



# Annual Summary Report for Dealers, Advisers and Investment Fund Managers - OSC Staff Notice 33-746

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This presentation is provided for general information purposes only and does not constitute legal or accounting advice.

Information has been summarized and paraphrased for presentation purposes and the examples have been provided for illustration purposes only.

Information in this presentation reflects securities legislation and other relevant standards that are in effect as of the date of the presentation.

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# Agenda

1. General overview: OSC Staff Notice 33-746
  2. Outcome of compliance reviews
  3. High risk compliance reviews and deficiencies
  4. Inadequate referral arrangements
  5. Know your client (KYC) and suitability
  6. Online advice
  7. Inadequate supervision of dealing representatives
  8. Firm and individual registration issues
  9. Update on registrant misconduct
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# General overview: OSC Staff Notice 33-746

# Key facts and stats

- OSC Staff Notice 33-746 – 8<sup>th</sup> publication of the CRR annual report
  - Information for registered firms and individuals directly regulated by the OSC:
    - Exempt market dealers (EMD)
    - Scholarship plan dealers (SPD)
    - Advisers (portfolio managers/PMs) and
    - Investment fund managers (IFMs)
  - Main areas of the annual report include:
    - Key policy initiatives impacting registrants
    - Our registrant outreach program
    - Issues related to the registration of individuals and firms
    - Reporting on items that affect all registrants:
      - Compliance review process
      - Deficiencies noted through compliance reviews during the year
      - Guidance on specific issues
    - Reporting on the outcome of registrant misconduct cases
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# Outcomes of compliance reviews

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# Outcomes of compliance reviews

- Outcomes of compliance reviews\*:

Outcomes of compliance reviews (all registration categories)	Fiscal 2015	Fiscal 2014
Enhanced compliance	40%	53%
Significantly enhanced compliance	47%	28%
Terms and conditions on registration	9%	10%
Surrender of registration	0%	3%
Referral to the Enforcement Branch	3%	5%
Suspension of registration	1%	9%

\* - the statistics apply to compliance reviews of firms and does not include action taken involving registration of individuals



# High risk compliance reviews and deficiencies

# High risk compliance reviews

- Background on high risk compliance reviews
  - Risk Assessment Questionnaire – sent in June 2014 to firms for which the OSC is the principle regulator
- Common deficiencies noted during high risk compliance reviews
  - Incomplete and/or inadequate books and records
    - Lack of or inadequate books and records to support compliance with securities law
    - Requested books and records not provided to staff in a timely manner
- Repeat Common deficiencies noted during high risk compliance reviews
  - Inadequate written policies and procedures
    - Written policies and procedures manual not tailored to a registrant's operations



# Topical Guide For Registrants

http://www.osc.gov.on.ca/en/Dealers\_topical-guide-for-registrants.htm Topical Guide for Registrants

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# Industry

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## Topical Guide For Registrants

This reference guide is designed to assist registrants and other stakeholders to locate topical guidance regarding compliance and registrant regulation matters. However, this reference guide is not an exhaustive list of all staff guidance or other resources on a topic and does not provide references or links to Ontario securities laws. The content of the guide is provided for information purposes only and not as advice. **The topical reference guide was last updated August 2015.** A list of the guidance documents that have been included in the guide can be found [here](#). The OSC's Compliance and Registrant Regulation Branch will periodically update the guide with new and historical materials.

Registrants may wish to proactively use the staff guidance they access through this guide as a self-assessment tool to strengthen their compliance with Ontario securities laws, and as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision. We encourage firms to seek advice from a qualified professional as they conduct their self-assessment and/or implement any changes to address issues that have been raised as a result of the guidance.

**Note to users:** The OSC's Investment Funds and Structured Products Branch provides guidance for issuers of publicly-offered investment funds. Please click [here](#) to access its homepage.

**SEARCH TIP** ▶ For a text search of this page press "Ctrl" and "F" simultaneously and then enter the text to be searched in the text box.

## Main topics

• Account statements	• Fees paid by investors (directly or indirectly)	• Personal trading
• Accredited investor prospectus exemption	• Financial reporting	• Policies and procedures
• Advisers	• Finder's fees	• Portfolio managers
• Alternative exam providers	• Flow-through limited partnerships	• Prohibited investments and prohibited transactions



# Inadequate referral arrangements

# Inadequate referral arrangements

- Continue to be an area of concern across all registration categories
- Issues noted where deficiencies were identified include:
  - *High # of referral arrangements*
  - *Business model reliant on third parties*
  - *Improper delegation of KYC and suitability obligations*
  - *Client confusion*
  - *Missing or incomplete referral agreements*
- Sections 13.7 to 13.10 of NI 31-103 outline the legal requirements
- Further guidance is available in Part 13 of the Companion Policy to NI 31-103



# Examples

# Example 1

- PM firm with over 1600 clients and only 2 registered ARs and 2 AARs
- Model portfolio services targeted towards retail investors
- Accepted a high level of referrals from financial planners
- Improper use of referral agents to discharge KYC
  - Financial planners collected KYC information and met with clients
- Resulted in terms and conditions being placed on the firm's registration
  - Compliance consultant to develop a remediation plan
  - Remediation plan called for all referred clients to be contacted directly
  - Amendments to referral agreements focusing on enhancing oversight of planners

