



ONTARIO
SECURITIES
COMMISSION

Annual Summary Report for Dealers, Advisers and Investment Fund Managers

Compliance and Registrant Regulation

OSC Staff Notice 33-747

July 21, 2016

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DIRECTOR'S MESSAGE

Looking forward to the 2016-2017 fiscal year, the Compliance and Registrant Regulation (CRR) Branch will be focusing on compliance reviews, our registrant outreach program and policy initiatives and projects.

Among other things, our compliance reviews will focus on high-risk firms, conflicts of interest relating to sales incentives and compensation practices, and compliance with new regulatory requirements. We issued the 2016 Risk Assessment Questionnaire which is a valuable tool that gathers information about our registrants' business operations. We use this information to risk rank firms, which then factors into the selection of firms we choose to review. We appreciate the time and effort it takes registrants to complete the questionnaire. Once the data is analyzed and the areas of interest are selected, we will start our high-risk reviews in the fall.

Other topics include the way in which conflicts of interests are mitigated (controlled and disclosed) or avoided. As stated in this year's Ontario Securities Commission's (OSC) Statement of Priorities, we will work closely with self-regulatory organizations (SROs) to coordinate compliance efforts on common issues, such as sales incentives and related conflicts of interest. Sales incentives and compensation (cash and non-cash) practices have a high degree of influence on the products that are sold to clients and registrants are reminded that know your client, know your product and suitability assessments are among the most fundamental obligations that a registrant owes to its clients. It is recommended that registrants review their practices and, if necessary, align their sales incentives and compensation practices with their obligations owed to their clients. Finally, with the enhancements to the exempt market, we will be reviewing for compliance with these new regulatory requirements.

We continue to strive for strong and open lines of communication with registrants. To assist registrants in complying with their regulatory obligations, we continue to focus on our registrant outreach program. We have started to record a few of the education sessions and to make them available for online viewing at any time. You can find a list of the sessions on the [Registrant Outreach](#) web page. We are also continuing our

“Registration as the First Compliance Review” program which includes meeting with applicants as part of their initial firm registration application to provide guidance to them early on in the registration process and to answer any questions that they may have.

Part of the open lines of communication includes publishing guidance. CRR will often publish guidance in the form of staff notices, including this annual report, to assist registrants in meeting their regulatory obligations. Staff notices and guidance reflect the views of Staff and are designed to help registrants understand how to not only meet the requirements of securities laws, but also to comply with the spirit of the requirements. For example, guidance can help registrants develop policies and procedures that are reasonably designed to operate an effective compliance system. Registrants are encouraged to review our guidance to understand Staff’s views on how to apply securities laws and regulations. Also, we continue to update the [Topical Guide for Registrants](#) to assist registrants in locating guidance applicable to their business model.

CRR has been involved in a number of multi-year projects that have impacted or will impact the regulatory landscape in Ontario. These initiatives have led to a number of achievements being reached, which include:

- the introduction of new capital raising initiatives in Ontario that are designed to facilitate capital raising by businesses at different stages of development, and allow a broader range of investors access to these opportunities,
- the publication of the targeted reforms and best interest standards consultation paper that is the next step in improving the relationship between clients and their advisers, dealers and representatives, and
- the publication of proposed amendments to the registration rules for dealers, advisers and investment fund managers, with a view to enhancing the registration regime.

CRR is dedicated to having open lines of communication with registrants which is critical as the emergence of innovative products, the use of technology and new methods of raising capital are changing the financial industry in Ontario and globally. We look forward to building on this relationship in the upcoming 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 in Ontario that trade or advise in securities or act as IFMs.

Individuals	Firms			
67,622	1,013 ¹			
	PMs	EMDs	SPDs	IFMs
	306 ²	217 ³	5	485 ⁴

Registrants overseen by the OSC

Although the OSC registers firms in the category of mutual fund dealer 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.

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 is outlined in the table below:

Current Trends in Registration – Section 2

Deficiency Trends	Update on Initiatives
<ul style="list-style-type: none"> • New firm registration filings – Form 33-109F6 (pg.19) • Change to firm information - unregistered capital markets participants (pg.21) • Annual notification requirement and participation fees – unregistered capital markets participants (pg.22) • Chief Compliance Officers at international firms operating in Ontario (pg.24) • Failure to apply for registration in all appropriate jurisdictions (pg.25) • Common errors in Form 33-109F4 filings (pg.26) • Failure to file Form 33-109F4 on behalf of all Permitted Individuals (pg.27) 	<ul style="list-style-type: none"> • Registration of online business models (pg.16): <ul style="list-style-type: none"> ○ equity crowdfunding (pg.17) ○ peer-to-peer lending (pg.18) • New business submissions – registration service commitments (pg.19) • Terms and conditions on registration to address business model and structural issues (pg.19)

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 adviser 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.33) • Inappropriate use of client testimonials (pg.34) • Sunset clauses in exemptive relief decisions (pg.36) • Corporate governance (pg.36) • Incomplete exemptive relief applications (pg.37) • Sections 11.9/11.10 transactions involving personal holding companies (pg.37) • Sections 11.9/11.10 transactions involving acquisition of inactive registered firms (pg.38) • Limiting liability through disclaimers (pg.39) • Common deficiencies (pg.39) 	<ul style="list-style-type: none"> • Sales of products to vulnerable investors (pg.41) • “One-person” firms and business succession planning (pg.42)
EMDs	<ul style="list-style-type: none"> • Inappropriate sponsoring of dealing representatives (pg.43) • Inadequate know your product assessments to support suitability analysis (pg.45) • Inadequate documentation to support reliance on accredited investor prospectus exemption (pg.46) • EMDs distributing securities of issuers in the lending industry (pg.47) 	<ul style="list-style-type: none"> • Updated compliance programs surrounding new capital raising exemptions (pg.48) • EMDs who sell related party products (pg.50)
PMs	<ul style="list-style-type: none"> • Common deficiencies (pg.51) • Inadequate number of advising reps (pg.52) • Individuals advising in options without required proficiency (pg.54) • Advising clients in other jurisdictions without appropriate registration (pg.55) • Improper marketing of registration and CIPF coverage (pg.56) 	<ul style="list-style-type: none"> • PM-IIROC member dealer service arrangements (pg.58) • Online advisers (pg.58)
IFMs	<ul style="list-style-type: none"> • Common deficiencies (pg.60) • Prohibited lending activities (pg.60) • Non-compliance with self-dealing prohibitions (pg.61) • Oversight of exemptive relief process (pg.63) • Lack of controls and supervision in overseeing outsourced functions (pg.64) 	<ul style="list-style-type: none"> • Focused reviews of mutual fund sales practices (pg.65) • Advisory discount fee survey (pg.65) • Summary of Investment Funds and Structured Products Branch policy initiatives (pg.66)

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

Summary of Registrant Misconduct – Section 4

Registrant Misconduct	Topics
Regulatory actions taken during April 1, 2015 – March 31, 2016	<ul style="list-style-type: none"> • Examples of reasons for taking regulatory action (pg.71)
Cases of interest	<ul style="list-style-type: none"> • Disclosures – criminal and solvency (pg.73) • Use of disclaimers (pg.74)
Contested opportunity to be heard decisions by topic	<ul style="list-style-type: none"> • False client documentation (pg.75) • Compliance system and culture of compliance (pg.77) • KYC, KYP and suitability (pg.78) • Financial condition and requirement to report capital deficiencies (pg.80) • Misleading staff or sponsoring firm (pg.81) • Rehabilitation of fitness for registration (pg.81)

Section 5 summarizes new and proposed rules and policy initiatives impacting registrants and section 6 concludes with details of where registrants can get 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 Registrant Advisory Committee**
- 1.3 Communication tools for registrants**
- 1.4 Topical Guide for Registrants**
- 1.5 Director's Decisions by topic and by year**

1 Outreach to registrants



Improve outreach and education focused on senior and vulnerable investors and work with the Investor Advisory Panel to identify further opportunities to advance investors' interests.

OSC Statement of Priorities – 2016/17

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), promote stronger compliance practices and enhance investor protection.

1.1 Registrant Outreach program

REGISTRANT OUTREACH STATISTICS (since inception)

40

- in-person & webinar seminars provided to June 30, 2016

7,100

- individuals that attended outreach sessions to June 30, 2016

Key features

- dedicated web page
- educational seminars
- Registrant Outreach community
- registrant resources

The Registrant Outreach program continues to provide Ontario registrants with practical knowledge on compliance-related matters and gives them the opportunity to hear first-hand from us about the latest issues impacting our registrants. Since the launch of the Registrant Outreach program in July 2013, approximately 7,100 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 the dialogue with registrants:

a) Registrant Outreach web page

We set up a [Registrant Outreach](#) web page on the OSC's website at www.osc.gov.on.ca, which was designed to enhance awareness of topical 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 of the OSC's website, for upcoming seminar descriptions and registration. 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 20, 2016	Canadian Securities Administrators (CSA) Consultation Paper 33-404 – <i>Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients</i>
May 30, 2016	Completing the risk assessment questionnaire (webinar)
April 14, 2016	Compliance with money laundering legislation
February 11, 2016	Mutual fund fees
November 24, 2015	Exempt market review (webinar)
October 22, 2015	Annual summary report for dealers, advisers and investment fund managers
September 15, 2015	Participation fees calculation (webinar)

c) Registrant Outreach community

Registrants 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 Registrant Advisory Committee

The OSC's Registrant Advisory Committee (RAC) was established in January 2013. The RAC, which is currently composed of 12 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 current RAC members were appointed in January 2015 and represent the second set of committee members since the inception of the RAC. You can find a list of [current RAC members](#) on the OSC website.

Topics of discussion undertaken by the current RAC members have included:

- the mystery shopping for investment advice report - [OSC Staff Notice 31-715](#),
- the 2016 Risk Assessment Questionnaire (the [2016 RAQ](#)),
- [Consultation Paper 33-404](#) on proposals to enhance the obligations of advisers, dealers and representatives toward their clients,
- an update on the [OSC's Whistleblower](#) program, and
- a discussion on the recent sales practices desk review conducted under section 5.2 of National Instrument 81-105 - *Mutual Fund Sales Practices* (NI 81-105). Refer to section 3.4(b)(i) of this annual report for additional details.

The term for the current RAC membership is coming to an end on December 31, 2016. We will be issuing a request for new RAC members in the fall of 2016.

1.3 Communication tools for registrants

We use a number of tools to communicate initiatives that we work on and the findings of those initiatives to our 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
July 7, 2016	Proposed amendments to the regulatory framework for advisers, dealers and investment fund managers
April 8, 2016	Canadian securities regulators introduce harmonized reporting for the prospectus exempt market
November 19, 2015	CSA Staff Notice 31-343 - <i>Conflicts of interest in distributing securities of related or connected issuers</i>
November 16, 2015	OSC capital markets participation fees
November 3, 2015	Exempt market distributions summary on OSC website

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

1.4 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.

1.5 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 of online business models**
- b) Registration service commitment – new business submissions**
- c) Terms and conditions on registration to address business model and structural issues**

2.2 Current trends in deficiencies and acceptable practices

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

2 Registration of firms and individuals

The registration requirements under securities law help to protect investors from unfair, improper or fraudulent practices by market participants. The information required to support a registration application allows us to assess a firm's and an individual's fitness for registration. When assessing a firm's fitness for registration we consider whether it is able to carry out its obligations under securities law. We use three fundamental criteria to assess a firm's and an individual's fitness: proficiency, integrity and solvency. These fitness requirements are the cornerstones of the registration regime.

In this section, we provide an update on current registration initiatives such as online portal/platform new business applications, registration service commitments and discuss common deficiencies noted in firm and individual registration filings.

2.1 Update on registration initiatives

a) Registration of online business models

We are seeing an increase in the number of firms seeking registration to operate online portals and trading platforms. Firms should consider submitting a pre-file application where the portal/platform has a unique or complex business model or will require discretionary relief from registration requirements. These applications may require more time to review and may take longer than the OSC's service standards. We may also request a demonstration of the online portal/platform as part of the pre-registration interview.

Regulatory requirements apply to all business models, including online advisers, crowdfunding portals and lending platforms. We have outlined areas where we typically identify deficiencies during the new firm application review process (which may result in a longer review process):

- the firm has not applied for registration in all of the appropriate registration categories based on its business plan and proposed business activities (e.g. if the firm will be advising investors, PM registration will likely also be required),
- the firm has not established appropriate policies and procedures that are tailored to its business operations, including policies and procedures to address aspects of an online portal,

- the firm has not identified conflicts of interest that exist or could arise with its directors, officers and employees, or has not determined how such conflicts will be controlled or avoided,
- the firm has not established standard agreements and other documentation, such as documentation to facilitate the collection of know-your-client (KYC) and know-your-product (KYP) information, and
- the individuals seeking registration do not meet the required proficiency and experience requirements.

We encourage firms to have a well-developed business plan in place before applying for registration.

(i) Equity crowdfunding

With Multilateral Instrument 45-108 – *Crowdfunding* ([MI 45-108](#)) coming into force on January 25, 2016, we have started to receive and review applications from firms seeking registration as either a restricted dealer funding portal or a registered dealer funding portal under MI 45-108. To date, we have been notified by several registered dealers as well as new firm applicants of their intention to rely on the crowdfunding prospectus exemption under MI 45-108.

A restricted dealer funding portal is subject to the conditions in MI 45-108 and, among other restrictions, will not be able to distribute securities in reliance on other prospectus exemptions, e.g. the accredited investor exemption.

