in trust for the registrant's clients, and
- in the case of cash, held in a designated trust account at a Canadian financial institution, a Schedule III bank, or an IIROC member firm.

We noted the following circumstances where IFMs were holding client assets, but were not adhering to these requirements:

- Registrants did not maintain documentation to evidence that the accounts, in which they held client assets, were designated as trust accounts.
- In some cases, registrants held client subscription and redemption proceeds in accounts they referred to as "flow-through accounts". However, the registrants did not properly recognize that they were in fact holding client assets and that these "flow-through accounts" should comply with the requirements of section 14.6 of NI 31-103.
- Registrants commingled management fees and performance fees they earned with client assets.

We also noted the following situations where IFMs did not maintain adequate records of supervision over client assets held in trust accounts:

- registrants did not perform reconciliations of trust accounts, and
- where IFMs outsourced the trust accounting function to service providers, registrants did not oversee the services performed by the service providers (e.g. review reconciliations and/or exception reports of trust accounts).

IFMs are responsible for directing the business, operations and affairs of an investment fund. These responsibilities include fund administration services, whether performed in-house or outsourced to another entity. Section 11.1 of NI 31-103 requires that IFMs have systems of controls and supervision in performing or overseeing fund administration

services. Part 11 of NI 31-103CP states that IFMs are responsible and accountable for all functions that are outsourced to service providers.

Acceptable practices for holding client assets

IFMs must:

- Determine if they hold client assets, including cash or client cheques accepted by the IFM for subscriptions in an investment fund.
- Ensure client assets are held in a designated trust account at a Canadian financial institution, a Schedule III bank, or a member of IIROC.
- Maintain documentation that clearly evidences that the account is a trust account.
- Maintain a separate operating account in the name of the registrant to handle transactions relating to the IFM's operations and ensure that these transactions do not flow through the trust account which has been set up for holding client assets.
- Develop internal policies and procedures regarding the use of the designated trust account, taking into consideration the following:
 - which transactions can and cannot flow through the trust account,
 - which transactions will flow through the IFM's operating account,
 - frequency of reconciliation of activity in the trust account, and
 - process of review and approval of the trust account reconciliation.

Unacceptable practices

IFMs must not:

- Use a bank account that is not designated as a trust account to handle client assets.
- Commingle the assets of an investment fund and/or its unitholders with the assets of the IFM.
- Accept client assets without having clearly documented policies and procedures regarding the handling of client assets.
- Rely exclusively on a service provider to reconcile activity in a trust account without appropriately overseeing the service provided.

(iii) Prohibited investments resulting in a fund being a substantial security holder

For IFMs who manage investment funds with a fund-of-fund structure, we noted instances where a top fund, alone or together with other related investment funds⁹, held more than 20% of the voting interest of an underlying fund. This resulted in the top fund being a substantial security holder of the underlying fund which is prohibited under paragraph 111(2)(b) of the Securities Act.

Paragraph 111(2)(b) of the Securities Act prohibits an investment fund from making an investment in any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder. Paragraph 110(2)(b) of the Securities Act states that a person or company is a substantial security holder of an issuer if it owns beneficially more than 20% of the voting rights attached to all voting securities of the issuer.

Acceptable practices to avoid the top funds from making prohibited investments

IFMs must:

- Have policies and procedures to monitor the percentage of portfolio holdings of a top fund in any of the underlying funds.
- Ensure that if there is more than one related investment fund that holds the same underlying fund, there is a process in place to monitor the aggregate holdings of the related investment funds in the underlying fund.
- Inform the advisers to the top funds of this prohibition and ensure parameters are set to avoid exceeding the 20% threshold.
- Assess if it is necessary to apply for exemptive relief given the business model.
- Have monitoring processes (as described above) and reporting in place to review and assess for compliance with section 111(2)(b) of the Securities Act.



b) Update on initiatives impacting IFMs

The following initiatives were part of a larger initiative executed in collaboration with the MFDA and IIROC, who each reviewed the incentive practices of their respective dealer

⁹ The term “related investment funds” is defined under subsection 106(1) of the Securities Act which includes more than one investment fund under common management.

firms¹⁰. The respective initiatives were part of a larger initiative referenced in [OSC Notice 11-775 – Notice of Statement of Priorities for Financial Year to End March 31, 2017](#) in which we stated that we would work closely with the SROs to coordinate compliance efforts on common issues, such as sales incentives and related conflicts of interest.

(i) Focused reviews on mutual fund sales practices

In December of 2015, we conducted focused compliance reviews of sales practices relating to section 5.2 of [National Instrument 81-105 – Mutual Fund Sales Practices](#) (NI 81-105) that governs the organization and presentation of mutual fund sponsored conferences. The compliance reviews included a sample of 20 IFMs and focused on mutual fund sponsored conferences organized and presented between 2013 and 2015. In total, we reviewed 63 mutual fund sponsored conferences organized by 13 IFMs that engaged in this type of sales practice under Part 5 of [NI 81-105](#).

Part 5 of [NI 81-105](#) regulates the sales practices of industry participants in connection with the distribution of publicly offered securities of mutual funds to safeguard the interests of investors. As a result, [NI 81-105](#) establishes a minimum standard of conduct to ensure that any compensation or benefits provided to participating dealers and their respective representatives are not in any way “excessive” or “extravagant” so as to improperly influence the selection of mutual funds for distribution by a representative to its clients.

We noted similar deficiencies to those found through prior reviews conducted in 2014 as reported in [OSC Staff Notice 33-743 – Guidance on sales practices, expense allocation and other relevant areas developed from the results of the targeted review of large investment fund managers](#) (OSC Staff Notice 33-743).

The purpose of the focused compliance reviews was to:

- determine if there had been improvement with sales practices resulting from the publication of OSC Staff Notice 33-743,
- review and assess an IFM’s policies, procedures, and practices relating to sales practices and, specifically, to the organization and presentation of mutual fund sponsored conferences,

¹⁰ MFDA Notice on the Review of Compensation, Incentives and Conflicts of Interest published on December 15, 2016 and IIROC Notice on Managing Conflicts in the Best Interest of the Client – Status Update published on December 15, 2016.

- determine and assess involvement by an IFM’s compliance staff in the organization and execution of mutual fund sponsored conferences, and
- assess and identify areas where additional guidance to industry participants may be needed.

Although the majority of IFMs included in the sample used the most recently published guidance in [OSC Staff Notice 33-743](#) to organize and present their mutual fund sponsored conferences, deficiencies were noted in the following areas:

- the process followed to select dealing representatives,
- the payment of prohibited costs, and
- the reasonability of the conference costs.

As a result of these focused compliance reviews, we are considering publishing additional guidance on the issues noted and raised through the focused compliance reviews. Specific guidance on compliance with paragraph 5.2(b) of [NI 81-105](#) that governs the selection of representatives of a participating dealer to attend a mutual fund sponsored conference was published in the [December 2016 edition of the Investment Funds Practitioner](#) (the December Practitioner).

We have reported the findings from this current initiative to each IFM included in the focused review. We have also worked closely with the OSC Enforcement Branch to reach a settlement with one firm related to the sales practice review of the firm.

We would like to remind IFMs of their obligations to ensure compliance with Part 5 of [NI 81-105](#) when organizing, presenting, and providing monetary support for sales practices. The guidance previously published in [OSC Staff Notice 33-743](#) remains relevant and we strongly encourage registrants to use that notice to improve their understanding of, and compliance with, applicable regulatory requirements. [OSC Staff Notice 33-743](#) and the guidance published in the December Practitioner, collectively, are meant to assist IFMs in meeting their duty to act honestly, in good faith, and in the best interests of their investment funds as required by section 116 of the Securities Act. Many of the concepts related to sales practices require judgment. Through previously issued guidance, we have tried to establish parameters around these concepts which best correlates with an IFM’s standard of care. We would like to remind IFMs that in establishing and complying with

internal sales practices parameters, the overarching objective and spirit of the rule must always be at the forefront and adhered to.

(ii) **Advisor discount fee arrangements survey**

As part of our focus on conflicts of interest and incentives practices, we sent a survey to approximately one hundred IFMs to obtain information about certain arrangements involving an IFM's provision of discounted management fees to certain representatives of participating dealers that distribute the IFM's mutual funds. The reduction in the management fee is achieved through a management fee rebate provided to certain mutual fund security holders that are clients of representatives that have entered into these arrangements. We are referring to these arrangements as *advisor discount fee arrangements*.