## Example 2

- PM firm with over 1800 clients and only 5 registered ARs and 2 AARs
- Numerous referral agreements in place with professional firms or affiliates
- Over 90% of the client base was referred to the PM firm
- Third party referral agents collected client KYC information using the PM firm's documents (e.g. Investment Questionnaire)
  - Clients were not able to provide the name of their AR
  - Clients disclosed changes to their KYC information to the referral agent
- Initial meetings between referral agents and clients took place without the presence or involvement of a registered AR of the PM firm.
  - Documents were signed prior to any discussion with an AR
  - Client questions were addressed to the referral agent and not an AR

# Items to consider regarding referrals

## 1. Agreement

- Have we entered into an appropriate referral agreement?
- Does the referral agreement adequately:
  - Identify the roles and responsibilities of each party
  - Identify a non-exhaustive list of activities that the referral agent can engage in
  - Identify how we will monitor and enforce the referral agent's compliance

## 2. Disclosure

- Have clients received appropriate disclosure?
  - Referral fees
  - Conflicts of interest

## 3. Resourcing

- Do we have appropriate resources to service the referred clients?
  - How will we ensure to meet out regulatory responsibilities?
  - Do we need to hire additional ARs and/or AARs?



# Inadequate update of clients' KYC and suitability information

# Collection and documentation of KYC information

- Requirements
  - Under paragraph 13.2(2)(c) of NI 31-103, a registrant must take reasonable steps to ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 [suitability]
    - i. The client's investment needs and objectives
    - ii. The client's financial circumstances
    - iii. The client's risk tolerance
  - Under subsection 13.2(4), a registrant must take reasonable steps to keep the information required under this section current
- What is current?
  - For a PM with discretionary authority, frequently or at least annually.
  - For a dealer, at the time a proposed trade or recommendation is made.
- 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 (issued January 9, 2014)

# Common practice for updating KYC

- A growing number of PM's have adopted a policy whereby all clients are delivered a letter/request form asking about changes to the client's KYC information
  - Overall, this appears to be a proactive approach to ensuring KYC is kept current
  - HOWEVER.....we have noted certain concerns:
    1. There is no back-end to the process; only negative confirmation.
    2. The letter/request triggers the client to call their PM, however, there is no evidence of the discussion being maintained.
    3. The letter/request asks the client to contact someone other than their AR (e.g. referral agent or administrative staff)
- Best practices include:
  - Follow-up procedures are used to contact all clients
  - Letter/request should instruct the client to call their AR directly and provide the ARs contact information
  - Letter/request should provide examples of changes that should be reported



# Online advice

# Online advice

- Current trend impacting the PM space
  - New PMs providing investment management services through an interactive website
  - Traditional PMs expanding their operations to offer online advice
- CSA Staff Notice 31-342 – *Guidance for Portfolio Managers Regarding Online Advice* (issued September 24, 2015)
- Characteristics of the online advice business model
  - Technology intensive
  - Retail client focused
  - Simple investment products
  - Low-cost fee structure

# Online advice continued...

## ***"Robo-advisers"***

- Term is frequently used in the media and can be misleading
- Refers to firms operating in the United States
- Fully automated computer system generates and delivers advice to investors

## ***"Online investment advisers"***

- Viewed as being a more accurate term to define these firms in Canada
- Firms offer 'hybrid services' that include:
  - The use of an interactive online interface to communicate with investors, and
  - The involvement of registered advising representatives for on-boarding of new clients and investment decision making responsibilities.

# Online advice continued...

## **Registration**

- No “online advice” exemption
  - Firm’s applying for registration must file Form 33-109F6 – *Firm Registration* and existing registrants must file Form 31-109F5 – *Change of Registration*
- The firm will be required to file substantial documentation including:
  - Online KYC questionnaire
  - Investor profiles and model portfolios offered
  - And details regarding the related processes
- The firm will likely also be requested to attend an in-person meeting to answer questions raised by staff and provide a live demonstration of the online functionality of the platform

## **Regulatory framework**

- Requirements of NI 31-103 are “technology neutral”; rules are the same



# Supervision of dealing representatives

# Supervision of dealing representatives

- One of an EMD's fundamental obligations is to properly supervise its dealing representatives ("DR")
- s. 32(2) of the Securities Act requires EMDs to establish and maintain systems of control and supervision for controlling their activities and supervising their DRs
- s. 11.1 of 31-103CP provides that anyone who supervises DRs must take all reasonable measures to ensure that the EMD and the DRs:
  - deal fairly, honestly and in good faith
  - comply with securities law
  - comply with the firm's policies and procedures
  - are proficient

# Supervision of dealing representatives (cont'd)

- Deficiencies identified due to inadequate supervision:
  - lack of KYC information collected
  - improper reliance on prospectus exemptions
  - lack of product knowledge
  - ineffective review of trades
  - lack of awareness about DRs':
    - outside business relationships
    - social media marketing
    - outside employment and business activities
    - personal trading