Registered dealer funding portals will seek either EMD registration under the *Securities Act* (Ontario) (the Act), or investment dealer registration under the Act along with IIROC membership. A registered dealer funding portal is also subject to the conditions in MI 45-108. However, registered dealer funding portals may also engage in other activities permitted under the EMD or investment dealer registration (e.g. an EMD will be able to distribute securities in reliance on other prospectus exemptions such as the accredited investor exemption or offering memorandum exemption available under National Instrument 45-106 – *Prospectus Exemptions* ([NI 45-106](#))). Investment dealers, who are members of IIROC, will also have to comply with requirements imposed by IIROC.

If you are currently an EMD or investment dealer and you want to rely on the crowdfunding exemption, you will need to notify your regulator of this change in your business operations by filing Form 33-109F5 – *Change of Registration Information* ([Form 33-109F5](#)) to update the business activities in Form 33-109F6 – *Firm Registration* ([Form 33-109F6](#)).

New business applications from equity crowdfunding portals are reviewed in a similar manner to other firm applications and firms are encouraged to discuss or meet with us early to assist with the process. Firms will also be subject to pre-registration reviews, which include interviews of key personnel of the firms. “Registration as the First Compliance Review” was described in section 3.1 of OSC Staff Notice 33-745 – *2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers* ([OSC Staff Notice 33-745](#)) and OSC Staff Notice 33-746 – *2015 Annual Summary Report for Dealers, Advisers and Investment Fund Managers* ([OSC Staff Notice 33-746](#)).

(ii) Peer-to-peer lending and other lending platforms

We continue to identify a number of “peer-to-peer” lending websites (P2P Websites) that are conducting business in Ontario without registration. P2P Websites generally facilitate the matching of borrowers and lenders (i.e. investors), and solicit lenders to fund loans. The loan arrangements entered into on P2P Websites may constitute a “security” as defined in the Act. Be aware that operating a P2P Website may involve registerable activity, including trading and advising in securities for a business purpose. If you are approaching Ontario investors to fund peer-to-peer loans or loan portfolios, you must consider whether registration and/or prospectus requirements apply. Additional information on our expectations is available in a [news release](#) issued on June 19, 2015.

Acceptable practices for firms operating P2P websites:

If you are planning to operate a P2P Website or other lending platform, you will need to consider the following before applying for registration:

- Engaging in discussions with OSC staff at an early stage regarding your proposed business model with a view to determining your obligations under Ontario securities law.
- Whether issuing notes to lenders (i.e. investors) and/or making loans to borrowers trigger the requirement to file a prospectus or to rely on a prospectus exemption. If you propose to rely on one or more prospectus exemption(s), consider how the conditions of such prospectus exemptions will be met.

- Where an issuer is established for the purpose of distributing securities (i.e. notes) to lenders, consider how conflicts of interest will be appropriately addressed.

b) Registration service commitment – new business submissions

We continue to follow the [OSC service commitment](#) published in May 2014 that sets out a framework for standards, conditions and timelines pertaining to registrants and registration-related filings for which the OSC is the principal regulator.

For new firm registration filings, we will aim to make a decision on a firm’s application within 90 working days (target is for 80% or more of all filings received) of receiving a *substantially complete* application with all questions answered in sufficient detail, all regulatory obligations met, with no concerns with fitness for registration and prompt responses to our requests for information.

c) Terms and conditions on registration to address business model and structural issues

We regularly use terms and conditions on firm and individual registrations to address business model and structural issues. A firm’s business structure may require terms and conditions to restrict its activity. Examples include some newer registrant business models such as online advisers and portals who may be subject to restrictions on activity, some law firms affiliated with dealers may be subject to restrictions and firms located outside of Ontario may be registered on certain conditions.

2.2 Current trends in deficiencies and acceptable practices

a) Common deficiencies in firm registration filings

Common deficiencies for firm registration filings were identified in section 3.2 of [OSC Staff Notice 33-746](#). Additional themes that we have identified are outlined below.



(i) New firm registration filings – Form 33-109F6

New business submissions that are incomplete generally result in delays as we are not able to start the review of the application. We pre-screen new firm applications to ensure that they are substantially complete before assigning these applications to a Corporate Registration Officer. The OSC’s registration service commitment does not apply until we have received a substantially complete application. All supporting documents required by

Form 33-109F6 must be submitted through the OSC's filing portal as part of the application in order to avoid delays.

Acceptable practices to apply for initial registration in Ontario:

Applicants must:

- Include all supporting documents required by Form 33-109F6, including the following:
 - **Schedule B of Form 33-109F6** - for each jurisdiction of Canada where the firm is seeking registration and does not have an office.
 - **Business Plan** - for the next three years. Describe the firm's proposed business model in detail, including types of investors and, for dealers, any prospectus exemptions that the firm plans to utilize.
 - **Policies and Procedures Manual** - at a minimum, the table of contents must be included.
 - **Constating Documents** - for example, the firm's articles of incorporation, any articles of amendments, partnership agreement or declaration of trust. As part of the constating documents, firms must also provide proof of extra provincial registration in the province, where applicable.
 - **Organizational Chart** - showing the firm's reporting structure. Include all permitted individuals, the ultimate designated person (UDP) and the chief compliance officer (CCO).
 - **Ownership Chart** - showing the firm's structure and ownership. At a minimum, include all parent entities, specified affiliates and specified subsidiaries. Include the name of the person, company, and class, type amount and voting percentage of ownership of the firm's securities.
 - **Calculation of Excess Working Capital** - refer to Form 31-103F1 of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ([NI 31-103](#)) and for subordination agreements refer to Appendix B of NI 31-103, if applicable.
 - **Audited Financial Statements** - attach, for your most recently completed year, either non-consolidated audited financial statements or audited financial statements prepared in accordance with subsection 3.2(3) of NI 52-107 - *Acceptable Accounting Principles and Auditing Standards*. If the firm is a start-up company, you may attach an audited opening statement of financial position instead.
 - **Letter of Direction to Auditor** - attach a letter of direction from the firm

authorizing the auditor to conduct any audit that the regulator may request.

- **Copy of Financial Institution Bond** - attach confirmation of sufficient bonding or insurance coverage that is in effect upon filing the application.
- **Director's Resolution Approving Insurance** - attach a director's resolution confirming that the firm has sufficient insurance coverage for its securities or derivatives related activities.
- **Regulatory & NRD User Fees** - we will contact the firm by phone or e-mail upon receipt of the application package and when the firm is set up in a pending state on the National Registration Database (NRD). The firm will be requested to submit fees through the firm's electronic fund transfer account on the NRD.
- **Form 33-109F4 - Registration of Individuals and Review of Permitted Individuals (33-109F4)** - we will advise the firm to file the individual submissions electronically on NRD and pay the related fees for all individuals seeking registration in dealing or advising categories, or in their capacity as directors or officers (chief executive officer, chief financial officer, chief operating officer or a functional equivalent), CCO and UDP. The firm should confirm that the individuals meet the proficiency requirements outlined in NI 31-103. The firm is also required to file individual submissions for its shareholders, who (directly or indirectly) hold more than 10% of the voting shares of the firm. These submissions are reviewed in conjunction with the firm application.

(ii) Change to firm information – unregistered capital markets participants

We note that there are many firms, relying on exemptions from registration, that are not ensuring that contact information provided to the OSC is up to date. Incorrect information will result in the firm being excluded from receiving important regulatory information including communications that require action by the firm.

Among other requirements, unregistered international dealers and advisers relying on the registration exemptions available under section 8.18 and 8.26 of [NI 31-103](#) are required to file Form 31-103F2 - *Submission to Jurisdiction and Appointment of Agent for Service*

([Form 31-103F2](#)) in order to rely on the international dealer and/or international adviser exemptions.

Similarly, unregistered non-resident investment fund managers relying on the registration exemption available under MI 32-102 - *Registration Exemptions for Non-Resident Investment Fund Managers* ([MI 32-102](#)) are required to file Form 32-102F1 - *Submission to Jurisdiction and Appointment of Agent For Service For International Investment Fund Manager* ([Form 32-102F1](#)) in order to rely on the registration exemption.

Forms 31-103F2 and 32-102F1 outline the firm's CCO and Agent for Service details. The companion policies to NI 31-103 and MI 32-102 indicate that if there is any change to the information in the forms filed by unregistered exempt international dealers and advisers and unregistered non-resident investment fund managers (collectively referred to as unregistered capital markets participants), the firm must update it by filing a replacement form with the regulator in the local jurisdiction.

Acceptable practices

Unregistered capital markets participants must:

- For unregistered international dealers and advisers, file a replacement Form 31-103F2 as soon as possible through the OSC's filing portal if there is any change to the information in the firm's Form 31-103F2 (including change in CCO or Agent for Service).
- For unregistered non-resident investment fund managers, file a replacement Form 32-102F1 as soon as possible through the OSC's filing portal if there is any change to the information in the firm's original Form 32-102F1 (including change in CCO or Agent for Service).
- For firms exempt from registration requirements by way of an OSC Order, we expect the firm to notify us if the firm is no longer relying on the OSC Order or if the firm is in breach of the conditions of the Order.

(iii) Annual notification requirement and capital markets participation fees – unregistered capital markets participants

Further to 2.2(a)(ii) above, we noted that there were a number of unregistered firms identified as relying on an exemption from registration requirements on the NRD system

that did not pay the required annual fees and did not respond to OSC Staff's communications in this regard.

A firm that relied on any of the following registration exemptions in the 12 months preceding December 1 of a year must notify the regulator of that fact by December 1 of that year:

- the dealer registration exemption in section 8.18 [*international dealer*] of NI 31-103 or the adviser registration exemption in section 8.26 [*international adviser*] of NI 31-103⁶;
- the investment fund manager registration exemption in subsection 4(3) of MI 32-102.

In Ontario, the firm must comply with the relevant annual filing and fee payment requirements applicable to these exemptions under OSC Rule 13-502 - *Fees*. In some instances, firms are no longer doing business in Ontario and did not update the OSC to indicate that the firm is no longer relying on the applicable exemption(s) from registration. In other instances, firms wound up their business operations, but still appeared in the NRD system as relying on an exemption from registration. To ensure that records are accurate, we have included acceptable practices in the chart below.

For firms that fail to comply with the filing and payment requirements and fail to respond to our requests, we will take action which may include seeking an order from a hearing panel of the OSC that the relevant registration exemption(s) does not apply to the firm. If the order is issued, the National Registration Search will be updated to reflect that the firm is no longer eligible to rely on the applicable registration exemption(s) in Ontario (this database is public and provides clients and prospective clients with confirmation of a firm's registration status in Canada). We will also contact the firm's principal regulator.

Acceptable practices for unregistered capital markets participants:

- If your firm is no longer relying on any of the aforementioned registration exemptions, and has no intention on utilizing the exemptions(s) in the future, confirm in writing that your firm has no securities business of any kind in Ontario and also confirm the date your firm ceased to rely on the exemption(s) in order for the firm's reliance to be removed from the NRD system.

⁶ In Ontario, this notification is not required for international advisers or dealers if the firm complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under OSC Rule 13-502.

(iv) Chief Compliance Officers at international firms operating in Ontario

We have identified a number of instances in which a non-Canadian firm, registered or applying for registration in Ontario, has appointed a CCO for its Canadian operations only, who is not the individual identified in its regulatory filings with other countries as the firm's CCO. Section 11.3 of NI 31-103 only contemplates one individual ("an individual") to be the firm's CCO. This is reflective of the policy intent that there should be one individual with overall authority and responsibility for the compliance function.

In large firms, the scale and kind of activities carried out by different operating divisions within the same legal entity may warrant the designation of more than one CCO. We will consider exemptive relief applications on a case-by-case basis, for different individuals to act as the CCO of a firm's operating divisions. We also recognize that firms, particularly large firms, may have compliance structures with multiple individuals responsible for the firm's compliance.

Where the foreign firm's CCO has not completed the examination requirements prescribed in NI 31-103, we will consider granting relief from some course requirements, such as the Canadian Securities Course, on a case-by-case basis, where the applicant can demonstrate equivalent alternative courses or compensating experience. It would be extremely rare, however, to grant an exemption from completing the Chief Compliance Officers Qualifying Exam or PDO exam.

Acceptable practices for CCOs at international firms operating in Ontario:

Registrants must:

- Consider what tools and supports a CCO with a global firm may need in order to ensure they have the required time and expertise to adequately discharge their responsibilities as CCO under Canadian securities law. For example: education concerning Canadian securities law and requirements, additional staffing or assistance from a Canadian compliance staff or securities lawyer.
- Ensure that the firm's CCO completes the Chief Compliance Officers Qualifying Exam or PDO exam.
- Consider whether the firm's CCO has sufficient knowledge and understanding of securities law gained through alternative courses or experience to apply for exemptive relief from the requirement to have successfully completed the Canadian Securities Course.

Unacceptable practices

Registrants must not:

- For the Canadian operations of an entity, appoint a CCO for Canadian registration purposes who is not accountable or responsible for compliance for the firm as a whole, unless the firm has obtained exemptive relief to permit this.

(v) Failure to apply for registration in all appropriate jurisdictions

We have identified a number of firms that have failed to register in jurisdictions in which individuals applying for registration reside. For example, a firm registered in British Columbia propose to sponsor a resident of Ontario as an advising representative, but does not apply to register in Ontario.