From the survey results, we identified advisor discount fee arrangements with the following common characteristics:

- the arrangements were entered into with a select number of representatives which resulted in the management fee rebate being available only to clients of those representatives and therefore only certain security holders of a mutual fund,
- the arrangements required the representatives to maintain in aggregate a certain minimum level of client assets in the IFM's mutual funds for the management fee rebate to be made available to the representatives' clients, and
- the management fee rebate was offered on a tiered scale, dependent on the amount of the aggregate assets invested by clients of the representative.

In some cases, the request to establish an arrangement was initiated by the representative.

The objective of [NI 81-105](#) is to discourage sales practices and compensation arrangements that give rise to the question of whether participating dealers and their representatives are being induced to sell mutual fund securities on the basis of the incentives they are receiving, as opposed to what is suitable for their clients. Under paragraph 2.1(b) of [NI 81-105](#), an IFM is prohibited from providing a non-monetary benefit to a representative of a participating dealer, subject to certain exceptions set out in Part 5 of [NI 81-105](#). These advisor discount fee arrangements are not in compliance with [NI 81-105](#) based on the following observations:

- These arrangements and the corresponding management fee rebate are available only to certain representatives that distribute an IFM’s mutual funds and are not available to all security holders of a mutual fund. As a result, the representatives that enter into these arrangements have a competitive advantage over other representatives in that they can offer investments in the mutual funds at a reduced overall cost to their clients, which may allow them to attract and retain more clients.
- Section 4.2(2) of the [Companion Policy to NI 81-105](#) states that a non-monetary benefit includes any benefit that could be perceived as an advantage to the representative receiving the benefit. The competitive advantage obtained by representatives that enter into these arrangements is a non-monetary benefit that may influence those representatives’ investment recommendations to clients.
- Sub paragraph 2.1(3)(b) of [NI 81-105](#) prohibits the provision of any benefit that is conditional on a particular amount or value of securities of one or more mutual funds being held in accounts of clients of a representative. These advisor discount fee arrangements require representatives to maintain assets in aggregate across their client accounts in the IFM’s mutual funds before a management fee rebate can initially and continually be provided to a representative’s clients.

(iii) Investment Funds and Structured Products (IFSP) Branch

Our IFSP Branch has worked on a number of policy initiatives with the CSA on the regulation of investment funds and other initiatives which impact IFMs. A summary of some of this work and the relevant information sources can be found in the chart below.

Project	Information source
<p>1) Mutual fund fees</p>	<p>On January 10, 2017 the CSA published CSA Consultation Paper 81-408 <i>Consultation on the Option of Discontinued Embedded Commission</i>. With the objective of enabling the CSA to make an informed decision about potentially discontinuing embedded commissions, the Consultation Paper sought input on:</p> <ul style="list-style-type: none"> ○ the potential effects on investors and market participants of discontinuing embedded commissions, including on the provision and accessibility of advice for Canadian investors, and on business models and market structure, ○ potential measures that could assist in mitigating any

	<p>negative impacts of such a change, if a decision is made to move forward, and</p> <ul style="list-style-type: none"> ○ alternative options that could sufficiently manage or mitigate the identified investor protection and market efficiency issues. <p>The comment period ended on June 9, 2017.</p>
2) Summary disclosure documents and delivery regime for exchange traded mutual funds (ETFs) and its delivery	<p>On December 8, 2016, the CSA published final amendments that require ETFs to produce and file a summary disclosure document called ETF Facts. Dealers that receive an order to purchase ETF securities will be required to send or deliver ETF Facts to investors within two days of the purchase. Delivery obligations related to ETF Facts will come into effect on December 10, 2018.</p>
3) CSA risk classification methodology	<p>On December 8, 2016, CSA staff published final amendments which require fund managers to use a standardized CSA mutual fund risk methodology to determine the investment risk level of conventional mutual funds and ETFs in the Fund Facts and ETF Facts, respectively.</p>
4) Final stage of modernization of investment fund product regulation	<p>The CSA published proposed amendments on September 22, 2016 to introduce or revise certain investment restrictions for alternative funds, including concentration limits, limits on illiquid assets, and limits on cash-borrowing. The proposed amendments would also introduce disclosure requirements for alternative funds that would clearly highlight the investment strategies that differentiate these products from conventional mutual funds. The comment period closed on December 22, 2016.</p>
5) Point of sale disclosure	<p>On August 22, 2016, the CSA announced a multi-year project to measure the impact of the requirements introduced by the Point of Sale amendments on investors and the industry.</p>
6) Review of fund-of-funds disclosure of fees and expenses	<p>Staff published the main findings of the continuous disclosure review focused on the disclosure of fees and expenses for fund-of-funds.</p>



ACTING ON REGISTRANT MISCONDUCT

- a) Regulatory action during April 1, 2016 to March 31, 2017**
- b) Cases of interest**
- c) Contested OTBH decisions and settlements by topic**

4 Acting on registrant misconduct



Effective registration and compliance oversight programs combined with timely enforcement, are essential to protect investors and foster trust and confidence in our capital markets.

OSC Statement of Priorities – 2017/18

The Registrant Conduct Team is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where warranted, and conducting Opportunity to be Heard (OTBH) proceedings before the Director. We

may become aware of registrant misconduct through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips.

Registrants must also 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.

As the Commission recently stated ¹¹:

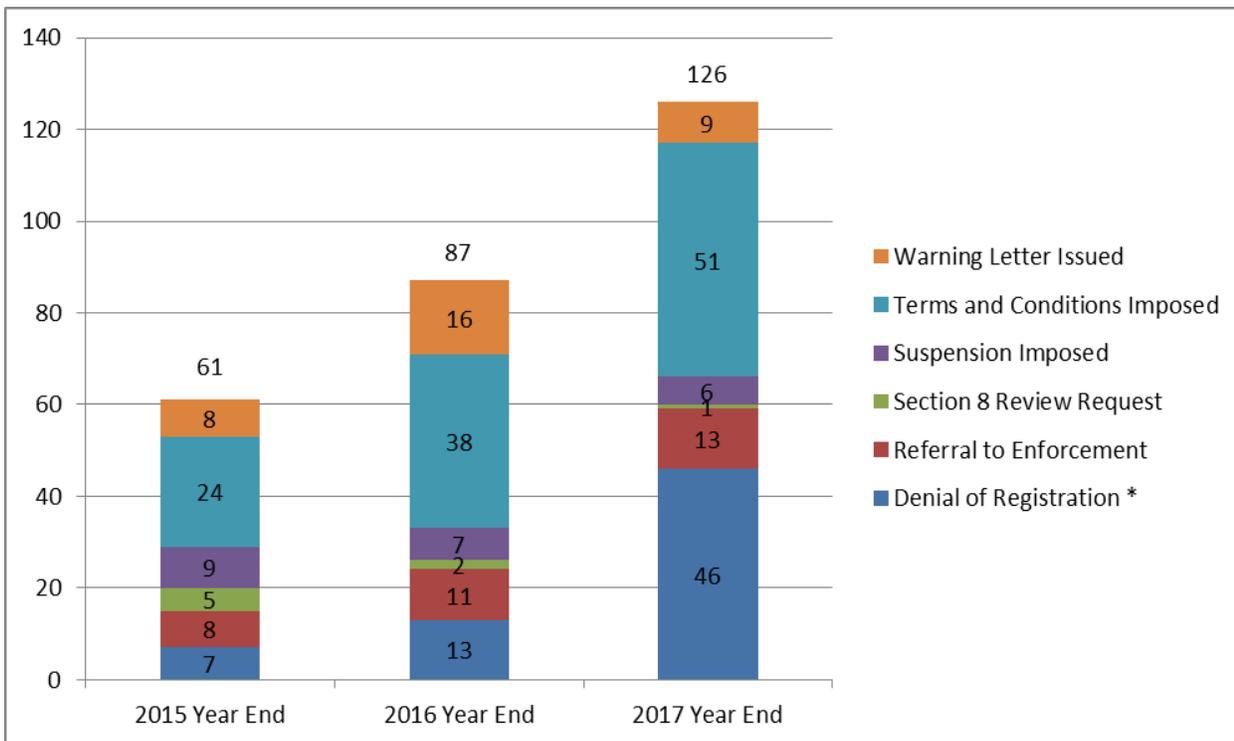
"A registrant must have systems of control and supervision in place to provide reasonable assurance that the firm, and each individual acting on its behalf, are complying with Ontario securities law. A firm is responsible for establishing and maintaining its compliance system..."