# Supervision of dealing representatives (cont'd)

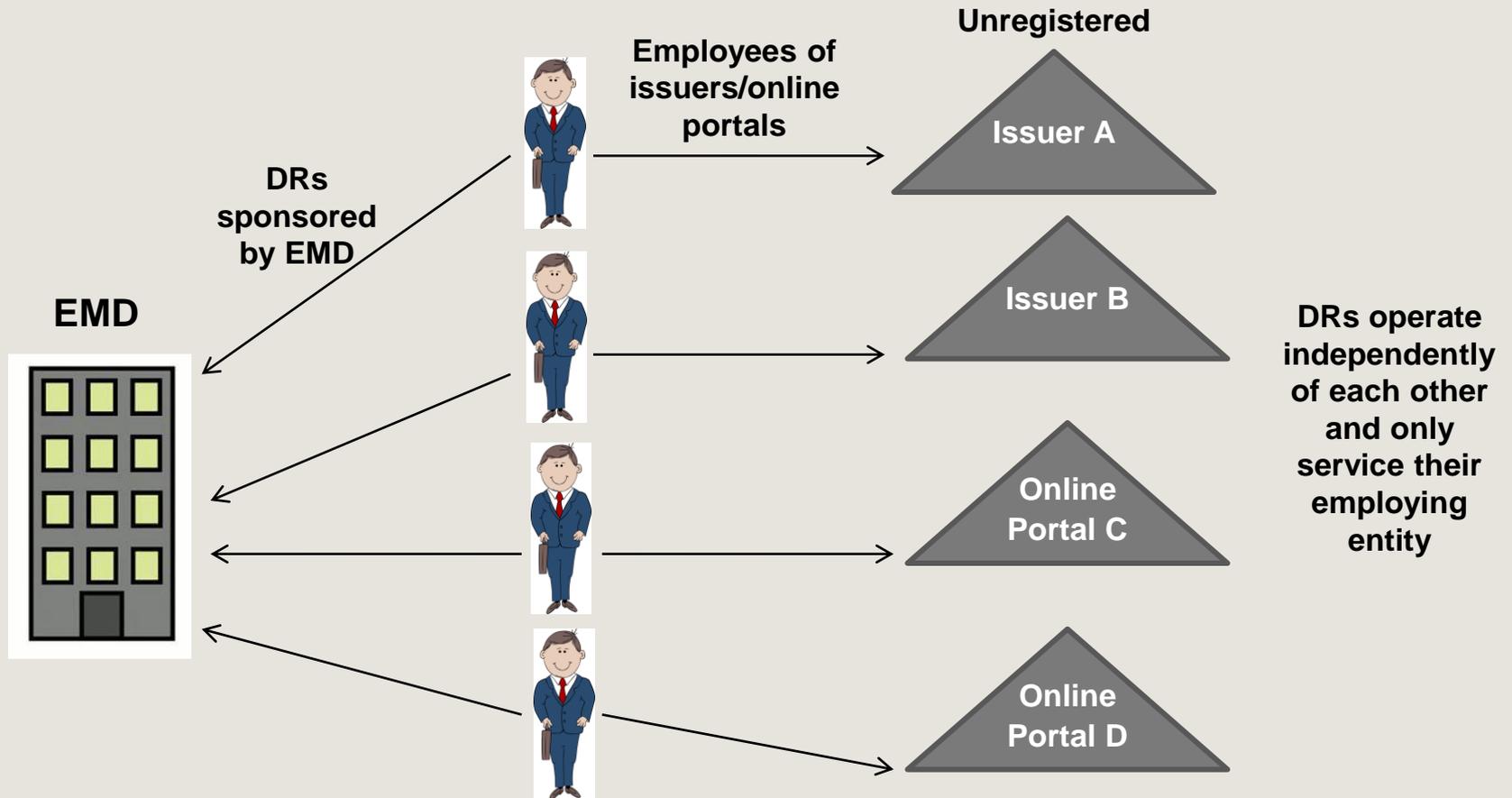
## Acceptable practices

- establish, maintain and apply policies and procedures to supervise DRs' activities
- provide ongoing training
- conduct formal reviews of DRs
- compliance oversight and reporting

## Unacceptable practices

- trade in securities not approved by the firm
- use and send documents on anything but the EMD's letterhead
- conduct outside business activities not approved by the firm
- conduct marketing without the firm's knowledge

# Supervision of dealing representatives (cont'd)



# Supervision of dealing representatives (cont'd)

- Concerns with EMDs sponsoring DRs for the sole purpose of distributing securities of DRs' employing or affiliated issuers/online portals
- Deficiencies identified:
  - Inadequate controls and oversight over business operations
  - DRs operate independently of EMD
  - DRs do not know or consider other products of EMD
  - DRs receive fixed compensation or salary from issuers/online portals
  - No mention of EMD to investor clients by DRs