An advising or dealing representative and his/her sponsoring firm should be registered in the jurisdiction where he or she resides and conducts the majority of business activities. We would question how an advising or dealing representative would be able to fulfill their obligations to their clients without conducting registerable activities from the jurisdiction in which they reside and conduct the majority of their business activities. See section 3.3(a)(iv) of this annual report for more information on this topic.

Acceptable practices for registrants in multiple jurisdictions:

Registrants must:

- When hiring an individual who will be conducting registerable activity, ensure that both the firm and individual are registered in the jurisdiction(s) where the individual will be conducting registerable activities.
- If an individual is working from a jurisdiction outside of the principal regulator of the firm, ensure that proper policies and procedures are in place and executed that confirm the individual's activities are appropriately supervised.

Unacceptable practices

Registrants must not:

- Assume that their firm does not need to be registered in a jurisdiction where a dealing or advising representative resides and is working because of the fact that the firm does not have any clients in that same jurisdiction.

b) Common deficiencies in individual registration filings



(i) Common errors in Form 33-109F4 filings

Non-disclosure of financial, regulatory and criminal information

We continue to see non-disclosure of financial, regulatory and criminal information in individual filings. Along with regulatory and criminal background checks, we also perform financial information checks. We expect that registrant firms will conduct their own background checks as well as ask the individual applicant/registrant specific questions in regards to these types of disclosures.

We remind registrants, Permitted Individuals and applicants that financial, criminal and regulatory information must be disclosed when an initial application is made or within 10 days of an event, if the individual is already registered with the regulator. Failure to do so will be considered in assessing an individual's suitability for registration and may result in staff recommending regulatory action, including the imposition of terms and conditions.

Common information not disclosed by registrants/applicants but that are required to be disclosed to the OSC include:

- discharged bankruptcies,
- fully performed consumer proposals,
- alcohol related driving offences,
- criminal charges,
- pardoned or assumed by the applicant to be pardoned criminal records, and
- discharged criminal records.

Incomplete or missing information in Form 33-109F4

We have also noted that registrant firms are submitting individual submissions on NRD with placeholder type information, e.g. "aaaaaa" or "xxxxx" rather than complete and

substantive details that would allow us to review in order to make a determination of qualification for the category for which the individual has applied.

We are unable to review an individual's suitability for registration without complete information. Such applications will be considered incomplete and returned to the firm for updating. These incomplete applications will not meet the criteria for applications which fall within our service guarantees.

(ii) Failure to file Form 33-109F4 on behalf of all Permitted Individuals

Some firms are not filing a Form 33-109F4 on behalf of all their Permitted Individuals, including individuals acting as trustees for trusts which hold 10% or more of the voting shares of a registered firm. Section 2.5 of National Instrument 33-109 - *Registration Information* ([NI 33-109](#)) requires a Permitted Individual to file a Form 33-109F4 with the regulator. This form is required to be filed within 10 days of the individual becoming a Permitted Individual of the firm.

Section 1.1 of NI 33-109 defines a Permitted Individual to mean:

- a. A director, chief executive officer, chief financial officer, or chief operating officer of a firm, or a functional equivalent of any of those positions,
- b. An individual who has beneficial ownership of, or direct or indirect control or direction over 10 percent or more of the voting securities of a firm, or
- c. A trustee, executor, administrator, or other personal or legal representative that has direct or indirect control or direction over 10 percent or more of the voting securities of a firm.

Acceptable practices when filing a Form 33-109F4:

Registrants must:

- If you identify that your firm has individuals who meet the definition of a Permitted Individual in NI 33-109 who have not filed a Form 33-109F4 with the regulator, take timely steps to make such filings on behalf of these individuals.
- Verify that the firm's NRD profile is updated as to any changes in ownership structure, including the formation of any trusts and the individuals who act as trustees, administrators or other representatives of the trust which has direct or indirect control or direction over 10% or more of the voting securities of the firm.

Unacceptable practices

Registrants must not:

- Assume that a Form 33-109F4 is not required for individuals who fall under the definition of Permitted Individuals because they are not involved in the day-to-day operations of the registrant.

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**
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- 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



“As a securities regulator, the OSC is responsible for making rules regarding investor protection and fair and efficient markets, overseeing compliance with the rules, monitoring risk and deterring misconduct through robust regulatory enforcement”.

October 26, 2015 - Keynote Address by Monica Kowal, Vice-Chair, Ontario Securities Commission at the Investor Recovery Conference

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 to improve their understanding of regulatory requirements and our expectations, and help us focus on a specific industry topic or practice we may have concerns with. We conduct compliance reviews on-site at a registrant’s premises, but we also perform desk reviews from our offices. 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 will be analyzed using a risk assessment model. Every registrant response is risk ranked and a risk score is generated. Those firms that are risk ranked as high will be 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 allow us to respond on a timely basis to industry-wide concerns or issues. In the past year, we reviewed Ontario-based online advisers that were operational for at least one year (for more details of this sweep review, see section 3.3 (b)(ii) 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 2016, with comparables to fiscal 2015, 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 2016	Fiscal 2015
Enhanced compliance	45%	40%
Significantly enhanced compliance	49%	47%
Terms and conditions on registration ⁷	5%	9%
Surrender of registration	0%	0%
Referral to the Enforcement Branch ⁸	1%	3%
Suspension of registration ⁹	0%	1%

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](#)).

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

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

⁹This percentage includes some registrants reviewed in the prior period.



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

The inadequate collection, documentation and updating of KYC information continues to be a significant and common deficiency. 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.

Issues that have been identified during our compliance reviews include firms:

- not collecting and/or documenting a client's financial circumstances, including for example, the client's risk tolerance, investment needs and objectives and time horizon,
- not updating client's KYC information at least annually,
- not collecting and documenting information about a client's other investments; without this information, a registrant does not have an adequate understanding of the

client's financial situation and whether the proposed transaction may result in undue concentration risk in securities of a single issuer, group of related issuers, or industry,

- not collecting and documenting adequate information about a client's financial situation; for example, by requiring clients to select from overly broad dollar ranges or providing clients with a very limited number of fields (boxes) in which they are to provide financial information (such as net income or financial assets), and
- providing no information to a client on the meaning of financial assets; if a client does not understand the difference between financial assets and net assets, the client may provide the registrant with inaccurate information.

We have repeatedly emphasized that these requirements are basic obligations of a registrant. 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](#)) and Section 4.3 (a)(iii) of [OSC Staff Notice 33-746](#) for further information regarding the collection, documentation and updating of KYC information.

(ii) Inappropriate use of client testimonials in marketing materials

Some registrants are inappropriately using testimonials in their marketing materials. Through the use of testimonials, a registrant may be seeking to influence investors. An example of a testimonial is a statement from a client stating "I received great returns and was provided with great service".

While Ontario securities law does not prohibit the use of testimonials, subsection 2.1(1) of OSC Rule 31-505 – *Conditions of Registration* ([OSC Rule 31-505](#)) requires registrants to deal fairly, honestly and in good faith with their clients. In our view, this principle is met when testimonials are balanced, fair and not misleading. Registrants are also prohibited from making statements that are untrue or omitting information that is necessary to prevent the statement from being false or misleading (see subsection 44(2) of the Act).

Registrants should be able to substantiate all claims that they make in their marketing materials. Further, there is a risk that misleading or inaccurate testimonials will be communicated to investors, unless the registrant has procedures in place to conduct an adequate review and approval of the use of testimonials.

Acceptable practices and processes for the use of testimonials in marketing materials:

Registrants must ensure that:

- Testimonials are current (for example if the person giving the testimonial is no longer a client, or is referring to returns from several years ago, this is not current).
- The marketing materials clearly disclose whether the testimonial is solicited or unsolicited.
- The marketing materials clearly disclose that the testimonials presented may not be representative of the views of other people, including, if applicable, other investors.
- Any disclaimers that accompany the testimonials presented should:
 - be clearly readable,
 - be understandable and not confusing to the reader,
 - avoid the use of boilerplate language, and
 - be in close proximity to the testimonial.
- They collect and document sufficient information about the person providing the testimonial, including adequate identification of the person, for example, first and last name, etc., and have obtained appropriate consent to their use.
- They have policies and procedures in place to ensure that marketing materials that include testimonials are appropriately prepared, reviewed and approved to prevent false and misleading statements from being used.

Unacceptable practices

Registrants should not allow the use of testimonials in marketing materials that:

- Include false or misleading testimonials.
- Are from individuals who were paid to provide the testimonial.
- Omit information that is necessary to prevent the testimonial from being false or misleading.
- Include testimonials that cannot be substantiated.
- Fail to inform the reader that the testimonials may not be representative of the views of other people.

(iii) Sunset clauses in exemptive relief decisions

Exemptive relief decisions may include a clause that will cause the decision to terminate after a certain period of time and/or upon the occurrence of a certain event (often referred to as a “sunset” clause). Firms are responsible for ensuring that they comply with all terms and conditions of exemptive relief decisions, including that they are not relying upon a decision that has terminated. If a firm knows that its exemptive relief decision is going to terminate (e.g., the sunset clause indicates the decision will terminate after a certain period of time, there will be a change in law, etc.) and the firm will require the exemptive relief after the decision has terminated, the firm should file an application for further exemptive relief before its existing decision terminates and with sufficient time for us to review the application. We may send a notice to firms after an exemptive relief decision has terminated but this does not lessen a firm’s responsibility to anticipate the termination and take action accordingly.

(iv) Corporate governance



“Corporate governance supports our securities regulatory mandate to protect investors and foster efficient capital markets. Good corporate governance contributes to investor confidence in our markets, lowers the cost of capital to our firms and encourages efficient allocation of resources.”

June 10, 2015 – Howard Wetston, former Chair of the Ontario Securities Commission, at the Canadian Coalition of Good Governance.

As part of compliance reviews, we routinely examine the compliance systems at a registrant, including the role of a firm’s UDP. The role of the UDP of a registrant is very important. The UDP is ultimately responsible for establishing, maintaining and promoting a culture of compliance and ethical behaviour within the firm. To help discharge this responsibility, the UDP

should establish an appropriate “tone from the top”. This tone should also be reinforced throughout the firm by all members of management.

During our reviews we have and will continue to seek examples that provide evidence that a culture of compliance is being communicated frequently and consistently at the firm, and is being reinforced by actions at the firm. The culture at a firm has a significant influence on how it conducts its business. Some examples may include whether senior management:

- adequately promotes the importance of complying with regulatory requirements and standards,
- promotes that compliance is the responsibility of all employees of the firm,
- ensures client complaints are adequately addressed,
- promotes industry involvement and training of staff, including continuing education,

- confirms that the firm appropriately avoids or manages conflicts of interest,
- encourages the escalation of issues by employees and requires that appropriate action is taken to address them, and
- verifies that the firm has adequate compliance resources with the appropriate level of experience to carry out the compliance function.

If we encounter any concerns in these areas, we will raise them as deficiencies and expect that appropriate corrective action is taken to address the concerns.

(v) Incomplete applications for exemptive relief

We continue to have concerns with applicants and/or their filing counsel not always following the required procedures when filing exemptive relief applications. As a consequence, we may be required to spend significant time ensuring that all relevant information has been provided and the application is complete. This additional time can prevent us from processing the application according to the OSC's service standards, or within an expedited time frame, where requested.

Please consult section 4.1(c)(ii) of [OSC Staff Notice 33-746](#) under the heading *Incomplete applications for exemptive relief* for a list of issues and acceptable practices that we have noted in order to ensure exemptive relief applications are ready for submission to the OSC.

(vi) Notice filing requirement under sections 11.9/11.10 for transactions involving the insertion of personal holding companies

We have recently received several inquiries about whether the transfer by an individual of voting securities of a registered firm to a wholly-owned holding company triggers a new notice filing under section(s) 11.9 and/or 11.10 of NI 31-103. We understand that transactions of this type often take place for tax planning purposes.

In October 2014, the CSA published final amendments to NI 31-103, including amendments to sections 11.9 and 11.10. One of the key purposes of these amendments was to streamline and clarify the process relating to notice filings and to reduce the regulatory burden on stakeholders. As such, CRR staff will not object to an interpretation that a notice filing is not required in the following scenario:

- an individual is a shareholder of a registered firm. For tax planning purposes, the individual wishes to transfer his/her securities to a newly-formed holding company (Hold Co.) such that he/she now owns 100% of the securities of Hold Co., which in turn owns the securities of the registered firm,
- Hold Co. does not have any active business,
- Hold Co. has been formed for the sole purpose of holding the securities of the registered firm, and
- no new persons or companies are introduced as directors, officers or shareholders of Hold Co., and
- the registered firm complies with ongoing filing obligations under 33-109, including the filing of Form 33-109F5 to reflect changes in ownership.

Since the specific facts of every transaction differ, CRR staff may take a different view on other transactions, for instance where an operating company, instead of a holding company, is inserted in the same ownership chain.

(vii) Notice filings under sections 11.9/11.10 for transactions involving the acquisition of a registered firm not actively conducting registerable activity

We have received several notice filings under sections 11.9 and 11.10 of NI 31-103 of proposed acquisitions of registered firms that are not using their registrations. It is important to note that the registration process cannot be avoided through these transactions. Furthermore, for those firms that have not conducted registerable activity for several years, it is our expectation that the firm apply to surrender its registration, rather than try to sell its registration.