CRR Staff's procedures in processing applications and examining for compliance are not a substitute for careful compliance by the firm itself."

a) Regulatory action during April 1, 2016 to March 31, 2017

For the period of this report, the following chart summarizes the regulatory actions taken by CRR staff against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.

¹¹ Commission decision in *Re Waverley Corporate Financial Services Ltd. and Donald McDonald*, March 1, 2017 at paras. 130, 149



*Please note that the Denial of Registration category includes individual registration applications that are withdrawn by the sponsoring firm where there is a conduct concern raised, but prior to the conduct review being completed, or in light of other conduct review activity.

We are continually improving our information tools, which is having the intended effect of identifying high risk registrants and high risk applicants for registration. This has resulted in an increase in regulatory actions taken over the past three years. Sources of information include background and solvency checks on individual registrants or individual applicants, the Risk Assessment Questionnaire, external contacts received from OSC Contact Centre, and referrals from SROs and other agencies.

Opportunity to be Heard (OTBH) Process

Prior to a Director of the OSC imposing terms and conditions on registration, or refusing an application for registration or reinstatement of registration, or suspending or amending a registration, an applicant or registrant has the right under section 31 of the Securities Act to request an OTBH before the Director.

Directors’ decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at [Director’s Decisions](#). The decisions are sorted by year and by topic. Director's decisions are an important resource for registrants and their advisers, as they highlight matters of concern to the OSC, as well as, the regulatory action that may be taken as a

result of misconduct. Directors' decisions approving settlements of OTBH proceedings are also published on the website. Publication of Directors' decisions increases transparency by communicating important information regarding registrant conduct to the public in a timely manner.

In some cases, a registrant may request a hearing and review by the Commission of a Director's decision under section 8 of the Securities Act.

b) Cases of interest

(i) Novel dealer business model, conflicts of interest, controls and supervision

On March 1, 2017, the Commission released its decision in *Re Waverley Corporate Financial Services Ltd. and Donald McDonald*. Waverley Corporate Financial Services Ltd. ("Waverley"), an EMD, and Donald McDonald, Waverley's UDP and CCO, were the subject of a decision of the Director dated July 15, 2016, following an OTBH. Waverley and McDonald sought a review of the decision pursuant to section 8 of the Securities Act.

Background

Waverley's business involved marketing its services to issuers. Dealing representatives associated with the issuers or their affiliates (through business or family connections¹²) were registered with Waverley to market the issuer's securities to investors. The dealing representatives generally sold the securities of the issuer with which they were associated. Investors became clients of Waverley. The business model was designed to avoid the issuers incurring the financial costs and compliance responsibilities required of dealers. The dealing representatives typically carried on business from locations connected with the issuers. Waverley was paid through monthly fees paid by or on behalf of the dealing representatives and a share of the commissions paid by the issuers. Waverley did not disclose this business model at the time of its registration with the Commission.

Director decision

Following a compliance review, we sought to impose terms and conditions on Waverley's registration relating to Staff's allegations that Waverley had failed to comply with various

¹² For example, some of the dealing representatives were officers and/or directors of the associated issuer; others were immediate family members of the associated issuer's officers and/or directors.

provisions of Ontario securities law. Waverley and McDonald requested an OTBH pursuant to section 31 of the Securities Act.

In the OTBH decision, the Director described Waverley's business model as providing "registration and compliance services to independent issuers by sponsoring a... person connected to an independent issuer as a dealing representative." Waverley marketed itself as a "registration alternative to issuers" (Decision, para. 40). The Director found that Waverley breached paragraph 25(1)(b) of the Securities Act, which requires dealing representatives to act on behalf of their sponsoring firm, and subsection 32(2) of the Securities Act, regarding control and supervision obligations required of a firm. The Director also found that Waverley did not appropriately respond to conflicts of interest as required by subsection 32(1) of the Securities Act and section 13.4 of NI 31-103. The Director imposed terms and conditions on Waverley and McDonald's registrations.

Commission decision

Waverley sought a hearing and review of the Director's decision under section 8 of the Securities Act. As a result of the hearing and review, the Commission substituted its own terms and conditions for those imposed by the Director.

Paragraph 25(1)(b) – Acting on behalf of registered firm

The Commission did not find that Waverley breached paragraph 25(1)(b) of the Securities Act. The Commission was persuaded that "Waverley's Representatives, at least to some extent, act on behalf of Waverley." The Commission did not find that a dealing representative acted exclusively for his or her associated issuer. However, to ensure that dealing representatives unambiguously acted on behalf of Waverley, the Commission imposed several terms and conditions, including provisions requiring dealing representatives to use Waverley e-mail and telephone services and prohibiting them from accepting compensation from issuers for registerable activities. As well, the Commission required issuers who sponsored Waverley dealing representatives to produce to Waverley such information and materials as if the issuer itself became registered as a dealer.

Conflicts of interest

The Commission found that disclosures of conflicts of interest arising from the dealing representatives' relationships to the issuer to Waverley's clients were "inconsistent and deficient... [P]arsing these multiple disclosures... does not constitute clear and effective communication of these conflicts" (at para. 58). In its decision, the Commission found that

Waverley did not adequately disclose these conflicts either to clients or in its NRD filings. The Commission stated that incentives provided directly by the issuer to the dealing representatives were “essentially ‘secret commissions’ that are obscured from an investor’s view” (at para. 66).

The Commission concluded that Waverley contravened Ontario securities law requirements to (i) identify conflicts of interest, (ii) respond to the conflicts of interest by appropriately disclosing, managing or avoiding the conflicts, and (iii) describe the conflict to clients in terms of how it could affect the services offered to them.

Among the terms and conditions imposed by the Commission was a requirement to create a clear and enhanced conflict of interest disclosure, and a prohibition on registering senior executives of an issuer because of the severity of that conflict of interest.

Systems of control and supervision

The Commission also found that Waverley’s systems of control and supervision were not effective in addressing key aspects of its activities and those of its dealing representatives, in breach of subsection 32(2) of the Securities Act and section 11.1 of NI 31-103. In particular, the Commission found that Waverley did not have appropriate controls over its referral arrangements and payment of referral fees and commissions, the marketing materials used by its dealing representatives, and that it did not adequately supervise its branch offices.

Throughout the hearing and review, Waverley repeatedly offered to fix deficiencies identified by Staff. This is an inadequate approach to supervision. A registrant must have systems of control and supervision in place to provide reasonable assurance that the firm, and each individual acting on its behalf, are complying with Ontario securities law. A firm is responsible for establishing and maintaining its compliance system. Waverley’s practice of fixing key deficiencies found by regulatory authorities after the fact in areas that are central to its activities is an inadequate approach to compliance (para. 130).

The Commission imposed terms and conditions on Waverley’s registration aimed at addressing these deficiencies through “more robust supervisory controls and procedures relating to Waverley’s oversight of its Representatives’ interactions with customers.” The Commission found that the CCO did not demonstrate the proficiency necessary to fulfill this “challenging role” of and imposed a term and condition on the CCO’s registration

requiring him to increase his proficiency by completing a course for senior executives in the securities industry.

(ii) Disclosure of outside business activity including community involvement / positions of influence

In the past year, we have observed a number of instances where registrants and applicants for registration have failed to disclose, or were late in disclosing, positions of influence with religious and community organizations. Such positions, whether paid or unpaid, are considered to be “current employment” on the Form 33-109 F4 and in change submissions (Form 33-109 F5). See [OSC Staff Notice 33-738](#) and [CSA Staff Notice 31-326 - Outside Business Activities](#).

We may recommend that “restricted client” terms and conditions be imposed on registrants conducting outside business activities that potentially pose a conflict of interest with their registerable activity. These terms and conditions may require increased supervision by the sponsoring firm and/or restrict the individual from dealing with people over whom they may exert power or influence.

Director decision in Re: Ranisau

Restricted client terms and conditions were considered in a recent decision of the Director. On November 30, 2016, the Director issued a decision following an OTBH regarding terms and conditions on the registration of George Ranisau. Ranisau, a dealing representative in the category of mutual fund dealer and sponsored by Quadrus Investment Services Ltd. (“Quadrus”), submitted a current employment change submission. Ranisau disclosed that he had been serving as president of a church and charitable organization since 2013. Staff recommended terms and conditions be imposed on Ranisau’s registration to restrict him from acting as a dealing representative for any person who is a member of his church, or a spouse, parent, brother, sister, grandparent or child of a church member.