# Supervision of dealing representatives (cont'd)

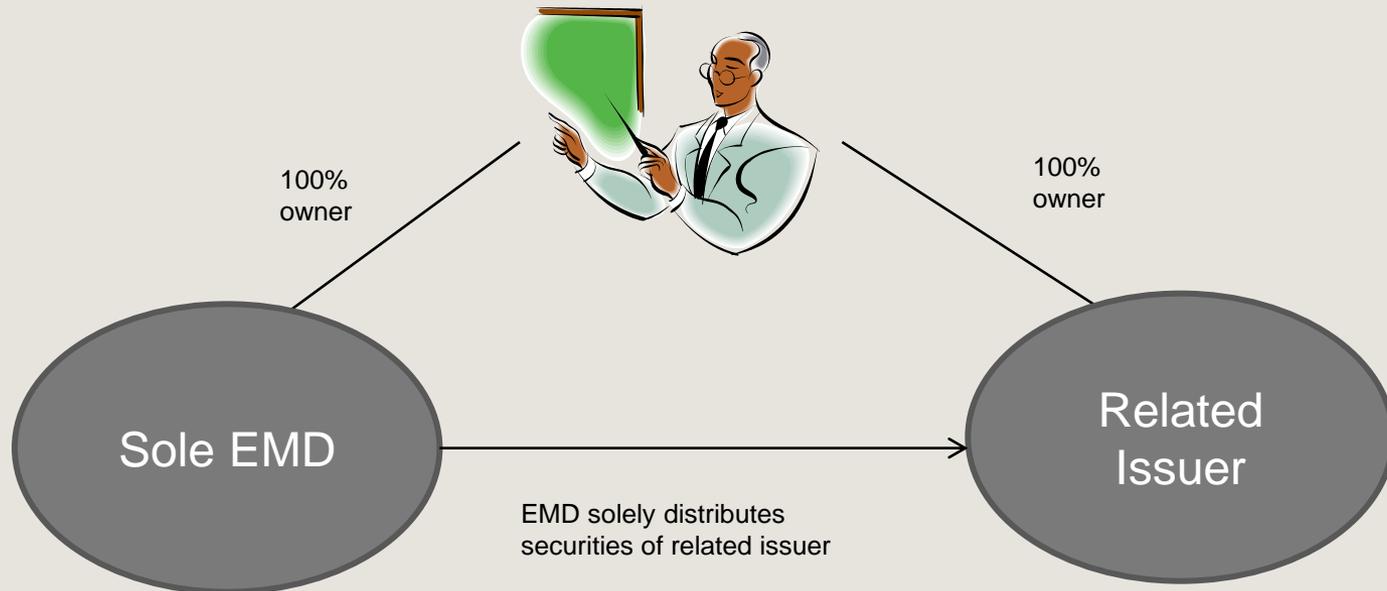
- para. 25(1)(b) of the Securities Act provides that an individual registered as a DR of a registered firm must be acting *on behalf of* such firm
- s. 11.1 of NI 31-103 requires a firm to establish, maintain and apply policies and procedures which establish a system of controls and supervision sufficient to:
  - a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities law, and
  - b) manage the risks associated with its business in accordance with prudent business practices

# Supervision of dealing representatives (cont'd)

Acceptable practices	Unacceptable practices
<ul style="list-style-type: none"><li>• DR acts on behalf of EMD</li></ul>	<ul style="list-style-type: none"><li>• DR operates its “own business” independent of EMD</li></ul>
<ul style="list-style-type: none"><li>• DR compensated by EMD for registrable activities</li></ul>	<ul style="list-style-type: none"><li>• DR compensated by issuer for registrable activities</li></ul>
<ul style="list-style-type: none"><li>• DRs trained on all products offered by EMD</li></ul>	<ul style="list-style-type: none"><li>• DRs hired for sole purpose of distributing their own product</li></ul>
<ul style="list-style-type: none"><li>• Controls and supervision to oversee DRs</li></ul>	<ul style="list-style-type: none"><li>• Minimizing compliance and supervision of DRs</li></ul>

# Supervision of dealing representatives (cont'd)

- EMDs who trade solely or primarily in securities of a limited number of related or connected issuers (“captive dealers”) raise unique supervisory concerns



# Supervision of dealing representatives (cont'd)

- This business model has an inherent conflict of interest
- Deficiencies identified include:
  - concealment of poor financial condition of issuer
  - sale of unsuitable investments
  - high investment concentration in issuer

# Supervision of dealing representatives (cont'd)

**Do**

- ensure that primary obligation is to the investor
- complete – and document – KYC, KYP and suitability
- refer to Staff Notice 31-336 for further guidance on KYC, KYP and suitability

**Don't**

- assume investor is client of the issuer
- prioritize EMD's relationship with the issuer
- rely on KYP of the issuer, without independent assessment

# Supervision of dealing representatives (cont'd)

Pre-registration	Post-registration
<ul style="list-style-type: none"><li>• Explain how you will ensure DRs understand conflicts of interest that exist and may arise</li></ul>	<ul style="list-style-type: none"><li>• During compliance reviews, staff will focus on whether DRs are addressing conflicts of interest properly</li></ul>
<ul style="list-style-type: none"><li>• Propose controls (e.g., policies and procedures) that will ensure proper supervision of DRs</li></ul>	<ul style="list-style-type: none"><li>• Review controls on an ongoing basis to ensure DRs continue to be properly supervised</li></ul>
<ul style="list-style-type: none"><li>• Advise if you plan to distribute related/connected issuer products in the future, so that staff is aware of possible DR supervision issues</li></ul>	<ul style="list-style-type: none"><li>• File Form 33-109F5 <i>Change of Registration Information</i> if business changes to captive dealer model to allow staff to consider new DR supervision issues</li></ul>



# Firm and individual registration issues

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# Changes to firm registration information

- Must notify the OSC of a change to previously submitted registration information on Form 33-109F6 *Firm Registration* by:
  - completing Form 33-109F5 *Change of Registration Information*,
  - including a blackline of the amended sections of Form 33-109F6, and
  - filing the documents through the OSC's online filing portal.
- Required changes and deadlines – Part 3 of NI 33-109
  - 10 or 30 calendar days
- Late fees – Appendix D of OSC Rule 13-502 *Fees*
  - \$100 per business day