Given the significant changes that result from these transactions, when we receive the notice filing, we will request that the firm provide a completed Form 33-109F6 that reflects the position of the firm after the completion of the proposed transaction and a completed Form 33-109F4 for each of its proposed registered and permitted individuals. Furthermore, we will ask that the new key personnel attend an in-person meeting to discuss the firm and its proposed activities.

(viii) Limiting liability through disclaimers

Some registrants are including language in documents and agreements such as a KYC form or an investment management agreement (IMA) that purports to limit their liability to their clients. These clauses are commonly referred to as “hedge” clauses.

We have significant concerns with the use of any terms in IMAs or other agreements that seek to limit or qualify a registrant’s liability to its clients. In a few cases, we have seen hedge clauses that go so far as to purport to limit the registrant’s liability with respect to breaches of the standard of care under Ontario securities law. That standard, set out in section 2.1 of OSC Rule 31-505, is to deal fairly, honestly and in good faith with clients.

In our view, it is in itself a breach of the standard of care if a registrant seeks to have its clients (a) waive the registrant’s liability for breaches of the standard of care, or (b) accept a limit on the quantum of the registrant’s liability under the standard of care. There is also doubt as to the enforceability of a contractual provision purporting to have these effects. In any event, we will cite any such clause as a significant deficiency in a compliance review and require that firms take action to rectify the deficiency.

Registrants should also be aware that the inclusion of hedge clauses do not in any way lessen their obligation to make dispute resolution services available to clients under section 13.16 of NI 31-103, regardless of whether or not the hedge clauses are drafted in a manner consistent with this obligation.

The use of inappropriate disclaimers was discussed in OSC Staff Notice 33-740 - *Report on the Results of the 2012 Targeted Review of Portfolio Managers and Exempt Market Dealers to Assess Compliance with the Know-Your-Client, Know-Your-Product and Suitability Obligations* ([OSC Staff Notice 33-740](#)). We encourage you to review OSC Staff Notice 33-740 to improve your understanding of inappropriate disclaimer language in client documentation.

(ix) 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"> Section 5.2B of OSC Staff Notice 33-736 CSA Staff Notice 31-325 – <i>Marketing Practices of Portfolio Managers</i>
3) Incomplete or inadequate books and records	<ul style="list-style-type: none"> Section 4.1 (b)(ii) of OSC Staff Notice 33-746
4) Incomplete or non delivered client account statements or trade confirmations	<ul style="list-style-type: none"> CSA Staff Notice 31-337 – <i>Cost Disclosure, Performance Reporting and Client Statements – Frequently Asked Questions and Additional Guidance</i> Section 5.2C in OSC Staff Notice 33-736 Section 4.3.3 in OSC Staff Notice 33-742 under the heading <i>PM client account statement practices</i>
5) Inadequate or no annual compliance report to the board	<ul style="list-style-type: none"> Section 4.1 (c)(iv) in OSC Staff Notice 33-745 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 compliance report</i> Elements of an effective compliance system registrant outreach and accompanying example of an inadequate report to the board
6) Inaccurate calculation of excess working capital	<ul style="list-style-type: none"> Section 4.1 (c)(iv) in OSC Staff Notice 33-745
7) Inadequate relationship disclosure information	<ul style="list-style-type: none"> Section 4.1 (c)(iv) in OSC Staff Notice 33-745 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</i>

	<i>information</i>
8) No notice of or inadequate filing of outside business activities	<ul style="list-style-type: none"> • 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>
9) Referral arrangements – inadequate disclosure or lack of agreements	<ul style="list-style-type: none"> • 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) Vulnerable investors

Through recent compliance reviews or investor complaints, CRR and the Investor Office, have detected concerns related to the provision of investment advisory services or sales of products 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, a physical disability, mental health problems, a language barrier). Senior investors, especially those who may have diminished capacity, are vulnerable to investment advice that is unsuitable, investment fraud and financial abuse. OSC staff is concerned with issues related to senior investors because:

- they are growing as a demographic, both in terms of population and also in terms of household investable assets,
- they are relying on investments to fund retirement costs, and in some instances agreeing to invest in high-risk products to generate a desired level of income, and they may have a reduced investment time horizon to recover from financial losses,
- they may not understand the risks and investment features of the product they have invested in.

We are prepared to take serious regulatory action when we find unsuitable investments. See the summary of the registrant conduct case *Re: Greg Thompson* (January 2016) in section [4\(c\)\(iii\)](#) of this annual report, which involved a vulnerable investor.

At this stage, we are focusing on senior investors. We propose to develop guidance on considerations and best practices for registrants who are dealing with senior retail

investors, with a focus on protecting senior investors and enhancing related supervisory, compliance and other practices when serving an aging client base.

In the interim, we remind you that you are responsible for the adequacy of your firm's policies and procedures for the protection of investors, including vulnerable investors. You should assess your firm's business model and policies and procedures. For example, your firm's policies and procedures should:

- provide for the training of firm employees, including advising representatives, associate advising representatives, dealing representatives and compliance staff, on:
 - communicating with senior clients,
 - suitability issues for senior clients,
 - identifying signs of elder abuse, and
 - identifying signs of diminished capacity (regardless of age).
- provide for an internal process for escalating issues identified (e.g., possible elder abuse, or concerns about a client with diminished capacity),
- ensure that the KYC information collected includes the name and contact information of a trusted contact of the senior client, and
- stipulate the requirements for clearer and more detailed communication, modified documentation (e.g. enhanced font size to be used on written documents), and documentation of verbal discussions.

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

A number of firms registered as a PM, IFM and/or EMD have only one registered individual to operate the business and service clients. This raises concerns regarding the impact on the firm's clients in the event of the death or incapacitation of the sole registered individual. For example, if the sole advising representative at a PM suddenly dies, client portfolios can no longer be managed by the firm unless the firm is able to register another advising representative. Alternatively, the client will have to engage another PM firm to manage his or her portfolio. In most cases, there will likely be a period where the client's portfolio is not being managed. This is especially concerning in periods of market turmoil. As a result, we are currently conducting a targeted compliance sweep of "one person" firms to assess whether they have policies and procedures to comply with regulatory requirements, to ensure continuity of services and the day-to-day operations of their business, as well as their business succession or wind-down plans in the event of death, disability or incapacity of the sole registered individual.

Once we complete this sweep, we plan to develop guidance for one-person firms in the areas of business continuity and succession planning to assist them in meeting their regulatory obligations. In the interim, we remind you that you are responsible for the adequacy of your firm’s policies and procedures in this area and that we expect firms to develop and test a business continuity plan and succession plan to minimize any disruption to the firm’s business and its clients. You should assess your firm’s business model, consider scenarios that may result in sudden business interruptions, and develop policies and procedures to address these. For example, your firm’s policies and procedures should:

- address how the firm will reduce and manage risks associated with disasters, significant business interruptions and other types of disturbances that may disrupt the firms’ day-to-day operations,
- consider how an unexpected loss of key personnel might affect the firm’s client and business relationships,
- address how the firm will communicate with clients, third-party service providers, and regulators,
- consider what information clients need to know about the business continuity/succession plan to ensure that it can be properly executed (e.g. providing clients with the name and contact details of the person who will be responsible for implementing the plan, and explaining to clients how they can access their assets in the event of loss of the firm’s key personnel, if applicable),
- provide for the training of firm employees, including training about their specific duties if the plan needs to be implemented, and
- address how often the plan needs to be updated.

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) Inappropriate sponsoring of dealing representatives

Last year we identified our concerns with registrants inappropriately “renting out” their firm’s registration (see [OSC Staff Notice 33-746](#) section 4.2 (a)(ii)). We draw your attention again to the fact that we are continuing to see some EMDs sponsoring dealing

representatives solely for the purpose of distributing securities of the dealing representatives' employing or affiliated issuers. A dealing representative should not be acting as a stand-alone operation within a registered firm and should be acting on behalf of the registered firm.

Section 25(1)(b) of the Act requires that individuals be registered as dealing representatives and that they act on behalf of the registered dealer. When dealing representatives hold themselves out as acting on behalf of their employing issuer, primarily earns their compensation from their employing issuer, and does not make available products on the EMD's shelf other than those issued by their employing issuer, these are each indications that the dealing representative is in fact acting on behalf of their employing issuer and not their registered dealer as required. When these dealing representatives act on behalf of their employing issuers when soliciting or contacting directly any prospective purchasers, they are not complying with paragraph 25(1)(b) of the Act.

In addition, dealing representatives of a firm should be trained on and offering all of the products approved for distribution by the registrant.

Acceptable practices to support the sponsorship of a dealing representative:

EMD firms must ensure that:

- Dealing representatives understand and consider all of the product offerings approved for distribution on the firm's product list when recommending investments and conducting a suitability analysis for a client of the firm.
- Dealing representatives receive adequate training from the EMD on all relevant product offerings for distribution on the firm's product list.
- Dealing representatives only act on behalf of the EMD and hold themselves out as representatives of the EMD.
- Dealing representatives are compensated by the EMD for their registerable activities.

Unacceptable practices

EMDs must not allow a practice of:

- Sponsoring a dealing representative whose primary and substantive employment is with an issuer and primarily earns their compensation from their employing

issuer.

- Dealing representatives operating “their own business” within the operations of the EMD’s registration.
- Each dealing representative sells his/her own shelf of products. The products approved by the firm should be available to be sold by all registered dealing representatives acting for the firm.
- Minimizing the compliance and supervision of dealing representatives.

(ii) Inadequate assessment of products (KYP) to support a suitability analysis

During our compliance reviews, we continue to identify that dealers are not performing a sufficient assessment of the issuers and their products prior to recommending these products to their clients. Further, we are finding that dealing representatives are not understanding and considering all of the product offerings approved for distribution on the firm’s product list.

Dealers and their dealing representatives are required to demonstrate that they have sufficient knowledge of a product, together with the KYC information of a client, to support a suitability analysis (see section 13.3 of NI 31-103). We encourage you to review [CSA Staff Notice 31-336](#) to improve your understanding of, and compliance with, your fundamental KYC, KYP and suitability obligations.

Acceptable practices to support a suitability analysis:

EMD firms must:

- Perform sufficient due diligence on an issuer prior to recommending the security to clients, including reviewing and assessing the information contained in the offering document provided by the issuer.
- Understand the key features, financial information and product risks of the securities being offered and be able to explain them to their clients.
- Analyze and review any third party assessment, that is provided to investors, of the issuer for completeness, reasonableness and accuracy.
- Provide adequate training to dealing representatives on all product offerings approved for distribution on the firm’s product list.
- Have policies and procedures in place to require dealing representatives to understand and consider all of the product offerings approved for distribution on

the firm's product list.

Unacceptable practices

EMDs must not:

- Perform due diligence of an issuer after a client expresses interest in purchasing a product.
- Rely solely on the issuer's information or third parties to fulfill their KYP obligation, e.g. information in the issuer's offering documents.
- Recommend or sell a product without understanding the product's risk and key features and conducting an appropriate KYP assessment.

(iii) Inadequate documentation to support reliance on the accredited investor prospectus exemption

We continue to see that some EMDs are not maintaining adequate documentation to support reliance on the accredited investor prospectus exemption. EMDs are selling prospectus-exempt securities to investors without ensuring that investors qualify as accredited investors within the meaning of National Instrument 45-106. For example, some EMDs:

- rely solely on a statement from the investor that he or she meets the accredited investor definition, without collecting any other information to support this statement,
- do not adequately explain to an investor the meaning of "financial assets" and subsequently do not accurately document the client's financial situation, when relying on the financial assets definition, and
- do not adequately explain to an investor that their net income must be calculated based on the two most recent calendar years and be reasonably expected to exceed the net income level of \$200,000 in the current calendar year, when relying on the income definition.

Paragraph 7.1(2)(d) of NI 31-103 provides that an EMD can trade a security only where the trade is a distribution made under a prospectus exemption or a resale where a prospectus exemption would have been available to the seller had the trade been a distribution. This is a requirement of the EMD in order to rely on this registration category. Otherwise they must be registered as an investment dealer. Section 1.9 of the Companion Policy to NI 45-106 states that it is the responsibility of the person distributing or trading securities to determine whether an exemption is available. Please review [OSC Staff Notice](#)

[33-735](#) - *Sale of Exempt Securities to Non-Accredited Investors* for more information on the requirements.

Acceptable processes and practices

EMDs and their registered individuals must:

- Have a process in place to collect and document sufficient information for each prospective investor to determine accredited investor status.
- Understand the criteria that must be met to rely on the accredited investor definition.

(iv) EMDs distributing securities of issuers in the loans industry

We have come across a number of EMDs distributing securities of issuers that raise capital for lending purposes or to purchase accounts receivables from businesses. Some examples include issuers:

- in the business of providing high risk loans to individuals or businesses, where interest of between 30%-39% is charged on these loans, and
- who use proceeds raised to purchase factored receivables, which includes receivables from various manufacturing, importing and service businesses.