Our position is that restricted client terms and conditions are appropriate where a registrant is in a position of power or potential influence, because a transaction with a client may be influenced by the client’s perception of the dealing representative’s role in a charitable or faith-based outside activity.

We submitted that the terms and conditions were appropriate because: (i) Ranisau was in a position of trust and potential influence over members of the church as the organization’s

president and because he had authority over the church's accounts; (ii) Staff has imposed similar terms and conditions on the basis of outside business activities, including for lay religious officials; and (iii) the terms and conditions were necessary for Ranisau's sponsoring firm to adequately supervise his outside business activities.

Ranisau argued that the terms and conditions would pose a significant burden on his business due to the requirement for trade pre-approval, the requirement for clients to confirm that they are not members of the church, and more onerous auditing requirements with respect to Ranisau's files. Ranisau argued that his position with the church was purely administrative, with minimal interaction with vulnerable individuals. Ranisau offered to provide a voluntary undertaking to withdraw from his position at the church, to refrain from accepting a position with the church other than voluntary positions (with Staff's input), and not to accept any new church members as clients.

The Director found that the evidence disclosed that Ranisau had opened accounts for several church members without providing them with the requisite outside business activities disclosure. The Director was not satisfied that a voluntary undertaking from Ranisau would be effective in addressing Staff's undue influence concerns. Moreover, the Director rejected the suggestion that the terms and conditions would create a burden on Ranisau's business. Rather, the terms and conditions would allow Quadrus to supervise his outside business activities.

The Director stated "The objective of the Restricted Client Terms and Conditions is not to prohibit dealing activity, but rather to limit the scope of clients that the Registrant can deal with. Also, the purpose of the Restricted Client Terms and Conditions is not to prohibit registrants from volunteering with charitable or religious organizations, but to protect clients from potential undue influence or a registrant who is in a position of power or trust, whether spiritual or otherwise" (at para. 19).

The Director concluded that Ranisau was in a position of power or potential influence over clients or potential clients who were members of the church and that the "restricted client" terms and conditions were warranted.

(iii) Registration of individuals with prior disciplinary history

From time to time we receive applications for registration from individuals who have a prior discipline history, which may include a refusal of registration, a suspension of registration,

or an adverse decision from the Commission and/or the Director and/or a SRO. We are often asked whether a prior disciplinary decision will preclude future registration.

Applications for registration are considered on a case-by-case basis. The fundamental criteria for registration (proficiency, solvency and integrity) will be considered. In cases where an applicant has a disciplinary history, the application may be escalated to the Registrant Conduct Team for review.

In *Re: Sawh (2016)*, the Director set out a number of factors to be considered when reviewing such applications. The applicant should provide evidence that he or she has satisfied each of the factors, if applicable:

- the applicant must show by a sufficient course of conduct that he/she can be trusted in performing business duties,
- the applicant must introduce evidence of other independent, trustworthy persons with whom the applicant has been associated since the prior refusal, suspension or revocation of registration,
- a sufficient period of time must have elapsed for the purposes of general and specific deterrence,
- where proficiency is at issue, the applicant must demonstrate how he or she has specifically remediated his or her proficiency,
- the applicant must demonstrate that the misconduct that led to the prior refusal, suspension or revocation is unlikely to recur in the future by no longer engaging in business with non-compliant business associates, and
- the applicant must demonstrate remorse and take full responsibility for his or her past conduct.

The Director stated in *Sawh*, "I agree that, at a minimum, these six factors must be considered before the Director can make a determination on an applicant's suitability for registration; after a finding by the Director or the Commission that the applicant was not suitable for registration" (at para. 25). These factors are not exhaustive – there may be other factors that warrant consideration by Staff in the circumstances of the individual application.

In addition, the prior decision of the Commission or Director may have required terms and conditions to be imposed at the time of re-registration (such as supervisory terms and

conditions or restrictions on the registrant’s activities). The applicant would be required to comply with any such terms and conditions in order to be registered.

Finally, we expect that applicants be in good standing with the terms of an SRO order prior to registration. For example, this would include the payment of fines resulting from an SRO order or settlement agreement.

c) Contested OTBH decisions and settlements by topic

The following matters came before the Director this year. The full Directors’ decisions on these matters are available on the OSC website at [Director’s Decisions](#). The decisions are sorted by year and by topic. In the following table, the topical headings are indicated for each decision.

(i) False client documentation

Registrant and date of Director’s decision	Description
Jarnail Kahlon ¹³ April 28, 2016	Jarnail Kahlon was registered as mutual fund dealing representative (formerly known as mutual fund salesperson) since 1995 with various mutual fund dealers. He was last registered with Investia Financial Services Inc. (“Investia”), between 2009 and 2014. At Investia, Kahlon failed to disclose his involvement with seven outside corporations and misled Investia in his annual compliance questionnaires. He repeatedly failed to keep adequate client notes despite a warning letter issued to him by Investia for this reason. He did not respond to compliance inquiries in a timely manner. Kahlon resigned effective June 5, 2014 after Investia gave him a 30-day notice of termination in good standing. In a settlement agreement with the MFDA dated February 23, 2015 (the “MFDA Settlement Agreement”), he admitted to obtaining and maintaining 21 pre-signed forms in respect of 16 clients, despite receiving training at Investia that this practice was prohibited. He applied for reactivation of

¹³ The Director’s decision in *Kahlon* can also be found in the Director’s decisions section of the OSC website under the topical heading “Misleading Staff or Sponsor Firm”.

registration in June 2014. In the review of the application, we noted that he failed to disclose many of his outside business activities to his former sponsoring mutual fund dealers. Although Kahlon showed remorse and took responsibility for his conduct, he demonstrated a prolonged period of non-disclosure and non-compliance. We entered into a settlement agreement with Kahlon providing that he would withdraw the application and would not reapply for a minimum of 18 months. Before reapplying, he must pass the Conduct and Practices Handbook Course and fully pay the fine and costs agreed to in the MFDA Settlement Agreement. Further, he would be subject to one year of strict supervision upon reactivation of registration.

(ii) Misleading staff or sponsoring firm

Registrant	Description
<p>John Doe April 28, 2016</p>	<p>John Doe ("Doe") applied to reactivate his registration as an advising representative under the Securities Act. (Because of the sensitive nature of this matter, the name "John Doe" was used to protect the identity of individuals other than the applicant who were involved in, or affected by the Director's decision). While he was registered with his previous firm, Doe had an extra-marital affair with Jane Doe ("Jane"). According to Doe, Jane grew angry when he ended the relationship and began directing harassing text messages, emails, social media posts, and telephone calls to him, his wife, and others that knew him, including two of his supervisors at work. When the supervisors met with Doe to question him about the emails they had received from Jane, he lied about the true nature of his relationship with her. Doe eventually made honest disclosure to his supervisors about his relationship with Jane, after they informed him about another email they had received from her. The next day, Doe's wife called the police to complain that Jane was harassing her. When the police questioned Doe about his relationship with Jane, he lied to them about the matter. Doe subsequently admitted the true nature of his relationship with Jane to the police after they informed him that they had seen text messages between Doe and Jane. The police also told Doe that Jane had alleged that he had threatened to kill her and they eventually charged him with uttering a death threat.</p>

However, the charge was withdrawn when he agreed to a peace bond. During an interview with Staff about his application, Doe gave inaccurate information about the specific nature of the alleged death threat. In addition to the matter involving Jane, while he was employed with his previous sponsor firm, Doe and a colleague had discussed the possibility of leaving the firm to begin their own investment fund. After the colleague left the firm, he and Doe continued to communicate about the possibility of starting their own fund, and Doe sent his former colleague confidential data belonging to his firm about a fund the two of them had worked on together while at the firm. Doe and Staff agreed to a resolution of the application pursuant to which (i) Doe would withdraw the application and not reapply for registration for a minimum period of 12 months from the date it was initially submitted, (ii) he would successfully complete the Conduct and Practices Handbook Course before reapplying, and (iii) his sponsor firm would submit a supervisory plan for our approval and implement the plan for Doe once approved by us. We agreed to this resolution because Doe had taken full responsibility for his misconduct, his actions did not directly affect any client of his previous employer, and he had obtained counseling to assist him in dealing with the personal issues that he believed had contributed to his misconduct.