# Changes to firm registration information (cont'd)

## Companion Policy 33-109CP *Registration Information*

### Appendix A

#### Summary of Notice Requirements in National Instrument 33-109

Description of Change	Notice Period	Section	Form submitted
<b>Firms – Form 33-109F6 information</b>			<b>by e-mail, fax or mail</b>
Part 1 – Registration details	10 days	3.1(1)(b)	Form 33-109F5
Part 2 – Contact information, including head office address (except 2.4)	10 days		
Item 2.4 – Agent and Address for service [Items 3 and 4 of Schedule B to Form 33-109F6]	10 days	3.1(4)	Schedule B to Form 33-109F6 <i>Submission to jurisdiction</i>
Part 3 – Business history & structure	30 days	3.1(1)(a)	Form 33-109F5
Part 4 – Registration history	10 days	3.1(1)(b)	
Part 5 – Financial condition	10 days		
Part 6 – Client relationships	10 days		
Part 7 – Regulatory action	10 days		
Part 8 – Legal action	10 days		

# Changes to firm registration information (cont'd)

**Do**

- File updates for any required changes
- Consider whether changes need to be made for both firm information (Form 33-109F6) and individual information (Form 33-109F4)

**Don't**

- Rely on information provided through other requirements as a substitute for reporting changes on Form 33-109F5 (e.g. section 11.9/11.10 notices, financial statements)
- Rely on filings made to IIROC or MFDA as a substitute for reporting changes on Form 33-109F5.

# Changes to individual registration information

- Must notify the OSC of a change to previously submitted registration information on Form 33-109F4 by completing Form 33-109F5 via NRD
- Required changes and deadlines – Part 4 of NI 33-109
  - 10 or 30 calendar days
- Late fees – Appendix D of OSC Rule 13-502 *Fees*
  - \$100 per business day

# Changes to individual registration information (cont'd)

## Companion Policy 33-109CP *Registration Information*

Appendix A			
Summary of Notice Requirements in National Instrument 33-109			
Individuals – Form F4 information			in NRD format
Item 1 – Name	10 days	4.1(1)(b)	Form 33-109F5
Item 2 – Address	10 days		
Item 3 – Personal information	No update required	4.1(2)	
Item 4 – Citizenship	30 days	4.1(1)(a)	
Item 5 – Registration jurisdictions	10 days	4.1(1)(b)	
Item 6 – Individual categories	10 days		
Item 7 – Address for service	10 days		
Item 8 – Proficiency	10 days		
Item 9 – Location of employment	10 days		
Item 10 – Current employment	10 days		
Item 11 – Previous employment	30 days	4.1(1)(a)	
Item 12 – Terminations	10 days	4.1(1)(b)	
Item 13 – Regulatory disclosure	10 days		
Item 14 – Criminal disclosure	10 days		
Item 15 – Civil disclosure	10 days		
Item 16 – Financial disclosure	10 days		
Item 17 – Ownership of securities	10 days		

# Changes to individual registration information (cont'd)

**Do**

- File updates for any required changes
- Consider whether changes need to be made for multiple sections of Form 33-109F4
- Sponsoring firms should have policies and procedures in place to ensure registered and permitted individuals have up-to-date information

**Don't**

- Wait and combine multiple changes into one NRD submission. Each change may have a difference deadline date. Separate late fee for each change.

# Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals*

- Automatic reinstatement of registration or permitted individual status applies if conditions under subsection 2.3(2) or 2.5(2) of NI 33-109 are met
- Only individuals who meet these conditions are permitted to file Form 33-109F7 via NRD
  - Otherwise, must file Form 33-109F4 via NRD as a “reactivation of registration”

## Conditions for individuals (s. 2.3(2) of NI 33-109):

- (a) Form 33-109F7 submitted on or before the 90th day after the cessation date;
- (b) employment with former sponsoring firm did not end because the individual was asked by the firm to resign, resigned voluntarily or was dismissed, following an allegation against the individual of criminal activity, breach of securities legislation or SRO rules;
- (c) no changes to information previously submitted for items 13-16 of Form 33-109F4;
- (d) individual is seeking reinstatement with a sponsoring firm in one or more of same categories of registration in which the individual was registered on the cessation date;
- (e) new sponsoring firm is registered in the same category of registration in which the individual’s former sponsoring firm was registered.

# Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals (cont'd)*

Conditions for permitted individuals (s. 2.5(2) of NI 33-109):

(a) Form 33-109F7 is submitted in accordance with NI 31-102 *National Registration Database*

(i) no more than 10 days after becoming a permitted individual of the new sponsoring firm, and

(ii) no more than 90 days after the cessation date;

(b) the individual holds the same permitted individual status with the new sponsoring firm that they held with the former sponsoring firm;

(c) the conditions described in paragraphs (b) and (c) of subsection 2.3(2) are met.