While reviewing the activity of some of these issuers, we identified concerns with the collectability of the loans or the receivables. We believe EMDs distributing securities of these issuers need to closely evaluate the credit risks and monitor the loans and receivables as part of their KYP obligations. Section 13.3 of the companion policy to NI 31-103 (NI 31-103CP), under the heading "Suitability obligation", states that to meet the suitability obligation registrants should have an in-depth knowledge of all securities that are bought or sold for, or recommend to, clients and should be able to understand and explain to their clients the security's risks, key features, initial and ongoing costs and fees and other relevant information. Monitoring procedures should include:

- monitoring the aging of loan receivables, with an emphasis on aging balances that exceed expectations or historical trends – keeping in mind that credit risk increases with loan term,
- monitoring any credit events, including missed payments or defaults by any debtors,
- assessing whether audited financial statements of the issuer and other entities in the investment structure will be provided to investors,
- closely monitoring bad debts of the issuer and the provision for accounts written off,

- ensuring a thorough understanding of the use of funds, including all types of lending practices engaged by the issuer,
- determining whether or not the issuer will be lending funds to related entities,
- identifying any related party entities, holding companies, or trustees in the organizational structure that may be used to conceal the actual use of funds,
- assessing the complexity of the organizational structure of the issuer - the number of entities, the money flows between entities and the reasons for the structure,
- assessing the reasonableness of the fee structure, including the net amount of investor proceeds utilised for the issuer’s lending operations,
- evaluating any collateral pledged as security for repayment of the loans and assessing the investor recourse for recovering funds in the event of default,
- if loans or receivables are being purchased from originators, assessing if there is a diversified pool of originators, or whether receivables are being purchased from a small pool or a single originator, and
- evaluating the historical performance and track record of any originator and asking that financial statements of the originator be made available for your review.

We would also like to remind EMDs that distribute the securities of these issuers that they have an obligation to perform ongoing due diligence, including analysis of the financial performance of the issuer products sold to their clients.



b) Update on initiatives impacting EMDs

(i) Compliance programs surrounding new capital raising exemptions



Recent changes to increase access to the exempt market have expanded investment opportunities for all investors. The OSC will support the implementation of the expanded exempt market access through targeted outreach, oversight and supervision processes.

OSC Statement of Priorities – 2016/17

During the past year, several new prospectus exemptions came into effect in Ontario (see section 5.2 of this report for more information), including the family, friends and business associates exemption, the offering memorandum exemption and the crowdfunding

exemption. We will be conducting compliance reviews to monitor whether dealers are complying with the requirements under the new prospectus exemptions. We are also working very closely with the OSC’s Corporate Finance Branch to coordinate and conduct compliance reviews of issuers.

As part of our compliance reviews of firms using these new exemptions, we will:

Family, friends and business associates exemption:

- Review the EMD's books and records to ascertain how it determined that the investor met the definition of "close personal friend" or "close business associate".

Offering memorandum exemption:

- Review the books and records of the EMD to determine:
 - the suitability assessment performed for each investor.
 - what reasonable steps the EMD took to confirm that an investor meets the "eligible investor" definition.
 - what procedures and controls are in place that led the EMD to conclude that the investment, of up to \$100,000, in an exempt product is suitable for an eligible investor and no concentration concerns were identified.
- Examine how the EMD delivered the offering memorandum to the investor, including the timing of the delivery, the mechanism of delivery (for example electronic or hard copy delivery) and the client's ability to access the document.
- Review and assess the marketing materials provided to investors for completeness, accuracy and reasonableness.
- Examine how the EMD determined that the security may be distributed in reliance on the offering memorandum exemption and how the EMD considered and determined that the security being distributed is not a specified derivative or a structured finance product.

Crowdfunding exemption:

- Examine how the dealer determined that the security may be distributed in reliance on the crowdfunding exemption.
- Review the books and records of the dealer to determine if the firm has an adequate due diligence process for reviewing issuers seeking to access the funding portal.
- Examine how the dealer made the offering document and any additional material available to investors.
- Review the funding portal to ensure there is no indication:
 - of a recommendation or advice having been given to an investor.
 - of advertising a distribution or soliciting of purchasers.

All compliance reviews:

- We will assess the adequacy and reasonableness of the firm's internal controls in overseeing the firm's compliance with specific features of the new prospectus exemptions, including:
 - determining whether an investor meets certain definitions.
 - the limits on how much an investor can invest under the offering memorandum or crowdfunding exemptions.
 - the delivery of offering memorandums or other required forms, such as risk acknowledgement forms.
- We will assess the adequacy of the firm's training to dealing representatives on the requirements of the new prospectus exemptions.
- Reviewing a sample of completed and signed risk acknowledgment forms.
- Reviewing marketing materials including brochures, social media, websites, and presentations to ensure they provide clear, accurate and balanced messages, particularly when directed to retail investors. We expect important facts and risks associated with the investment to be clearly outlined. EMDs should review the materials to ensure that all risks identified in the marketing materials are consistent with those identified in the offering memorandum and as acknowledged in the risk acknowledgement section of Form 45-106F9.

The above information is not a complete list. We recommend that you conduct regular self-assessment of your firm's compliance with securities laws. Where necessary we will take regulatory action to ensure compliance.

(ii) EMDs who sell related party products

We have historically had concerns with firms registered solely in the EMD category that trade solely or primarily in the securities of a limited number of related or connected issuers (referred to in this section as "captive dealers"). The basis of this concern is that EMDs that trade solely or primarily in the securities of related or connected issuers are financially dependent on these issuers and therefore this business model has a significant inherent conflict of interest.

To assist captive dealers in meeting their regulatory obligations, staff of the CSA issued [CSA Staff Notice 31-343](#) - *Conflicts of interest in distributing securities of related or connected issuers*.

The purpose of the Notice was to:

- set out our concerns with the conflicts of interest that arise from the captive dealer business model and to provide guidance to captive dealers on how to respond to conflicts of interest by avoiding, or controlling and disclosing them,
- suggest acceptable and unacceptable practices for addressing conflicts of interest,
- outline what firms proposing to be captive dealers can expect when applying for registration, and
- outline what captive dealers can expect when CSA staff perform compliance reviews.

Our compliance reviews of captive dealers will continue to focus on how these significant conflicts of interest are addressed. For applicants who propose to use this business model, our pre-registration review will focus on conflicts of interest identification, evaluation and controls. We may also recommend refusal of registration for firms that propose to have a captive dealer business model if it does not adequately address the conflicts of interest.

We remind dealers that changes in business models must be filed with us. Registrants must file Form 33-109F5 if they change their business to a captive dealer business model.

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) Common deficiencies and previously published guidance

The following includes the deficiencies that we continued to find in reviews of PMs that have been reported on in previous annual reports and prior guidance (in addition to those in the section on deficiencies for all registrants). 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 investment management agreements	<ul style="list-style-type: none"> Section 4.3.1 of OSC Staff Notice 33-742 under the heading <i>Inadequate investment management agreements</i> Subsection 11.5(1) and paragraph 11.5(2)(k) of NI 31-103
2) Inadequate trade matching policies and procedures	<ul style="list-style-type: none"> Section 5.4.1 of OSC Staff Notice 33-738 under the heading <i>Lack of awareness of trade-matching requirements</i> National Instrument 24-101 and CP24-101
3) KYC information not current	<ul style="list-style-type: none"> Section 4.3(a)(iii) of OSC Staff Notice 33-746 under the heading <i>Inadequate update of clients' KYC and suitability information</i> Section 13.2(4) of NI 31-103 and 31-103CP CSA Staff Notice 31-336 under the heading <i>How often should registrants update KYC information?</i>

(ii) Inadequate number of advising representatives

Some PMs do not maintain an adequate number of advising representatives (ARs) and associate advising representatives (AARs) based on the nature of their business activities, and the number of their clients.

For example, we identified one PM that provided portfolio management services for about 1,000 high-net-worth individuals that had only one registered AR (and no AARs). This PM offered separately managed accounts consisting of a wide variety of securities. Based on the firm's business activities, and the number of its clients, we found this firm to have an inadequate number of ARs. To address our concerns, the firm registered additional ARs and AARs to service their clients.

We have also observed a number of PM firms, including online advisers, that have very low (e.g. less than \$10,000) or no minimum dollar amounts to open a managed account. This contrasts with PM firms that have historically had very high account minimums, such as \$500,000 and above. The practice of having very low or no account minimums for managed accounts may result in these firms having a very high ratio of clients to AR/AARs.

It is important that PMs maintain an adequate number of ARs/AARs to ensure clients are provided with the proper level of service, attention and monitoring required under a discretionary portfolio management relationship, and to discharge their KYC and suitability obligations under securities law. On an ongoing basis, PMs must have an adequate number of ARs and AARs to service their clients, and that they are devoting enough time to servicing the business and clients, especially when their client accounts or assets under management (AUM) increases or is expected to increase.

There are no bright-line tests for determining an adequate number of ARs and AARs for each firm. It will depend on the facts and circumstances of each firm. For example, with all other things being equal, a PM firm with a robust automated KYC and suitability process that offers simple, passive investments likely does not need as many ARs compared to a firm with manual KYC and suitability processes and complex, active investments.

Further, since an AAR's advice must be pre-approved by their designated AR under section 4.2 of NI 31-103, PMs should also ensure the ratio of ARs to AARs is reasonable, considering the duties and responsibilities of the individuals.

Acceptable practices in maintaining an adequate number of ARs/AARs

PMs must:

- Consider the following factors when determining how many ARs/AARs are required:
 - the nature of the business,
 - number and types of clients,
 - assets under management,
 - expectations of clients,
 - types of products and services offered,
 - types of investment strategies used,
 - if sub-advisers are used, and
 - plans or expectations for changes to any of the above factors.
- Create guidelines for what is an adequate number of ARs/AARs at your firm based on the above and other factors, and regularly monitor the number of ARs/AARs based on these factors.
- Proactively recruit, hire and register ARs and AARs when you expect numbers of clients and/or AUM to increase by certain thresholds or when the firm's

guidelines indicate a need for additional ARs or AARs.

Unacceptable practices

PMs must not:

- As a substitute for having an adequate number of ARs/AARs, delegate certain of their obligations (such as collecting, documenting and updating clients' KYC and suitability information) to referral agents, such as financial planners or individuals registered in a category which does not permit advising (e.g. SPDR, MFDR).

(iii) Individuals advising in options without required proficiency

Some individuals who are registered as ARs at PMs are advising clients in recognized options (for example, exchange-traded equity options) without the required proficiency, as they have not completed a required course.

Section 3.1 of OSC Rule 91-502 - *Trades in Recognized Options* ([OSC Rule 91-502](#)) states that no person shall give advice in respect of a recognized option unless he or she has successfully completed the Canadian Options Course, which is defined to include a significantly equivalent successor course. A recognized option is defined in section 1.1 of OSC Rule 91-502, and includes certain equity options or non-equity accepted options that trade on an exchange or market. An equity option and a non-equity accepted option are also defined in section 1.1 of OSC Rule 91-502.

The Canadian Options Course is no longer being offered. Its successor courses are both the Derivatives Fundamentals Course and the Options Licensing Course prepared and conducted by The Canadian Securities Institute.

Acceptable practices for PMs advising in options

PMs must:

- Take an inventory of their completed option courses and assess if they meet the required proficiency.
- If you identify ARs at your firm advising in recognized options without the required proficiency, cease their options advising activities until the individuals complete the required courses (or if appropriate, applying for an exemption if they have completed comparable options courses).

Unacceptable practices

PMs must not:

- Assume your firm's ARs are proficient to advise in recognized options solely on the basis that they are registered as an AR, and without performing any due diligence on their completed options courses.

(iv) Advising clients in other jurisdictions without appropriate registration

Some PMs advise clients who are resident in one or more foreign or other Canadian jurisdictions outside of Ontario, without complying with the other jurisdictions' registration requirements or exemptions. For example, these PMs:

- are not registered with the securities regulatory authority (SRA) in the applicable jurisdictions to provide advice in securities when they should be registered,
- do not have an adequate basis to support that they are exempt from adviser registration requirements in the non-Ontario jurisdictions (e.g. they cannot satisfactorily explain to us the steps they took to ascertain if registration was required or not), or
- appear, for Canadian clients outside of Ontario, to be relying on the client mobility registration exemption for individuals in section 2.2 of NI 31-103 and for firms in section 8.30 of NI 31-103, but have not taken all of the required steps to rely upon these exemptions (such as not submitting a completed Form 31-103F3 *Use of Mobility Exemption* to the applicable local SRA).

The registration of firms and individuals that provide advice in securities is a key pillar of investor protection. If a PM is not in compliance with registration requirements in other jurisdictions, this raises concerns that the firm does not maintain an adequate compliance system as required under section 11.1 of NI 31-103. Further, the breach by a registrant of a requirement in another Canadian or foreign jurisdiction may be considered by us as impacting the registrant's fitness for continued registration in Ontario.

In addition, if we find that a PM is acting as an adviser in another jurisdiction without appropriate registration or use of a valid registration exemption, we may provide this information to the applicable SRA. This may lead to a regulatory action by that SRA. See section 2.2(a)(v) of this annual report for more information.

Acceptable practices for PMs advising clients in other jurisdictions

PMs must:

- Before providing advice to a client resident or located in another jurisdiction (including an existing Ontario client moving to another jurisdiction), take adequate steps to understand and comply with the applicable jurisdiction's registration and other requirements, such as by discussing with your firm's compliance staff and/or by engaging a securities lawyer or other qualified person.
- Take an inventory of the residency of your existing clients, and if clients are located in jurisdictions where you are not registered or do not have a valid registration exemption, take immediate steps to come into compliance such as by registering in the applicable jurisdictions or discontinuing your advisory services to the applicable clients.

Unacceptable practices

PMs must not:

- Assume you do not need to register in the other jurisdiction if you do not solicit clients in the jurisdiction, or only have a small number of clients in the jurisdiction, without performing due diligence on the applicable jurisdiction's requirements.