(iii) Compliance system and culture of compliance

Registrant	Description
Smart Investments Ltd. and David Hopps ¹⁴ May 2, 2016 with addendum to decision dated	Smart Investments Ltd. ("Smart") was registered as an investment fund manager, portfolio manager, and exempt market dealer. Smart was the manager for six prospectus-qualified mutual funds (the "Smart mutual funds") and also had a small discretionary managed account business. David Hopps was the sole beneficial owner of Smart. The predecessor of Smart was involved in proceedings before the Commission resulting in terms and conditions on Smart's registration. We recommended the suspension of the firm due to numerous compliance problems at the

¹⁴ The Director's decision in *Smart Investments Ltd. and David Hopps* can also be found in the Director's decisions section of the OSC website under the topical headings "Compliance with Terms and Conditions of Registration", "Misleading Staff or Sponsor Firm" and "Trading or Advising Without Appropriate Registration".

<p>July 6, 2016</p>	<p>firm, and because we obtained evidence that Smart had engaged in advising activity when it did not have an appropriately registered advising representative, and Smart had filed false notices and registration information on the NRD. At the opportunity to be heard proceeding , Smart did not dispute Staff’s factual submissions. Smart submitted a reorganization plan for Staff and the Director to consider as an alternative to a suspension of the firm’s registration. On May 2, 2016, the Director issued a decision rejecting the reorganization plan and suspending the firm’s registrations in all categories, including its registration as an investment fund manager, effective 70 calendar days from the date of the decision. The Director found that the firm lacked an effective compliance system, a proficient and experienced CCO, and a sound governance structure. The suspension was deferred to September 6, 2016 to allow time for the firm to wind-up the Smart mutual funds and to distribute proceeds to the unitholders. In addition, the registration of David Hopps as the UDP of the firm was suspended as a result of the Director’s decision. The Director found that Hopps failed to discharge his duties as the UDP of the firm and that he “demonstrated a lack of understanding and appreciation for the responsibilities of a UDP”. On July 4, 2016, an addendum to the Director’s decision was signed which allowed the firm to retain its registrations as a portfolio manager and exempt market dealer. This was contingent on a corporation controlled by Loren Greenspoon acquiring 100% of the voting securities of Smart from Hopps and Thomas Nicolle obtaining registration as CCO for the firm.</p>
<p>Waverley Corporate Financial Services Ltd. and Donald McDonald¹⁵ July 21, 2016,</p>	<p>See page 78 for this case summary and commentary on a novel dealer business model, conflicts of interest, controls and supervision.</p>

¹⁵ The Director’s decision in *Waverley Corporate Financial Services Ltd. and Donald McDonald* can also be found in the Director’s decisions section of the OSC website under the topical headings “Conflicts of Interest” and “Duty to Supervise”.

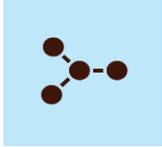
Commission decision March 1, 2017	
Investar Investments Ltd., Liyuan Qi and Jian (Bob) Guo ¹⁶ October 20, 2016, addendum issued February 17, 2017	Investar Investment Ltd. (“Investar”) was registered as an EMD. Liyuan Qi was the UDP of Investar and Jian (Bob) Guo was CCO. Investar, Qi and Guo are collectively referred to herein as the “Investar Registrants”. During a compliance review, we discovered that Investar had been dealing outside of its registration category by entering into mutual fund distribution agreements with two fund companies and selling mutual funds to clients and that Investar held itself out as a mutual fund dealer to clients. Investar also failed to make timely and accurate filings with the Commission. Although the Investar Registrants requested an OTBH regarding the suspensions of their registrants, they failed to appear on the scheduled date and the OTBH proceeded in their absence. The Director found that the Investar Registrants engaged in a pattern of serious non-compliance with Ontario securities law and permanently suspended the registrations of the firm and the individuals. The Investar Registrants requested a review of the decision pursuant to section 8 of the Securities Act, although they did not do so within the time specified in section 8. The request for a review was subsequently withdrawn following an agreement with Staff and the issuance of an addendum to the Decision to clarify that Qi and Guo could apply for registration as a dealing representative in future with an appropriately registered firm.

(iv) Outside business activity

Registrant	Description
George Ranisau ¹⁷ December 2, 2016	See page 81 for this case summary and commentary on disclosure of outside business activity including community involvement / positions of influence.

¹⁶ The Director’s decision in *Investar Investments Ltd., Liyuan Qi and Jian (Bob) Guo* can also be found in the Director’s Decisions section of the OSC website under the topical headings “Misleading Investors or the Public” and “Trading or Advising Without Appropriate Registration”.

¹⁷ The Director’s decision in *George Ranisau* can also be found in the Director’s Decisions section of the OSC website under the topical heading “Duty to Supervise”.



KEY POLICY INITIATIVES IMPACTING REGISTRANTS

- 5.1 Syndicated mortgages**
- 5.2 Targeted reforms and best interest standard**
- 5.3 Review of compensation practices**
- 5.4 Proposed amendments to registration rules for dealers, advisers, and investment fund managers**
- 5.5 Derivatives regulation**
- 5.6 Dealers and advisers servicing foreign resident clients from Ontario**
- 5.7 Independent dispute resolution services for registrants**
- 5.8 Proposed exemptions for distributions of securities outside of Canada**
- 5.9 Efforts to move to T+2 settlement cycle**
- 5.10 International Organization of Securities Commissions: Committee 3 – Market Intermediaries (C3)**

5 Key policy initiatives impacting registrants

5.1 Syndicated mortgages

Subsections 35(4) and 73.2(3) of the Securities Act provide that mortgages sold by persons registered or exempt from registration under mortgage brokerage legislation are exempt from the registration and prospectus requirements in Ontario. These exemptions currently include syndicated mortgages, which are defined as mortgages in which two or more persons participate, directly or indirectly, as the mortgagee. As such, syndicated mortgage investments are primarily regulated by the Financial Services Commission of Ontario (FSCO).

As detailed in the 2017 Ontario Budget, the government plans to transfer regulatory oversight of syndicated mortgage investments from FSCO to the OSC. This is consistent with the manner in which these products are regulated in most other provinces.

Going forward, the government will work with both FSCO and the OSC to plan an orderly transfer of the oversight of syndicated mortgage investments.

5.2 Targeted reforms and best interest standard

On April 28, 2016, the CSA published [Consultation Paper 33-404](#) *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* (the Consultation Paper). The Consultation Paper sought comment on proposed regulatory action aimed at enhancing the obligations that registrants owe to their clients. The Consultation Paper set out:

- a proposed set of regulatory amendments (the targeted reforms) to NI 31-103, and
- a proposed regulatory best interest standard, accompanied by guidance.¹⁸

¹⁸ The British Columbia Securities Commission (BCSC) did not consult on the proposed regulatory best interest standard.

The comment period ended on September 30, 2016 and the CSA received over 120 comment letters.

The CSA engaged in extensive consultations following the publication of the Consultation Paper, including roundtable sessions, registrant outreach sessions, meetings with individuals as well as groups of stakeholders, speaking at conferences, and meeting with members from the SROs.

On May 11, 2017, the CSA published [CSA Staff Notice 33-319](#) - *Status Report on Consultation Under CSA Consultation Paper 33-404 Proposals to Enhance the Obligation of Advisers, Dealers, and Representatives Toward Their Clients* (the Status Report). The Status Report provided a description of the consultation process on the Consultation Paper, identified key themes emerging from the various consultation activities, and indicated the direction that the CSA would be proceeding on the various reforms proposed in the Consultation Paper.

In the Status Report, the CSA expressed its support for advancing each of the areas of reform outlined in the Consultation Paper. However, in light of the significant feedback received on the proposals, the CSA is considering changes to refine or eliminate a number of the prescriptive elements of the targeted reforms and will not proceed with some of the elements of the proposed reforms.

The CSA also identified certain reforms that should be given higher priority in the next phase of the work, namely conflicts of interest, suitability, KYC, KYP, titles, and designations.

The Status Report also indicated that while the CSA remain firmly committed to developing the targeted reforms, the CSA did not reach consensus on proceeding with work to develop a regulatory best interest standard. The OSC and the Financial and Consumer Services Commission of New Brunswick (FCNB) confirmed their commitment to proceeding with work to articulate a regulatory best interest standard, indicating that this work will include continued consultation with stakeholders and SROs and will advance in parallel while working on the targeted reforms with the CSA. The BCSC, Alberta Securities Commission, Autorité des marchés financiers, and Manitoba Securities Commission are of the view that no further work should be done on the proposed regulatory best interest standard. The

Nova Scotia Securities Commission and the Financial Consumer Affairs Authority of Saskatchewan will consider the results of the OSC and FCNB's further consultations with stakeholders and the SROs.