## Acceptable practices

**Do**

- Obtain and review Form 33-109F1 to determine if reinstatement is appropriate

# Reactivation of individual registration

- Applies when an individual who has an NRD record is applying for registration or seeking review as a permitted individual and is not eligible for reinstatement of registration under subsection 2.3(2) or 2.5(2) of NI 33-109
- File Form 33-109F4 via NRD

**Do**

- Complete entire Form 33-109F4
- Update for any changes to previously submitted information
- Must disclose all details surrounding individual's resignation, termination or dismissal for cause by the individual's previous employers

# Voluntary surrender of registration

- Director considerations:
  - (a) all financial obligations to its clients have been discharged;
  - (b) all requirements prescribed by regulations for the surrender of registration have been fulfilled or will be fulfilled; and
  - (c) surrender is not prejudicial to the public interest
- File an application online. Include:
  - written consent to suspension (pending our review of the surrender application);
  - reason(s) for the surrender;
  - the date that the firm has ceased registerable activities;
  - confirmation whether the firm holds or has ever held client assets;
  - future plan of the firm.

# Voluntary surrender of registration (cont'd)

- Additional documentation required to support the surrender application:
  - An officer's certificate
  - Financial statements dated after the firm ceased registerable activities
  - Auditor's comfort letter or specified procedures report to provide evidence that all financial obligations to clients have been discharged

# Voluntary surrender of registration (cont'd)

## Officer's/Director's Certificate

I, [Insert name of UDP], the ultimate designated person of [Insert name of firm] (the Firm) represent and provide the following information and documents to the directors of the Commissions listed below as part of the Firm's surrender of registration(s):

- [Insert Commission name] (the Principal Regulator)
  - [Insert Commission name]
  - [Insert Commission name]
  - [Insert Commission name]  
(collectively, the Commissions)
1. The Firm ceased registrable activities as [Insert registration categories] on [Insert date].
  2. The Firm has discharged its financial obligations to its clients, including the [Insert as applicable - investment funds/managed accounts etc.] that it formerly managed.
  3. The Firm did not hold client assets.
  4. There are no existing or potential claims or liabilities against the Firm by its clients.
  5. There are no unresolved complaints against the Firm by its clients.
  6. The Firm's unaudited financial statements submitted as part of this surrender application present fairly the financial position of the Firm in accordance with International Financial Reporting Standards or U.S. GAAP.

I represent that the above representations, evidence, information and documents are true, they are not misleading and they do not omit any fact that is required to be stated or that is necessary to make them not misleading.

I understand that it is an offence under the Securities Act to make a statement to the Commission that is misleading or untrue.

# Voluntary surrender of registration (cont'd)

## Example of auditor's comfort letter

**Auditor's Report  
on Compliance with the Ontario Securities Act**

To the Ontario Securities Commission

We have audited [company name]'s compliance as at December 31, 20xx with the requirement established under section 30 of the *Ontario Securities Act* (the Act) to have discharged all of its financial obligations to its clients. Compliance with the requirement established by the provisions of the Act is the responsibility of the management of [company name]. Our responsibility is to express an opinion on this compliance based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether [company name] complied with the requirement established by the Act referred to above. Such an audit includes examining on a test basis, evidence supporting compliance, evaluating the overall compliance with the Act, and where applicable, assessing the accounting principles used and significant estimates made by management.

In our opinion, [company name] is in compliance, in all material respects, with the requirement established under section 30 of the Act, to have discharged all of its financial obligations to its clients.