(v) Improper marketing of registration and CIPF coverage

Some PMs are improperly representing their registration with us. For example, they state in marketing materials that they are registered:

- with the OSC, but do not state the category of their registration,
- with the OSC, but incorrectly state their category of registration. For example, they state they are registered as a PM when they are a restricted PM, or they state that they are registered as an investment counsel, which is an outdated category,
- as a PM, but do not state in which provinces or territories they are registered. This may lead an investor to believe that they are registered in all Canadian jurisdictions when this may not be the case.

Further, some PMs make misleading statements about the Canadian Investor Protection Fund (CIPF). Many PMs have trading authority over their clients' custody accounts at IIROC Dealer Members (DMs). In marketing materials, some PMs discuss their service

arrangements with DMs who may act as the client's custodian. DMs are participants in the CIPF, which protects investors within specified limits if a DM becomes insolvent. When describing the DMs they use, some PMs make statements which inappropriately imply that the PM is a CIPF participant. For example, they state that "customer assets are protected by CIPF within specific limits", without making it clear that this only applies to customer assets held at the DM and not the PM. Further, some PMs inappropriately make statements describing CIPF coverage that differs from what a CIPF participant is permitted to state about CIPF coverage. For example, their website or marketing brochures have a section that summarizes CIPF coverage in their own words.

Subsection 44(1) of the Act prohibits a person or company from representing that it is registered under the Act unless the representation is true and the representation specifies the category of registration.

Subsection 44(2) of the Act prohibits a person or company from making untrue or misleading statements about any matter relevant to a reasonable investor who is deciding whether to enter into or maintain a trading or advising relationship with the person or company.

Acceptable practices for marketing registration and CIPF coverage

PMs must:

- When representing your registration categories in marketing materials, state the jurisdictions where you are registered.
- Provide factual information about your clients' custodian's participation in any investor protection fund, and referring clients to speak to their custodian to learn more about the fund and its coverage or to view the fund's website.

Unacceptable practices

PMs must not:

- Make statements (including by omission) which may lead an investor to believe that a PM is a participant in the CIPF.
- Make statements about CIPF coverage that differs from what a CIPF participant is permitted to state.



b) Update on initiatives impacting PMs

(i) PM-IIROC member dealer service arrangements

CSA and IIROC staff continue to review service arrangements between CSA-regulated PMs and investment dealers that are members of IIROC to assess if rule amendments and/or guidance are needed. Review topics include:

- whether there is a way for clients to receive a single account statement instead of two statements, and
- principles for a written services agreement between the PM and IIROC dealer member outlining each party's roles and responsibilities.

Until this work is complete, we will continue to consider the factors set out in section 4.3.3 of [OSC Staff Notice 33-742](#) under the heading *PM client account statement practices* when assessing if a PM is meeting its statement delivery obligations to its clients when only the client's custodian delivers a statement to the client.

(ii) Online advisers

A number of PMs are now operating as "online advisers" in Ontario. These firms provide discretionary investment management services to retail investors through an interactive website.

On September 24, 2015, CSA staff published [CSA Staff Notice 31-342](#) – *Guidance for Portfolio Managers Regarding Online Advice*. This Notice describes the operations of online advisers and provides guidance about the ways in which a PM can provide advice using an online platform, while complying with regulatory requirements. The key points in the Notice are as follows:

- there is no "online advice" exemption from the normal conditions of registration for a PM. The registration and conduct requirements set out in NI 31-103 are "technology neutral". The rules are the same if a PM operates under the traditional model of interacting with clients face-to-face and if a PM uses an online platform.
- the online advice platforms that we have seen so far are hybrid services that utilize an online platform for efficiency, while registered ARs remain actively involved in decision-making. These platforms use robust electronic questionnaires for the KYC information gathering process, but an AR is responsible for determining that sufficient KYC information has been gathered to support investment suitability determinations

for a client. Clients' managed accounts are invested in relatively simple products, including unleveraged exchange traded funds, low cost mutual funds or other redeemable investment funds, cash and cash equivalents. Often, model portfolios are created using algorithmic software although, again, an AR has responsibility for the suitability of each client's investments.

- prior to implementing an online advice operating model, a PM or an applicant for registration as a PM will be asked to file substantial documentation, including their proposed KYC questionnaire and information about the processes relating to its use. We will review the documents to assess how the firm will meet its obligations under NI 31-103.
- CSA staff would need to carefully consider whether a PM would be able to fully comply with its obligations under NI 31-103 if the PM sought to conduct operations using an online advice platform that is materially different from the model described in the Notice.

The above key points continue to apply. Currently, the online advisers operating in Ontario have a business model materially consistent with those described above. In early 2016, we began compliance field reviews of Ontario-based online advisers that were operational for one year or longer. We are in the process of completing these reviews. We also recently formed a CSA-IIROC working group 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.

At a later time, we may publish additional guidance for online advisers, including our compliance review findings.

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

(i) Common deficiencies and previously published guidance

The following includes the deficiencies that we continued to find in reviews of our registrants that have been reported on in previous annual reports and prior guidance. 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 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 12.6 of 31-103CP
2) Inadequate oversight of outsourced functions and service providers	<ul style="list-style-type: none"> Section 4.4 (a)(i) of OSC Staff Notice 33-745 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
3) Inadequate disclosure in offering memoranda	<ul style="list-style-type: none"> Section 4.4.1 of OSC Staff Notice 33-742 under the heading <i>Inadequate disclosure in offering memoranda</i> Section 5.3 of OSC Rule 45-501
4) Inappropriate expenses charged to investment funds	<ul style="list-style-type: none"> Section 4.4 (a)(i) of OSC Staff Notice 33-746 Section 4.4.1 of OSC Staff Notice 33-742 under the heading <i>Inappropriate expenses charged to funds</i> Part II of OSC Staff Notice 33-743

(ii) IFM related conflicts of interest

Prohibited lending activities

We noted issues with IFMs lending money to the investment funds they manage. In the cases that we reviewed, the loan was long-term in nature for purposes other than funding redemptions of the fund’s securities or meeting expenses incurred by the investment fund in the normal course of its business.

This activity creates a serious conflict of interest which cannot be managed by the IFM. Section 13.12 of NI 31-103 restricts lending activities by a registrant. Although paragraph (2) of NI 31-103 provides that an investment fund manager may lend money on a short term basis to an investment fund it manages, the loan must be for the purpose of funding redemptions of its securities or meeting expenses incurred by the investment fund in the normal course of its business.

Acceptable practices to avoid prohibited lending activities:

IFMs must:

- As part of their conflict of interest policies and procedures, establish parameters under which the IFM may lend money to the funds it manages (e.g. duration, purpose).
- Have policies and procedures to monitor the lending activities to confirm that these activities comply with the conditions under section 13.12 on an ongoing basis.
- The terms of the loan are not less favourable to the funds as compared to standard commercial terms of a similar loan.

Unacceptable practices:

IFMs must not:

- Make ad hoc or one-time loans to funds for general purposes, even when the amount of the loan is small.

Non-compliance with self-dealing prohibitions

We noted instances where the IFM, who was also the adviser to the funds, caused the funds to purchase a security of an issuer in which a responsible person (as defined in section 13.5 of NI 31-103) or an associate of a responsible person is a director. The fact was not disclosed to the securityholders of the funds or the disclosure was general in nature and not meaningful. In all cases, written consent was not obtained from each securityholder of the investment fund before the purchase.

In addition, we continue to identify prohibited inter-fund trades during compliance reviews as previously discussed under Section 4.4 (a)(iii) of [OSC Staff Notice 33-746](#).

These activities create serious conflicts between the IFM/adviser and the securityholders of the funds. Paragraph 13.5(2)(a) of NI 31-103 prohibits registered advisers from knowingly

causing any investment portfolio they manage, to purchase a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director unless this fact is disclosed to the client and the client has provided written consent prior to the purchase.

In addition, section 13.5 of NI 31-103CP states that if the client is an investment fund, the disclosure should be provided to, and the consent obtained from, each securityholder of the investment fund in order for it to be meaningful. Disclosure should be prominent, specific, clear and meaningful to the client. This approach may not be practical for prospectus-qualified investment funds. Consider the specific exemption under section 6.2 of National Instrument 81-107 – *Independent Review Committee for Investment Funds* ([NI 81-107](#)).

Furthermore, section 13.5(2)(b) of NI 31-103 strictly prohibits inter-fund trading between two investment funds that have the same adviser.

Acceptable practices to ensure compliance with self-dealing provisions

IFMs must:

- Have policies and procedures in place to identify any changes to outside business activities, officer positions held and directorships of a responsible person or an associate of a responsible person of the firm.
- Ensure that the adviser of the funds is aware of the issuers in which a responsible person or an associate of a responsible person holds a partner, officer or director position (the Restricted Issuers).
- Before investing in Restricted Issuers, provide adequate and clear disclosure to the securityholders of the funds about the conflict, and obtain written consent from each securityholder of the funds.
- For prospectus-qualified investment funds, consider having the Independent Review Committee to review and approve the purchase as provided under section 6.2 of NI 81-107.
- Consider adopting a policy where investing in Restricted Issuers is strictly prohibited.
- Refer to Section 4.4 (a)(iii) of OSC Staff Notice 33-746 for guidance on prohibited inter-fund trading.

(iii) Oversight of exemptive relief process

An IFM may have obtained relief from certain requirements in securities legislation on its own behalf or on behalf of the investment funds under its management. If so, the IFM must have a process in place to confirm that the compliance and operational staff of the IFM understand the nature, as well as the terms and conditions, of the relief. In our compliance reviews, we identified a number of examples where the IFM did not comply with the terms and conditions of exemptive relief decisions. We observed the following:

- compliance staff at IFMs were unaware of the relief. In these cases, operational staff worked with legal staff to obtain relief, but did not inform compliance staff of the application and decision. Since compliance staff were not involved in the application process nor informed of the decision, they could not answer our questions as to what the relief was for and if it is still in use.
- compliance staff at IFMs were not monitoring compliance with the terms and conditions of the decision or, in some cases, incorrectly assuming that someone else was monitoring the conditions. In some of these cases, IFMs were offside the terms and conditions outlined in the decision.

In some cases, IFMs did not obtain the necessary relief. Legal and/or compliance staff did not adequately monitor changes in securities legislation for the impact on existing and/or proposed investment funds that would trigger the need to obtain relief. In other cases, compliance and/or legal staff did not adequately monitor relief that was granted against the firm's business changes.

Section 11.1 of NI 31-103 requires a firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision to provide reasonable assurance compliance with securities legislation and manage the business risks in accordance with prudent business practices. Policies and procedures should be established that:

- require the firm to be aware at all times of which decisions it is relying upon,
- require the CCO and compliance staff to monitor compliance with the terms and conditions outlined in these decisions, and
- require operational staff comply with the terms and conditions outlined in these decisions in carrying out their day-to-day activities.

Acceptable practices to maintain compliance with exemptive relief orders

IFMs must:

- Assign the responsibility to oversee compliance with one or more persons. The person responsible should obtain information from the different groups (such as legal, operational and compliance).
- Develop policies and procedures that clearly outline the procedures to be followed to oversee the exemptive relief process. The policies and procedures should require that:
 - There is as an assessment on a regular basis to determine if any exemptive relief is required based on the operations.
 - There is regular monitoring of conditions in any decisions that have been granted.
 - Confirmation is required that conditions are being complied with.
- Maintain an inventory of all relief orders granted and the terms and conditions specified in each decision. This inventory will assist you in monitoring for compliance.
- Monitor OSC Bulletins for relief granted to other firms that may be applicable to your business.

(iv) Lack of controls and supervision in overseeing outsourced functions

We continue to identify situations where IFMs inadequately oversee their funds' service providers. We identified instances where IFMs did not review:

- security holdings valuations or they were performed on an infrequent basis,
- reconciliations and/or exception reports of security holdings,
- accruals and reconciliations of dividend and interest income,
- net asset value (NAV) exception reports,
- processing of corporate actions,
- reconciliations and/or exception reports of trust accounts, and
- reconciliation of units outstanding between fund accounting records and transfer agent records.

IFMs are responsible for all outsourced functions. They must develop oversight procedures that are performed by their staff on all outsourced functions on a regular basis.

As required under section 11.1 of NI 31-103, IFMs must have a system of controls and supervision in overseeing their outsourced functions. Part 11 of 31-103CP states that IFMs are responsible and accountable for all functions that are outsourced to service providers.

Acceptable practices to oversee outsourced functions

IFMs must:

- Establish and maintain policies and procedures to actively monitor and review the work performed by service providers.
- Develop detailed policies and procedures in dealing with exceptions as reported by the service providers and as identified by IFM staff in their review of the service providers' work.
- Develop escalation protocols on how to deal with exceptions, including circumstances where compliance staff should be involved.
- Provide training to operational staff at all levels on the established policies and procedures so that exceptions are appropriately addressed on a day-to-day basis.
- Obtain and review the service provider's CSAE 3416 *Reporting on Controls at a Service Organization*.



b) Update on initiatives impacting IFMs

(i) Focused reviews on mutual fund sales practices

In early 2016, we conducted a focused review of mutual fund sponsored conferences organized and presented by IFMs, in order to assess compliance with Part 5.2 of NI 81-105. We continued to identify similar deficiencies in this area as noted in prior reviews in 2006 and 2014, which were discussed 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](#) and [OSC Staff Notice 11-760 - Report on Mutual Fund Sales Practices Under Part 5 of NI 81-105 - Mutual Fund Sales Practices](#).