Over the 2017-2018 fiscal year, the CSA will prioritize the work on many of the targeted reforms. This work will culminate in rule proposals that will be published for comment, providing further opportunity for meaningful input from stakeholders. The OSC and FCNB will also be further advancing the work on a proposed regulatory best interest standard on a parallel path.

5.3 Review of compensation practices

On December 15, 2016, the CSA published [CSA Staff Notice 33-318](#) - *Review of Practices Firms Use to Compensate and Provide Incentives to their Representatives* (CSA Staff Notice 33-318).

[CSA Staff Notice 33-318](#) outlines the results of a survey conducted in 2014 to identify the practices that firms use to compensate their representatives, including direct tools such as commissions, performance reviews, and sales targets (compensation arrangements), as well as indirect tools such as promotions and valuation of representatives' books of business for various purposes (for example, retirement and awards) (incentive practices). [CSA Staff Notice 33-318](#) also sets out the potential material conflicts of interest that could arise, if not properly controlled, from some of these compensation arrangements and incentive practices.

The survey focused on compensation arrangements and incentive practices in use for retail representatives at large financial institutions that serve clients in the MFDA and IIROC channels and high net worth clients in the portfolio manager channel.

Firms are reminded that we consider a conflict of interest to be any circumstance where the interests of different parties, such as the interests of a client and those of a registrant, are inconsistent or divergent. As explained in the NI 31-103CP, a registered firm's policies and procedures for managing conflicts should allow the firm and its staff to (i) identify conflicts of interest that should be avoided, (ii) determine the level of risk that a conflict of interest raises, and (iii) respond appropriately to conflicts of interest.

On the same day that CSA Staff Notice 33-318 was published, both [IIROC](#) and the [MFDA](#) each published their own notices outlining findings of their recent work in the area of compensation arrangements and incentive practices.

We may issue further guidance and/or proposed regulation related to compensation arrangements and incentive practices in light of our on-going work on this issue and in conjunction with our review and analysis of comments received on the [Consultation Paper 33-404](#).

5.4 Proposed amendments to registration rules for dealers, advisers, and investment fund managers

On July 7, 2016, the CSA published for comment proposals to amend the regulatory framework for dealers, advisers, and investment fund managers.

Since the implementation of NI 31-103 on September 28, 2009, we have monitored the operation of NI 31-103, NI 33-109, and related instruments (collectively, the National Registration Rules) and have engaged in continuing dialogue with stakeholders with a view to further enhancing the registration regime. Certain amendments to the National Registration Rules have been published since 2009 and the current proposed amendments, which range from technical adjustments to more substantive matters, are the latest result of this on-going monitoring and dialogue.

The current proposed amendments aim to achieve four objectives, namely:

- to make permanent certain temporary relief granted by the CSA in May 2015 relating to client reporting requirements introduced under “CRM2”, and also to add guidance to NI 31-103CP regarding the delivery of information required under CRM2,
- to enhance custody requirements applicable to registered firms that are not members of IIROC or the MFDA,
- to clarify the activities that may be conducted under the EMD category of registration in respect of trades in prospectus-qualified securities and to expand an existing exemption from the dealer registration requirement for registered advisers who trade in the securities of affiliated investment funds to their clients’ managed accounts, and
- incorporate other changes of a minor housekeeping nature.

The comment period for the proposed amendments ended on October 5, 2016. We have reviewed the comments received and anticipate that the final amendments will be published shortly.

5.5 Derivatives regulation



“The proposed business conduct regime will protect investors, accountability, and protect against market abuse.”

April 4, 2017 – Louis Morisset, CSA Chair and President, discussing NI 93-101 being published for comment

CRR staff have been working with the OSC Derivatives Branch in developing a number of rules relating to the regulation of derivatives, including proposed rules that will set out the principal business conduct and registration requirements and exemptions for derivatives

dealers and derivatives advisers (collectively, derivatives firms) and a proposed rule that will prohibit the advertising, offering, selling or otherwise trading of binary options to or with individual investors. In addition, CRR staff continue to work with the Derivatives Branch on the implementation of other rules relating to derivatives, including compliance reviews of derivatives market participants in connection with their compliance with the derivatives data trade reporting rule.

Derivatives business conduct and registration rules

On April 4, 2017, the CSA published for comment proposed [National Instrument 93-101 - Derivatives: Business Conduct](#) and a related companion policy (collectively, the Proposed Business Conduct Rule). The Proposed Business Conduct Rule sets out the principal business conduct obligations and exemptions for derivatives firms and certain of their representatives and will apply to a derivatives firm, regardless of whether the derivatives firm is registered or exempted from the requirement to be registered under Ontario securities law.

The Proposed Business Conduct Rule sets out a comprehensive regime regulating the conduct of derivatives firms and certain of their representatives, including requirements relating to the following:

- Fair dealing
- Conflicts of interest
- KYC
- Suitability
- Pre-trade disclosure
- Reporting
- Compliance
- Senior management duties
- Recordkeeping
- Treatment of derivative party assets

Many of the requirements in the Proposed Business Conduct Rule are similar to existing market conduct requirements applicable to registered dealers and advisers under NI 31-103 but have been modified to reflect the different nature of derivatives markets and their participants.

As indicated in the notice to the Proposed Business Conduct Rule, we are monitoring the work being conducted in connection with the CSA best interest initiative [CSA Consultation Paper 33-404](#) and may recommend amendments to the Proposed Business Conduct Rule at a later date based on this work.

We are also in the process of developing a proposed registration regime for derivatives firms and certain of their representatives and expect to publish Proposed National Instrument 93-102 - *Derivatives: Registration* and a related companion policy (collectively the Proposed Registration Rule) for comment in the fall of 2017 during the consultation period for the Proposed Instrument.

Prohibition on the offer or sale of binary option to individuals

CRR staff have been working with the Derivatives Branch, Enforcement Branch and the Investor Office in developing a number of strategies to respond to investor complaints over binary options fraud.

Binary options take the form of a wager in which investors bet on the performance of an underlying asset, often a currency, commodity, stock index or share. The timeframe on this bet is typically very short, sometimes hours or even minutes. When the time is up, the investor either receives a predetermined payout or loses the entire amount. In many instances, no actual trading occurs and the transaction takes place for the sole purpose of stealing money. In addition, those who have provided credit or personal information to binary options sites frequently fall victim to identity theft.

The firms and individuals involved in binary options trading platforms are often located overseas. Many of these products and the platforms selling them have been identified as vehicles to commit fraud. We emphasize that no offering of these products, including by a broker, dealer or platform, has been authorized in Canada. All current offerings in Canada are therefore illegal, with only limited and narrow exceptions for transactions with highly sophisticated investors. Nevertheless, some persons are using misleading information to promote these products as legal and legally offered.

Before making a decision to invest, investors should check the registration of a person or company offering the investment by visiting the [CSA website](#), the [National Registration Search Database](#) or the [CSA Disciplined Persons List](#). There are no registered individuals or firms permitted to trade binary options in Canada.

Over the last year, CRR staff have assisted Enforcement Branch staff in a number of enforcement proceedings involving unregistered offshore platforms that have victimized Canadian investors. In addition, CRR staff have worked with the Investor Office in developing investor warning materials about the risks of binary options, including the materials at <http://www.binaryoptionsfraud.ca/>.

On April 26, 2017, the CSA published for comment a proposed rule, [National Instrument 91-102 Prohibition of Binary Options](#), that would prohibit advertising, offering, selling or otherwise trading a binary option to or with an individual. The comment period is open until July 28, 2017 in Ontario.

5.6 Dealers and advisers servicing foreign resident clients from Ontario

We remind non-registered firms that the requirement to register is triggered when providing registerable services (for example, trading or advising) to foreign resident clients from offices, or with employees, in Ontario.

On June 5, 2015 [OSC Rule 32-505](#) - *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* (OSC Rule 32-505) and its companion policy came into force. [OSC Rule 32-505](#) provides exemptions from the relevant dealer and adviser registration requirements under the Securities Act, subject to certain conditions. These exemptions are for U.S. broker-dealers that are trading to, with, or on behalf of, clients that are resident in the United States, or for U.S. advisers that are acting as advisers to clients resident in the United States. In these cases, the requirement to register as a dealer or adviser in Ontario is triggered because these dealers and advisers have offices or employees in Ontario. The exemptions in [OSC Rule 32-505](#) are not available in respect of clients that are resident in Ontario.