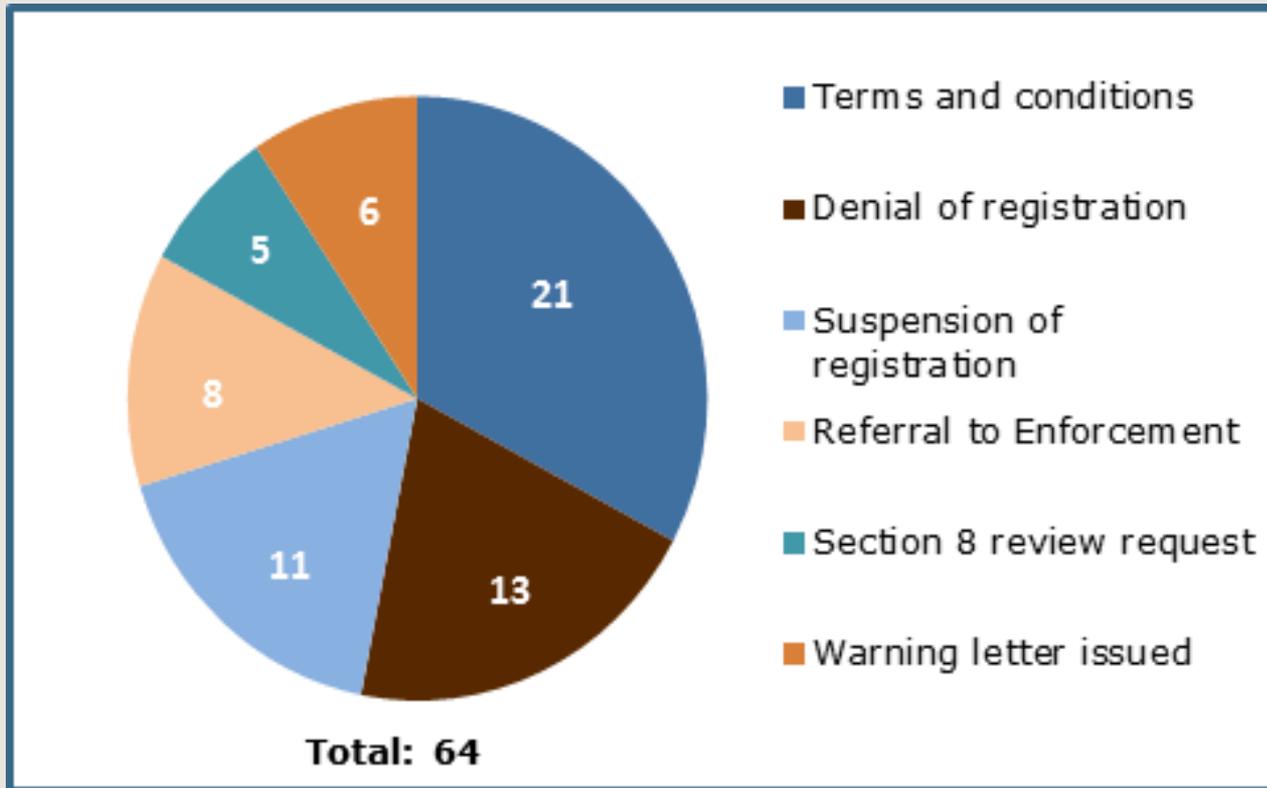


# Acting on registrant misconduct

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# Regulatory Action April 1, 2014 to March 31, 2015



# CSA Disciplined Persons List

- CSA Disciplined Persons List (DPL) expanded to include individual registrants subject to discipline through CRR Branch
- Includes regulatory action based on concerns with the individual's integrity (such as suspension, refusal of registration or strict supervision)
- DPL available on CSA website

# Criminal Charges

- NI 33-109 requires individual registrants to notify the regulator of changes to information, including changes to Item 14 (criminal disclosure)
- Non-disclosure of criminal charges and convictions is problematic regardless of the underlying crime
- Where charges are brought pursuant to *Criminal Code* that may be relevant to suitability for registration (theft, fraud, perjury, identity theft)
- We will take immediate steps to protect investors (such as imposing supervisory terms and conditions) pending the outcome of the criminal proceedings
- We reserve the right to investigate independently or take further action as the case advances.
- This year strict supervision was imposed in 3 such cases

# Accessing Director decisions just got easier . . .

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## Industry

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### Related Information

Procedures for Opportunities To Be Heard Before Director's Decisions on Registration Matters

## Director's Decisions

Firms and individuals have the right to a hearing with the Director before the OSC:

- imposes terms and conditions on a registration, or
- refuses an application for registration, reinstatement of registration, or amendments to a registration.

This is known as an "opportunity to be heard".

An opportunity to be heard is normally conducted in writing, although it can be conducted in person. The Director will issue a decision on the matter in writing to the firm or individual, and to OSC staff. The firm or individual has the right to ask the OSC to review the Director's decision.

Listed below are Director's decisions relating to opportunities to be heard since 2003.

By Year | By Topic

This page presents decisions of the Director on registration matters arising out of Opportunities to be Heard according to topic. The headings used on this page represent some of the main issues that arise in these Director decisions.

**The fact that a decision is listed under a particular heading means that the conduct described by the heading was alleged in the case, and not necessarily that the Director found the individual or company responsible for the conduct.** In addition, some decisions involve more than one issue and accordingly they appear under multiple headings. Stakeholders should read a decision in full before referring to it for any purpose.

This page includes decisions of the Director on registration matters that have been issued since March 12, 2003, however stakeholders should determine whether there are any earlier decisions of the Director or the Commission that may be relevant for their purposes. Decisions of the Director and the Commission can be found in the OSC Bulletin.

This page is for informational purposes only, and is not intended to be legal advice. Stakeholders may wish to consult legal counsel if they have any questions about the application of a particular decision to their own circumstances.

### Appointing an Ultimate Designated Person or Chief Compliance Officer

[New Solutions Capital Inc. and Ronald James Ovenden](#)

[Ittihad Securities Inc.](#)

# Director decisions published this year

- *Re Wealth Stewards Portfolio Management Inc. and Sushila Lucas*, (2014), 37 O.S.C.B. 5855
- *Re Acasta Capital*, (2014), 37 O.S.C.B. 7503
- *Re Arcady Burdo*, (2014), 37 O.S.C.B. 7829
- *Re Duffy* (2014), 37 O.S.C.B. 9409
- *Re Gold Investment Management Inc.* (2014), 37 OSCB 9565
- *Re Reaney* (2015), 38 O.S.C.B. 86, *application for hearing and review dismissed* (2015), 38 O.S.C.B. 6404
- *Re Freedman and Sloane Capital Corp.*, (2015), 38 O.S.C.B. 6412

# *Freedman and Sloane Capital Corp.*

- Sloane was a Toronto-based EMD. Freedman was the UDP, CCO, DR, 100% shareholder.
- Compliance review in 2012 found numerous significant deficiencies, including in the areas of KYC, KYP, and suitability.
- The number of issuers sold by Sloane rapidly increased from 7 to 25.
- Second compliance review commenced in the fall of 2013 found 10 significant repeat deficiencies, including in the areas of KYC, KYP, and suitability

## *Freedman and Sloane, cont.*

- KYC deficiencies:
  - “Dealer-after-the-fact”.
- KYP deficiencies:
  - Securities distributed before due diligence completed.
  - Freedman did not take appropriate steps to review financial statements of issuers.
  - Freedman unaware of significant detrimental information regarding principal of one issuer when information was readily available on the internet.
- Suitability deficiencies:
  - Reliance on concept of “unsolicited trade” to explain failure to discharge suitability obligation.