We will report the findings of our reviews to each IFM included in our focused reviews and assess the need for further guidance.

(ii) Advisory discount fee survey

In April 2016, we issued a survey requesting information from a sample of IFMs relating to special arrangements involving the provision of discounted management fees. Specifically,

these arrangements are initiated by IFMs with certain dealers and/or advisers selected by the IFM (collectively referred to as advisers) that distribute the mutual funds managed by the IFMs and involve the following features:

- the arrangement is between the IFM and the advisers and not between the IFM and the securityholders of the funds,
- the management fee rebate is offered to certain securityholders of the funds if the adviser maintains a certain minimum level of assets under management in aggregate with the IFM,
- the arrangement is entered into with a select number of advisers and the management fee rebate is only available to the clients of these advisers, and
- these arrangements are not disclosed by the IFM or available to all unitholders.

We are currently in the process of reviewing information collected related to these arrangements and assessing any non-compliance with Part 2 of National Instrument 81-105 and other regulatory requirements. This work is part of a larger initiative included in the OSC’s Statement of Priorities. We are coordinating our compliance efforts with the SROs to look at issues common to us, such as sales incentives and conflicts of interest.

(iii) Investment Funds and Structured Products Branch

Our Investment Funds and Structured Products (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.

IFM Resources	Information source
<p>1) Annual Summary Report</p>	<ul style="list-style-type: none"> • The IFSP Branch publishes an annual summary report for Investment Fund Issuers. The 2015 annual summary report <u>2015 – Summary Report for Investment Fund and Structured Product Issuers</u> was published on February 17, 2016. Specific information includes: <ul style="list-style-type: none"> ○ Mutual Fund Fees – section 1.1 ○ Point of sale disclosure – section 1.2 ○ CSA risk classification methodology – section 1.2(iii) ○ Final stage of modernization of investment fund

	product regulation – section 1.4
2) Investment Funds Practitioner	<ul style="list-style-type: none"> • The Investment Funds Practitioner is an ongoing publication that provides an overview of issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that are filed with the OSC.
3) Staff Notice	<ul style="list-style-type: none"> • For investment funds that track an index, staff published on July 9, 2015, OSC Staff Notice 81-728 - Use of "Index" in Investment Fund Names and Objectives to provide guidance on staff's views of the characteristics that an "index" should possess.



ACTING ON REGISTRANT MISCONDUCT

- a) Regulatory action during April 1, 2015 to March 31, 2016**
- b) Cases of interest**
- c) Contested OTBH decisions and settlements by topic**

4 Acting on registrant misconduct

Registrant misconduct may come to our attention through various channels, including 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 establishing controls to detect and address instances of misconduct. As the Commission recently stated in *Re: Argosy Securities Inc. and Keybase Financial Group Inc.*:

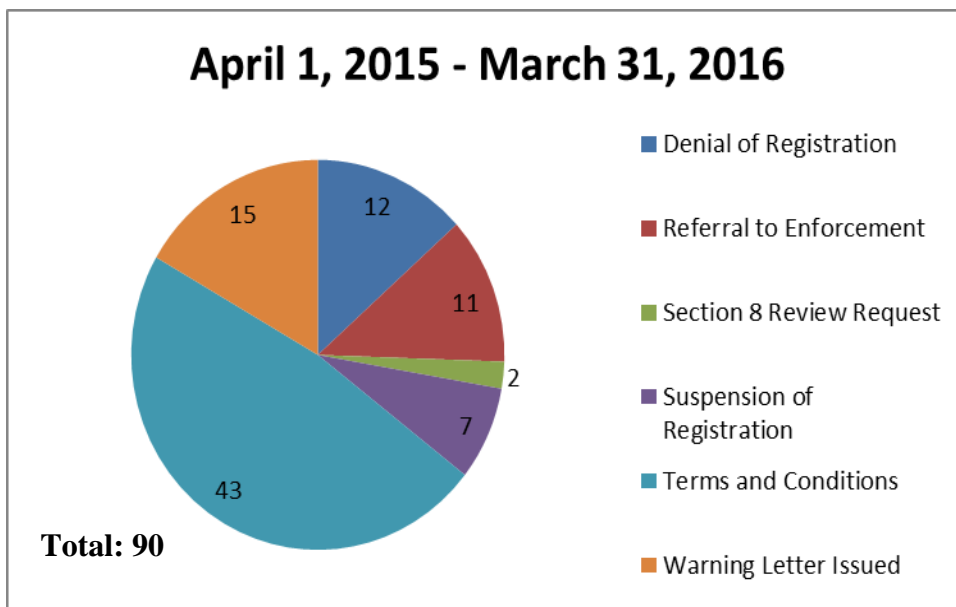
“The enactment of policies and procedures by a registrant firm is only a first step toward the establishment and maintenance of a satisfactory compliance and supervisory system. Such policies and procedures are of no benefit unless they are implemented...”

Further, a registered firm must conduct monitoring and testing of the firm’s activities in order to assess whether the policies and procedures are being implemented properly. To the extent that the monitoring and testing reveals deficiencies, these deficiencies must be rectified promptly, whether through amendment of the policies and procedures, further communication and/or training with respect to the policies and procedures, increased management supervision of firm activity, employee discipline, or other means.”¹⁰

a) Regulatory action during April 1, 2015 to March 31, 2016

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.

¹⁰ Commission decision in *Re: Argosy Securities Inc. and Keybase Financial Group Inc.*, April 20, 2016 at paras. 149-150



In order to enhance transparency and inform registrants about the elements we consider in determining what response may be recommended in various situations, we have compiled the following information based on situations we have come across in past cases.

When we encounter registrant misconduct, we respond with timely and appropriate regulatory action. In recommending regulatory action we consider whether there were aggravating or mitigating factors, such as:

- The nature of the conduct,
- The severity and duration of the conduct,
- Whether the conduct was deliberate,
- Whether the conduct represents repeat non-compliance, a pattern of misconduct, or multiple transgressions,
- The level of investor harm and the magnitude of investor losses,
- Whether the firm or individual has taken steps to rectify the situation, and
- The level of cooperation by the firm or the individual.

Some of the reasons that we consider when recommending regulatory action are:

Regulatory Action	Examples of Reasons for Taking the Regulatory Action
<p>Terms and conditions on registration to address compliance or conduct concerns¹¹</p> <p>Examples include:</p> <ul style="list-style-type: none"> • a requirement to replace the CCO and/or UDP; • a requirement to hire a compliance consultant and/or monitor; • close or strict supervision on the individual; • successful completion of a course; • a requirement to file monthly reports with the OSC (such as financial reports). 	<ul style="list-style-type: none"> • Compliance deficiencies (generally significant and/or repeat compliance deficiencies may result in terms and conditions); • Conduct issues (such as inadequate compliance system, inadequate policies and procedures, UDP and/or CCO not performing responsibilities, conflicts of interest); • Late filing of financial statements; • Capital deficiencies; • Loss of key personnel (UDP or CCO).
<p>Suspension of registration</p> <p>May be automatic (if arising from a capital deficiency or a failure to pay fees), voluntary (when following a surrender of registration or settlement), or may result from registrant misconduct.</p>	<ul style="list-style-type: none"> • Numerous significant deficiencies identified during a compliance review; • Inappropriate use of investor proceeds; • Conducting or delegation of registerable activity without registration; • Inadequate KYC or KYP information and deficient suitability analysis (including improper reliance on prospectus exemptions); • Undisclosed material conflicts of interest; • Misrepresentations to Staff; • Working capital deficiency.
<p>Denial/refusal of registration</p>	<ul style="list-style-type: none"> • Integrity, proficiency or solvency concerns; • Non-disclosure of criminal charges or conviction;

¹¹ We regularly use terms and conditions on firm and individual registrations to address business model and structural issues in circumstances where there is no misconduct or breaches of Ontario securities law. Please refer to section 2.1 (c) of this report for examples of this.

	<ul style="list-style-type: none"> • Repeat compliance concerns or a pattern of misconduct; • Unapproved outside business activity while registered; • Failure to honour a settlement agreement with a SRO; • Making misrepresentations to OSC staff, sponsoring firm, or the public; • For-cause dismissal from previous employment for conduct or compliance reasons; • Incomplete disclosure of circumstances of termination or resignation from previous employment; • Conducting registerable activity without registration; • Engaging in fraud.
<p>Referral to Enforcement</p>	<ul style="list-style-type: none"> • Conduct involving registerable activity or other inappropriate conduct by individuals or firms that are not registered with the OSC, or who are acting outside of the scope of their registration; • Conduct involving the misappropriation of investor assets or other potentially criminal activity; • Investigation steps are needed beyond the scope of CRR subject matter expertise (e.g. insider trading, money laundering); • There is a potential that a receiver may need to be appointed, usually when there is an investment fund involved in the conduct; • An interim remedy is sought, such as a cease trade order; • Specialist reports are required to be obtained or experts are required to be retained.

Opportunity to be Heard (OTBH) Process

Prior to a Director of the OSC imposing terms and conditions on a 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 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. 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 OSC of a Director's decision under section 8 of the Act.

b) Cases of interest

(i) Disclosures – criminal and solvency

As a part of the application for registration, applicants are required to disclose specified information pertaining to criminal charges and convictions, and their personal financial circumstances, among other things. This information is required to be disclosed in Form 33-109F4 pursuant to sections 2.2 and 2.3 of NI 33-109 (see the discussion of this requirement in section 2.2(b)(i) of this report). Registrants are also required to disclose changes to this information on an ongoing basis, and within 10 days of the change, pursuant to section 4.1 of NI 33-109.

The failure to make required disclosures of criminal and solvency matters has been a long-standing problem and the subject of various decisions from the Commission and the Director (see [Director's Decisions](#) by topic under "Misleading Staff or Sponsoring Firm"). Non-disclosure may result in a finding that the individual lacks integrity and is therefore unsuitable for registration. Consistent with our past experience, this year we identified a number of situations where applicants and registrants did not make the required disclosure of criminal and solvency matters, either in a timely manner or at all. These cases were reviewed by our Registrant Conduct Team, and have resulted in regulatory action being taken against several individuals; in some cases, the application was withdrawn or the registrant resigned. A number of these cases are on-going.

As part of the application process, we now conduct solvency checks on all applicants for registration or reactivation of registration. Where these searches reveal solvency issues that were not disclosed on the individual's application form (such as a past bankruptcy, consumer proposal, requirement to pay, etc.), we have reviewed the matter further and taken regulatory action where appropriate.

(ii) Use of disclaimers

As noted in section 3.1(b)(viii) of this report, during the course of compliance reviews, we review client agreements and documents and assess whether any terms or clauses contradict or are inconsistent with the registrant's obligations under securities law, in which case a deficiency may be noted.

The use of language in client documents disclaiming obligations under securities law and the use of other disclaimers may be considered to be a breach of the obligation to deal fairly, honestly and in good faith with clients as required in subsection 2.1(1) of OSC Rule 31-505. A breach of this obligation may indicate that a firm or individual lacks integrity and is therefore unsuitable for registration, and may result in regulatory action, including suspension.

There are two Director decisions, including the recent decision in *Re Kodric* (September 24, 2015) (Kodric) in which the Director made this finding.

- In *Re Kingsmont Investment Management Inc.* (September 24, 2013) (Kingsmont), Clients investing in a particular product were required to sign a Risk Disclosure form that contained the following statement: "As such, I hereby release Kingsmont Investment Management Inc., its officers, directors and employees and my investment adviser for any and all losses that I may incur relating to this investment."

Staff argued at the OTBH proceeding that this language was intended to relieve the registrants of their suitability obligation in subsection 13.3(1) of NI 31-103 and a breach of the obligation to deal fairly, honestly and in good faith. The respondents argued that the language was included as a warning to investors that the investment was risky.

The Director agreed with staff's position, finding that the language was clear on its face and that its purpose was to protect the firm and the individual registrant from

any liability associated with the investment. The Director found that including this disclaimer of liability in the document was a breach of the above obligations.

- In *Kodric*, the registrant asked clients to sign an indemnity letter with respect to a leveraging strategy recommended by the registrant. Staff argued that this was an attempt to shift the responsibility for assessing suitability from the registrant to the clients. The respondent argued that the indemnification language was included to ensure that clients understood the risks of leveraging and that it was not an attempt to shirk his responsibilities as a registrant. The Director found that the indemnification language was clear on its face and that the registrant could not claim that he was not intending to shirk his responsibilities.

In both cases, the Director found that the respondents lacked integrity for this and other reasons, making them unsuitable for registration.