Members of the CSA, except Ontario, issued parallel orders of general application (the Blanket Orders) granting exemptions from the requirement to register as a dealer or an

adviser on conditions that are substantially similar to those in [OSC Rule 32-505](#) (the OSC made [OSC Rule 32-505](#) to coordinate with the action taken by the CSA as orders of general application are not authorized under Ontario securities law).

For more information see section “1.5 Outbound advising and dealing” of [OSC Staff Notice 33-746](#).

5.7 Independent dispute resolution services for registrants

Release of the independent evaluation report of OBSI

As mentioned in last year’s annual report, the Ombudsman for Banking Services and Investments (OBSI) underwent an independent evaluation of its investment operations and practices by an external evaluator in early 2016 as required by the [Memorandum of Understanding](#) (MOU). The purpose of the review was to assess whether OBSI meets the standards set out by the CSA in the MOU and whether any reform to its operations or procedures are necessary to improve OBSI’s effectiveness. The final report [Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments \(OBSI\) Investment Mandate](#) was released by OBSI on June 6, 2016. The Report stated that OBSI meets the requirements of the MOU and that its decisions were fair and consistent to both firms and investors. The Report also included nineteen recommendations, including that OBSI be empowered to make decisions that are binding on firms. The Joint Regulators Committee (JRC) is currently reviewing the report and looking at various regulatory options to strengthen OBSI’s ability to secure redress for investors in response to this key recommendation made by the independent evaluator.

Publication of OBSI JRC Annual Report

On March 23, 2017, the CSA, IIROC, and the MFDA jointly published the third annual report of the JRC, see [CSA Staff Notice 31-348 - OBSI Joint Regulators Committee Annual Report for 2016](#) (the JRC Annual Report).

The JRC Annual Report provides an overview of the JRC’s mandate and also highlights the major activities in 2016, including a review of the independent evaluation report, and on-going monitoring of complaint trends and patterns that are of interest to the JRC, such as compensation refusals, amounts recommended by OBSI, and actual amounts paid, complaint volumes, and types of investment issues.

The JRC is comprised of representatives from the CSA and the SROs. It meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system. For more information on the JRC please see [JRC web page](#) on the OSC's website.

5.8 Proposed exemptions for distributions of securities outside of Canada

On June 30, 2016, the OSC published for a 90-day comment period proposed [OSC Rule 72-503 - Distributions Outside of Canada](#) and proposed Companion Policy 72-503 (together, the 2016 Proposal).

The 2016 Proposal was intended to replace "[Interpretation Note 1 - Distributions of Securities Outside Ontario](#)"¹⁹ (the Interpretation Note) and to provide a stand-alone regime for the distribution of securities outside Canada. The comment period expired on September 28, 2016 and we received 15 comment letters.

Subsequent to the publication for comment of the 2016 Proposal, the CSA decided to publish for comment proposed amendments to [NI 45-102](#) that would address many of the concerns associated with the resale of securities outside of Canada under section 2.14 of [NI 45-102](#).

In the interests of harmonizing resale regimes across the CSA for outbound securities, the OSC has proposed to remove the resale provisions from the 2016 Proposed Rule. We have also proposed a number of additional changes in response to comments that we received on the 2016 Proposal. As a result of these changes, a [revised proposal](#) was published for a 90-day comment period on June 29, 2017. The comment period is open until September 27, 2017.

5.9 Efforts to move to T+2 settlement cycle

The securities industry in Canada is changing the standard settlement cycle from the current period of three days after the date of a trade (T+3) to two days after the date of a

¹⁹ Interpretation Note 1 was published in connection with the Notice of Repeal of OSC Policy 1.5 *Distribution of Securities Outside of Ontario*, (March 25, 1983) 6 OSCB 226.

trade (T+2). It is expected that this change will occur on September 5, 2017, at the same time as the markets in the United States are expected to move to a T+2 settlement cycle.

Registered firms should continue to assess all of the potential impacts of a transition to a T+2 settlement cycle and make any necessary changes to their systems and processes for settling trades.

On April 27, 2017, the CSA published final amendments to [National Instrument 24-101 - Institutional Trade Matching and Settlement](#) to facilitate the expected move to a T+2 settlement cycle and to update, modernize, and clarify certain provisions in the rule. The amendments are expected to come into force on September 5, 2017.

For more information see:

- [CSA Consultation Paper 24-402](#) - *Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment* (see Annex E)
- [CSA Staff Notice 24-314](#) - *Preparing for the Implementation of T+2 Settlement: Letter to Registered Firms*
- [CSA Staff Notice 24-312](#) - *Preparing for the Implementation of T+2 Settlement*

5.10 International Organization of Securities Commissions (IOSCO): Committee 3 – Market Intermediaries (C3)

We continued to participate in IOSCO C3 during the past year. This committee is focused on issues related to market intermediaries (primarily broker-dealers) and comprises of representatives from over 30 regulators. The international developments and priorities at IOSCO C3 inform our policy and operational work, which is also guided by the principles and best practices published by IOSCO.

During the past year, IOSCO C3 published:

- its final report on [Update to the Report on the IOSCO Automated Advice Tools Survey](#), which identifies how automated advice tools have developed in IOSCO member jurisdictions, whether IOSCO member jurisdictions have any additional regulatory concerns, and whether there have been any regulatory initiatives undertaken or envisaged at a national level since the publication of the 2014 report,
- its final report on [IOSCO Survey on Retail OTC Leveraged Products](#), which set out the results of a survey of IOSCO members on their experiences with rolling spot (or

leveraged) forex contracts, contracts for differences, and binary options, applicable regulations and supervisory concerns, and

- its consultation report on [Order Routing Incentives](#), which sets out a review of the approaches and practices used by IOSCO members in their respective markets regarding order routing and execution, as well as planned reforms by IOSCO members.



ADDITIONAL RESOURCES

6 Additional resources

This section discusses how registrants can get more information about their obligations. The CRR Branch works to foster a culture of compliance through outreach and other initiatives. We try to assist registrants in meeting their regulatory requirements in a number of ways.

We continue to develop new discussion topics and update the Registrant Outreach program to registrants (see section 1.1 of this annual report) to help them understand and comply with their obligations. We encourage registrants to visit our [Registrant Outreach web page](#) on the OSC's website.

The [Industry: Dealers, Advisers and IFMs](#) section on the OSC website provides detailed information about the registration process and registrants' ongoing obligations. It includes information about compliance reviews and acceptable practices and provides quick links to forms, rules, past reports, and e-mail blasts to registrants. It also contains links to previous years' versions of our annual reports to registrants.

The [Industry: Investment Funds and Structured Products](#) section on our website also contains useful information for IFMs, including past editions of The Investment Funds Practitioner published by the IFSP Branch. The [Industry: Industry Resources - The Exempt Market](#) section on our website also contains useful information for issuers that are distributing securities under a prospectus exemption.

Registrants may also contact us. Refer to Appendix A of this report for the CRR Branch's contact information. The CRR Branch's PM, IFM, and dealer teams focus on oversight, policy changes, and exemption applications for their respective registration categories. The Registrant Conduct team supports the PM, IFM, dealer, registration, and financial analyst teams in cases of potential registrant misconduct. The financial analysts on the Compliance, Strategy, and Risk team review registrant submissions for financial reporting (such as audited annual financial statements, calculations of excess working capital, and subordination agreements). The Registration team focuses on registration and registration-related matters for the PM, IFM, and dealer registration categories (including mutual fund dealers), among others.