## *Freedman and Sloane, cont.*

- Recommendation to Director to suspend registration of Sloane and Freedman.
- OTBH requested and settled on terms:
  - EMD assets of Sloane sold to Calgary-based EMD.
  - Sloane permanently suspended.
  - Freedman suspended (CCO/UDP 5 years, DR 10 months), 3-year prohibition on being a permitted individual, completion of CPH before reapplying, strict supervision for one year.

## *Gold Investment Management Inc.*

- PM offering model portfolio services targeted to retail investors in various provinces including significant client base in Ontario.
- Accepted referrals from unregistered financial planners. Relied on financial planners to collect KYC information from clients.
- May 2013 – Consented to terms and conditions including:
  - retaining a compliance consultant to strengthen compliance system
  - remediation plan including contacting all referred clients by end of the year.
- Became clear that not all referred clients would be contacted by the end of the year. Staff recommended additional T&Cs to prevent firm from taking on new clients, and restricting firm's ability to accept additional funds from existing clients.

## *Gold Investment Management, cont.*

- December 2013 – OTBH requested and firm consented to T&Cs on an interim basis while settlement discussions ongoing.
- October 2014 – Settlement agreement included new T&Cs:
  - retainer of consultant to continue,
  - monthly reporting by consultant on KYC reviews done and number of new clients taken on,
  - annual compliance reviews by consultant to assess compliance with Ontario securities law, for a period of three years, and
  - amendment of referral agreement to provide for:
    - annual meetings between firm and referral agents and attestation that referral agents did not engage in registerable activity, and
    - requirement that referral agent provide prior written notice to Gold before agent amends its website in any way.

# *Wealth Stewards Portfolio Management Inc. and Sushila Lucas*

- Wealth Stewards was a registered PM. Sushila Lucas was the UDP, CCO and sole registered advising representative.
- An unregistered individual, Bruce Deck, handled the firm's KYC, suitability and advising responsibilities. Deck was a 50% owner of the firm and maintained a financial planning business. Clients were asked to sign a waiver that Deck had not provided investment advice.
- Lucas falsely signed documents attesting that she had met with clients and verified their identity – this activity was in fact improperly delegated to Deck.
- Following an OTBH, the Director suspended the firm's registration indefinitely. Lucas was suspended as UDP and CCO for 3 years and as advising representative for 6 months. Lucas was required to complete educational requirements prior to reactivation of registration.

# The Signature Cases – *Duffy, Reaney*

- Reaney is now the leading Ontario securities regulatory decision on pre-signed forms and forgeries “for convenience”.
  - Principles confirmed or emerging from Reaney:
  - In a Director’s suspension case, suitability for registration assessed at the time of the hearing (i.e., intervening events will be considered).
  - Review of MFDA and IIROC definitions of “forgery”.
  - Forgery always harmful, even if done “for convenience”. Identified aggravating factors.
  - Forgery not permissible just because it’s for a family member.
  - Evidence of client support not persuasive.
  - OSC oversees registration matters and is not bound by MFDA staff decisions regarding compliance and Enforcement.
  - Importance of educational impact of decision (i.e., “general deterrence”).
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# References

- OSC Staff Notice 33-746 *Annual Summary Report for Dealers, Advisers and Investment Fund Managers*  
[http://www.osc.gov.on.ca/documents/en/Securities-Category3/sn\\_33-746\\_annual-rpt-dealers-advisers.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3/sn_33-746_annual-rpt-dealers-advisers.pdf)
  - Topical Guide for Registrants:  
[http://www.osc.gov.on.ca/en/Dealers\\_topical-guide-for-registrants.htm](http://www.osc.gov.on.ca/en/Dealers_topical-guide-for-registrants.htm)
  - 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:*  
[https://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20140109\\_31-336\\_kyc-kyp-suitability-obligations.htm](https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140109_31-336_kyc-kyp-suitability-obligations.htm)
  - CSA Staff Notice 31-342 *Guidance for Portfolio Managers Regarding Online Advice*  
[https://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20150924\\_31-342\\_portfolio-managers-online-advice.htm](https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20150924_31-342_portfolio-managers-online-advice.htm)
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# References

- National Instrument 33-109 *Registration Information*  
<https://www.osc.gov.on.ca/en/14018.htm>
- Registration-related forms (including how to submit them to the OSC):  
[https://www.osc.gov.on.ca/en/Dealers\\_forms\\_index.htm](https://www.osc.gov.on.ca/en/Dealers_forms_index.htm)
- Overview of the Registration Process (February 2014 Registrant Outreach)  
[https://www.osc.gov.on.ca/documents/en/Dealers/ro\\_20140220\\_registration-process.pdf](https://www.osc.gov.on.ca/documents/en/Dealers/ro_20140220_registration-process.pdf)
- OSC Rule 13-502 *Fees* (for late fees and activity fees)  
[https://www.osc.gov.on.ca/en/SecuritiesLaw\\_13-502.htm](https://www.osc.gov.on.ca/en/SecuritiesLaw_13-502.htm)
- Participation Fee Calculation (September 2015 Registrant Outreach):  
[https://www.osc.gov.on.ca/documents/en/Dealers/ro\\_20150918\\_participation-fees-calculation.pdf](https://www.osc.gov.on.ca/documents/en/Dealers/ro_20150918_participation-fees-calculation.pdf)



# Questions?

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