Appendix A – contact information for registrants

Director's Office

Name	Title	Telephone*	E-mail
Debra Foubert	Director	593-8101	dfoubert@osc.gov.on.ca
Ranjini Srikantan	Administrative Assistant	593-2320	rsrikantan@osc.gov.on.ca

Team 1 – Portfolio Manager

Name	Title	Telephone*	E-mail
Lisa Bonato	Manager	593-2188	lbonato@osc.gov.on.ca
Felicia Tedesco	Manager	593-8273	ftedesco@osc.gov.on.ca
Sabrina Philips	Administrative Assistant	593-2302	sphilips@osc.gov.on.ca
Chris Jepson	Senior Legal Counsel	593-2379	cjepson@osc.gov.on.ca
Kat Szybiak	Senior Legal Counsel	593-3686	kszybiak@osc.gov.on.ca
Leigh-Ann Ronen	Legal Counsel	204-8954	lronen@osc.gov.on.ca
Melissa Taylor	Legal Counsel	596-4295	mtaylor@osc.gov.on.ca
Andrea Maggisano	Legal Counsel	204-8988	amaggisano@osc.gov.on.ca
Carlin Fung	Senior Accountant	593-8226	cfung@osc.gov.on.ca
Trevor Walz	Senior Accountant	593-3670	twalz@osc.gov.on.ca
Teresa D'Amata	Accountant	595-8925	tdamata@osc.gov.on.ca
Scott Laskey	Accountant	263-3790	slaskey@osc.gov.on.ca
Daniel Panici	Accountant	593-8113	dpanici@osc.gov.on.ca
Tai Mu Xiong	Accountant	263-3797	txiong@osc.gov.on.ca

Team 2 - Investment Fund Manager

Name	Title	Telephone*	E-mail
Felicia Tedesco	Manager	593-8273	ftedesco@osc.gov.on.ca
Margot Sobers	Administrative Assistant	593-8229	msobers@osc.gov.on.ca
Robert Kohl	Senior Legal Counsel	593-8233	rkhoh@osc.gov.on.ca
Maye Mouftah	Senior Legal Counsel	593-2358	mmouftah@osc.gov.on.ca
Erin Seed	Senior Legal Counsel	593-4264	eseed@osc.gov.on.ca
Yan Kiu Chan	Legal Counsel – on secondment	204-8971	ychan@osc.gov.on.ca
Jennifer Lee-Michaels	Legal Counsel	593-8155	jleemichaels@osc.gov.on.ca
Faustina Otchere	Legal Counsel	596-4255	fotchere@osc.gov.on.ca
Alizeh Khorasanee	Senior Accountant	593-8129	akhorasanee@osc.gov.on.ca
Jessica Leung	Senior Accountant	593-8143	jleung@osc.gov.on.ca
Merzana Martinakis	Senior Accountant	593-2398	mmartinakis@osc.gov.on.ca
Estella Tong	Senior Accountant	593-8219	etong@osc.gov.on.ca
Daniel Brown	Accountant	593-2353	dbrown@osc.gov.on.ca
Saleha Haji	Accountant	593-2397	shaji@osc.gov.on.ca
Daniela Schipani	Accountant	263-7671	dschipani@osc.gov.on.ca
Jeff Sockett	Accountant	593-8162	jsockett@osc.gov.on.ca

Team 3 – Dealer

Name	Title	Telephone*	E-mail
Lisa Bonato	Manager	593-2188	lbonato@osc.gov.on.ca
Linda Pinto	Registration Administrator	595-8946	lpinto@osc.gov.on.ca
Paul Hayward	Senior Legal Counsel	593-8288	phayward@osc.gov.on.ca
Elizabeth Topp	Senior Legal Counsel	593-2377	etopp@osc.gov.on.ca
Adam Braun	Legal Counsel	593-2348	abraun@osc.gov.on.ca
Roxane Gunning	Legal Counsel	593-8269	rgunning@osc.gov.on.ca
Gloria Tsang	Legal Counsel	593-8263	gtsang@osc.gov.on.ca
Maria Carelli	Senior Accountant	593-2380	mcarelli@osc.gov.on.ca

Stratis Kourous	Senior Accountant	593-2340	skourous@osc.gov.on.ca
Susan Pawelek	Senior Accountant - secondment	593-3680	spawelek@osc.gov.on.ca
Dena Staikos	Senior Accountant	593-8058	dstaikos@osc.gov.on.ca
Allison Guy	Compliance Examiner	593-2324	aguy@osc.gov.on.ca
Jennifer Chan	Accountant	593-2351	jchan@osc.gov.on.ca
Mark Delloro	Accountant	597-7225	mdelloro@osc.gov.on.ca
Louise Harris	Accountant	593-2359	lharris@osc.gov.on.ca
Michael Rizzuto	Accountant	263-7663	mrizzuto@osc.gov.on.ca
George Rodin	Accountant	263-3798	grodin@osc.gov.on.ca
Jarrold Smith	Accountant	263-3778	jsmith@osc.gov.on.ca

Team 4 - Registrant Conduct

Name	Title	Telephone*	E-mail
Elizabeth King	Deputy Director	204-8951	eking@osc.gov.on.ca
Tekla Johnson	Administrative Assistant	593-8284	tjohnson@osc.gov.on.ca
Michael Denyszyn	Senior Legal Counsel	595-8775	mdenyszyn@osc.gov.on.ca
Mark Skuce	Senior Legal Counsel	593-3734	mskuce@osc.gov.on.ca
Victoria Paris	Legal Counsel	204-8955	vparis@osc.gov.on.ca
Marlene Costa	Legal Counsel	593-2192	mcosta@osc.gov.on.ca
Lisa Piebalgs	Forensic Accountant	593-8147	lpiebalgs@osc.gov.on.ca
Allison McBain	Compliance Examiner - secondment	593-8164	amcbain@osc.gov.on.ca
Rita Lo	Registration Research Officer	593-2366	rlo@osc.gov.on.ca

Team 5 - Compliance, Strategy and Risk

Name	Title	Telephone*	E-mail
Tekla Johnson	Administrative Assistant	593-8284	tjohnson@osc.gov.on.ca
Ahmed Meer	Senior Financial Analyst	263-3779	ameer@osc.gov.on.ca

Isabelita Chichioco	Financial Analyst	593-8105	ichichioco@osc.gov.on.ca
Helen Walsh	Lead Risk Analyst	204-8952	hwalsh@osc.gov.on.ca
Wayne Choi	Business Analyst	593-8189	wchoi@osc.gov.on.ca
Brandon Nixon	Business Analyst	595-8942	bnixon@osc.gov.on.ca
Clara Ming	Registration Data Analyst	593-8349	cming@osc.gov.on.ca
Lucy Gutierrez	Registration Support Officer	593-8277	lgutierrez@osc.gov.on.ca

Team 6 – Registration

Name	Title	Telephone*	E-mail
Louise Brinkmann	Manager	596-4263	lbrinkmann@osc.gov.on.ca
Linda Pinto	Registration Administrator	595-8946	lpinto@osc.gov.on.ca
Kamaria Hoo	Registration Supervisor	593-8214	khoo@osc.gov.on.ca
Feryal Khorasanee	Acting Registration Supervisor	595-8781	fkhorasanee@osc.gov.on.ca
Colin Yao	Legal Counsel	593-8059	cyao@osc.gov.on.ca
Jonathan Yeung	Accountant	595-8924	jyeung@osc.gov.on.ca
Jane Chieu	Corporate Registration Officer	593-3671	jchieu@osc.gov.on.ca
Chris Hill	Corporate Registration Officer	593-8181	chill@osc.gov.on.ca
Anne Leung	Corporate Registration Officer	593-8235	anneleung@osc.gov.on.ca
Anthony Ng	Corporate Registration Officer	263-7655	ang@osc.gov.on.ca
Kipson Noronha	Corporate Registration Officer	593-8258	knoronha@osc.gov.on.ca
Rachel Palozzi	Corporate Registration Officer	595-8921	rpalozzi@osc.gov.on.ca
Edgar Serrano	Corporate Registration Officer	593-8331	eserrano@osc.gov.on.ca
Jenny Tse Lin Tsang	Corporate Registration Officer	593-8224	jtselintsang@osc.gov.on.ca
Pamela Woodall	Corporate Registration Officer	593-8225	pwoodall@osc.gov.on.ca
Christy Yip	Corporate Registration Officer	595-8788	cyip@osc.gov.on.ca
Linda Tam	Individual Registration Officer	204-8957	ltam@osc.gov.on.ca
Dianna Cober	Individual Registration Officer	593-8107	dcober@osc.gov.on.ca
James Hunter-Swarm	Individual Registration Officer	593-3673	jhunterswarm@osc.gov.on.ca

Toni Sargent	Individual Registration Officer	593-8097	tsargent@osc.gov.on.ca
Azmeer Hirani	Individual Registration Officer	596-4254	ahirani@osc.gov.on.ca
Cheryl Pereira	Registration Officer	593-8149	cpereira@osc.gov.on.ca

OSC LaunchPad

Name	Title	Telephone*	E-mail
Pat Chaukos	Chief, OSC LaunchPad	593-2373	pchaukos@osc.gov.on.ca
Amy Tsai	Fintech Regulatory Advisor, OSC LaunchPad	593-8074	atsai@osc.gov.on.ca

*Area code (416)



The OSC Inquiries & Contact Centre operates from 8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday, and can be reached on the Contact Us page of

www.osc.gov.on.ca

If you have questions or comments about this report, please contact:

Stratis Kourous
Senior Accountant
Compliance and Registrant Regulation
skourous@osc.gov.on.ca
(416) 593-2340