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
Eva-Christine Missullis June 17, 2015	Eva-Christine Missullis was registered as a mutual fund dealing representative with Investors Group Financial Services Inc. (IG) since 2004. Missullis’ registration was suspended when she was terminated for cause in January 2012. When Missullis applied to reinstate her registration, Staff reviewed the circumstances surrounding her termination for cause. Staff found that a client had complained that Missullis had made an unsuitable investment for them, and that she had failed to disclose the existence of deferred sales charges associated with the investment. Missullis forged the client’s signature to a KYC document that misstated the client’s risk tolerance and made

	<p>it more consistent with the nature of the impugned investment. Before terminating her for cause, IG offered to reimburse the client for investment losses in their account and for the deferred sales charges. On the basis of these facts, Staff informed Missullis that it proposed to recommend to the Director that her application for reinstatement of registration be granted, subject to terms and conditions. Staff’s letter emphasized that had Missullis not been terminated for cause over three years ago, Staff likely would have recommended a suspension of her registration. Missullis was offered an opportunity to be heard, but did not request one, and her registration was reinstated subject to custom supervisory and proficiency terms and conditions.</p>
<p>Vince Domenichini October 16, 2015</p>	<p>Vince Domenichini was registered as a mutual fund dealing representative with FundEx Investments Inc. since 2000 (and prior to that was registered with another firm since 1994). Domenichini’s registration was suspended when he was terminated for cause in December 2014 because of client signature falsifications found in some of his client files during a compliance review conducted by his firm. When Domenichini applied to reinstate his registration, Staff reviewed the circumstances surrounding his termination and found that he had used 30 pre-signed forms for 9 different clients, and forged client signatures to 51 documents for 17 clients. At least 5 of the forgeries were not authorized by the client, and Domenichini usually did not attempt to have his clients sign a document before he resorted to forgery. In addition, during the firm’s compliance review, Domenichini falsely denied forging a document. Domenichini agreed to withdraw his application for a period of one year from the date it was originally submitted, and agreed that any reinstatement of his registration would be subject to supervisory terms and conditions.</p>
<p>Dhiren Desai¹² November 11, 2015</p>	<p>Dhiren Desai was registered as a mutual fund dealing representative with Investors Group Financial Services Inc. (IG) since 2006. In 2013, one of his clients obtained an RSP loan, the proceeds of which were invested in mutual funds with IG. Shortly thereafter, the client</p>

¹² The Director’s decision in *Desai* can also be found in the Director’s Decisions section of the OSC website under the topical heading “Misleading Staff or Sponsor Firm”.

requested a redemption of the mutual funds. At the time of the redemption, an individual with the same name as the client contacted IG to advise that a loan had been taken out in her name without her knowledge, and that she had never met with Desai or anyone at IG. The redemption was reversed. IG concluded that an identity theft had occurred and that the transaction was fraudulent. Desai acknowledged that he did not deal directly with the client, but rather took instructions from an intermediary. Staff sought a six-month suspension of Desai's registration based primarily on three allegations: (i) that he falsified his client notes to appear to be a contemporaneous account of his meetings with the client, (ii) that he made misleading statements to Staff in the course of their investigation, and (iii) that he used pre-signed forms to effect the transaction. The Director found that the client communication document was falsified, and that Desai made vague and inconsistent statements to Staff regarding his involvement in the transaction. The Director concluded that Desai attempted to conceal his activities, and therefore lacked integrity. The Director found that although Desai was not complicit in the fraud, the incident might not have occurred had he been more diligent. The Director also found that Desai used blank or pre-signed forms in carrying out his activities. The Director ordered that Desai's registration be suspended for a period of three months, that he be required to complete the Conduct and Practices Handbook (CPH) course prior to being re-registered, and that his registration be subject to terms and conditions including strict supervision for a period of one year. In ordering a shorter suspension, the Director was guided by the fact that Desai was not complicit in the transaction and the fact that his supervisor testified to his character and his ability to learn and improve his proficiency and business practices.

(ii) Compliance system and culture of compliance

Registrant	Description
Argosy Securities Inc. and Keybase	Argosy Securities Inc. is an investment dealer and IIROC Dealer Member, and Keybase Financial Group Inc. is a mutual fund dealer and MFDA Dealer Member. The two firms are both solely owned by the same

<p>Financial Group Inc. August 18, 2015 Commission reasons for decision released April 21, 2016</p>	<p>individual, who is registered as the UDP of both firms. The firms had a lengthy history of repeat significant deficiencies identified by SRO staff, so OSC staff conducted an enterprise-wide compliance field review in conjunction with the SROs. OSC staff found a number of significant deficiencies, and recommended terms and conditions requiring the firms to retain a consultant to assess and address deficiencies in the firms' compliance resources and in their corporate governance. The firms were also required to satisfy SRO staff in respect of other itemized deficiencies. The Director imposed the terms and conditions, and the firms sought and obtained a hearing and review before the Commission. The Commission confirmed the Director's decision, and made a number of observations in its subsequent written reasons. The Commission endorsed the importance of firm culture and of the critical role of the UDP in establishing an appropriate "tone from the top." Even where the firms had reasonable policies and procedures, the Commission said that they were not adequately monitored, tested or enforced. The Commission also observed that independent directors might have avoided some of the firms' regulatory difficulties. Finally, the Commission found that the firm's remedial measures taken only in the face of imminent regulatory action did not reflect an appropriate firm culture.</p>
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(iii) KYC, KYP and suitability

Registrant	Description
<p>John Kodric¹³ September 22, 2015</p>	<p>The Director refused to reactivate the registration of John Kodric as a mutual fund dealing representative sponsored by Carte Wealth Management Inc. Kodric was dismissed from Manulife Securities Investment Services Inc. (Manulife) after 16 years due to an open investigation by the MFDA and client complaints. Kodric was alleged to have introduced clients to a private company (with which his brother was employed) for the purpose of investing in the company. The Director</p>

¹³ The Director's decision in *Kodric* can also be found in the Director's Decisions section of the OSC website under the topical headings "Outside Business Activity (Including Off-Book Dealings)" and "Trading or Advising Without Appropriate Registration".

	<p>found that Kodric engaged in trading outside his category of registration contrary to section 25(1) of the Act. Kodric also breached section 38 of the Act by telling his clients that the securities would be listed on the exchange, and communicating specific values and time frames for which the values would be met. In addition, Kodric recommended a leveraging strategy to many of his clients which involved borrowing against their home equity in order to obtain a “two-for-one” investment loan, the proceeds of which were invested in mutual funds. Distributions from the funds were used to pay the interest on the loans and any excess distributions or tax refunds were invested in additional mutual funds. The leveraged amount far exceeded the suitability guidelines set out by the MFDA and Manulife’s policies and procedures. Kodric asked clients to sign an indemnity letter with respect to the leveraging strategy in an attempt to shift the responsibility for assessing suitability onto the clients. Kodric also had pre-signed forms in his client files. The Director concluded that Kodric lacked the necessary proficiency and integrity required for registration, did not act fairly, honestly and in good faith with his clients, and did not comply with various provisions of Ontario securities law. Kodric was restricted from applying for registration for at least 12 months; his registration would depend on him demonstrating remorse and taking courses to “better understand his obligations as a registrant.” If registered, he would be subject to strict supervision by his sponsoring firm and prohibited from using leverage.</p>
<p>Greg Thompson January 19, 2016</p>	<p>Greg Thompson is registered as an exempt market dealing representative with Becksley Capital Inc. since 2010. Thompson sold \$200,000 worth of a high-risk investment product to a 93-year-old client with modest financial resources and a medium risk tolerance. The investment was made in two tranches: an initial investment of \$150,000, and a second investment of \$50,000, and no prospectus exemption was available for the second investment. The client’s total investment in this single illiquid and high-risk product represented almost 63% of her assets. Staff alleged that the investment was unsuitable for the client, and that it appeared that in processing the trades, Thompson was inappropriately influenced by the client’s son, who had an interest in the assets used to make the investment. Thompson agreed to terms and</p>

conditions on his registration requiring further education about his obligations as a registrant, a prohibition on any trading activity until this education was completed, and strict supervision of his trading activity once it resumed.

(iv) Financial condition – including requirement to report capital deficiencies

Registrant	Description
Cornerstone Asset Management L.P. ¹⁴ November 6, 2015	<p>Cornerstone Asset Management L.P. (Cornerstone) was a registered EMD. Although its working capital calculation and annual audited financial statements were due on March 31, 2015, the firm did not file its capital calculation until June 3, and failed to file its financial statements until August 21. During this process, the firm failed repeatedly to reply to Staff's information requests within deadlines provided by Staff. Staff also identified concerns with the recoverability of a related party receivable, and the firm did not respond to Staff's resulting concerns with the firm's solvency. Staff recommended that the firm be suspended because it could not demonstrate the requisite solvency of a registered firm and failed to deliver required books and records to Staff in a timely manner. Staff's position was that Cornerstone's ongoing registration was objectionable particularly considering the time and effort other firms expend in order to comply with their obligations and with Staff's requests. Staff accordingly recommended that the firm's registration be suspended. The firm first requested an OTBH, but ultimately consented to its suspension. The Director agreed with Staff's analysis that the test for a suspension was met, and noted that Cornerstone accepted the suspension recommendation made by Staff.</p>

¹⁴ The Director's decision in *Cornerstone Asset Management L.P.* can also be found in the Director's Decisions section of the OSC website under the topical heading "Late Delivery of Financial Statements".

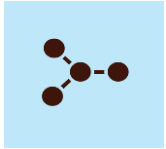
(v) Misleading staff or sponsoring firm

Registrant	Description
Edward Rempel December 4, 2015	Edward Rempel was registered as a mutual fund dealing representative. Rempel's registration was suspended when he resigned from his firm in August 2015, and in that same month he applied to reinstate his registration with another firm. At the time of Rempel's application, the MFDA had completed a disciplinary hearing against him, and the decision from that hearing was pending. The allegations made by the MFDA against Rempel were that when he was employed as a mutual fund dealing representative with Armstrong & Quaile Associates Inc. he tried to persuade a client to withdraw a complaint against him, offered to compensate the client if he withdrew his complaint, and imposed conditions on his proposal to the client in order to keep it a secret. If true, the allegations made by the MFDA against Rempel would impugn his suitability for registration. Accordingly, Staff informed Rempel that it considered his application incomplete pending the MFDA's decision. Ultimately, the MFDA hearing panel found that the allegations against Rempel had been proven, and among other things, imposed a three-year prohibition on him conducting securities related business on behalf of an MFDA member. Rempel agreed to withdraw his registration application until August 2018, and agreed that any reinstatement of his registration would be subject to supervisory terms and conditions.

(vi) Rehabilitation of fitness for registration

Registrant	Description
Sanjiv Sawh March 17, 2016	Sanjiv Sawh applied for registration as a dealing representative in the category of mutual fund dealer. In 2010, Investment House of Canada Inc., an MFDA Dealer Member of which Sawh was the firm's chief compliance officer agreed to surrender its membership in the face of allegations of misconduct. When Sawh later applied to be registered as a dealing representative, Staff recommended that his registration be refused as a result of numerous breaches of securities legislation and SRO rules. The Director refused his registration in 2011, as did the Commission in a hearing and review in 2012; the Commission's decision,

which found that Sawh lacked the integrity and proficiency to be registered, was affirmed by the Ontario Superior Court of Justice (Divisional Court) in 2013. In 2015, Sawh reapplied for registration with Keybase Financial Group Inc. and demonstrated that the circumstances of his fitness for registration had materially changed since his last application. The Director endorsed a joint recommendation by Staff and Sawh that he be registered subject to one year of strict supervision, based on a six-part test that Sawh was able to meet. Sawh was able to demonstrate (1) a sufficient course of conduct that he could be trusted in performing business duties (in a non-registerable capacity); (2) supportive evidence of independent, trustworthy persons who engaged in business dealings with him since his refusal; (3) that a sufficient period of time had lapsed for the purposes of general and specific deterrence; (4) that he had remediated his proficiency through a number of courses and compliance reviews that he undertook on his own initiative; (5) that he no longer engaged in business with non-compliant business associates; and (6) that he showed remorse and took full responsibility for his past conduct. The Director stated: *"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."*



KEY POLICY INITIATIVES IMPACTING REGISTRANTS

- 5.1 Proposed amendments to registration rules for dealers, advisers and investment fund managers**
- 5.2 Expanded exempt market review**
- 5.3 Targeted reforms and best interest standard**
- 5.4 Outbound advising and dealing**
- 5.5 Derivatives regulation**
- 5.6 Independent dispute resolution services for registrants**
- 5.7 Proposed exemptions for distributions of securities outside of Canada**
- 5.8 Efforts to move to T+2 settlement cycle**
- 5.9 International Organization of Securities Commissions – Committee 3 – Market Intermediaries (IOSCO C3)**

5 Key policy initiatives impacting registrants

5.1 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 ongoing monitoring and dialogue.

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

- make permanent certain temporary relief granted by the CSA in May 2015 relating to client reporting requirements introduced in 2013 under “[CRM2](#)”, and also add guidance to NI 31-103CP regarding the delivery of information required under CRM2,
- enhance custody requirements applicable to registered firms that are not members of IIROC or the MFDA,
- clarify the activities that may be conducted under the EMD category of registration in respect of trades in prospectus-qualified securities, and 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.

5.2 Expanded exempt market review



“The amendments will enhance access to capital across Canada while introducing key investor protection measures.”

October 29, 2015 - Louis Morisset, Canadian Securities Administrators, Chair

The OSC has introduced new prospectus exemptions. These new prospectus exemptions are intended to facilitate capital raising by businesses at different stages of development, including start-ups and small and medium-sized enterprises (SMEs), while maintaining an

appropriate level of investor protection. The new exemptions include:

- an offering memorandum prospectus exemption,
- a family, friends and business associates prospectus exemption,
- an existing security holder prospectus exemption, and
- a crowdfunding prospectus exemption along with a registration framework applicable to crowdfunding portals.

All of the new prospectus exemptions have now been implemented in Ontario (see [Summary of Key Capital Raising Prospectus Exemptions in Ontario](#)). Registrants that distribute securities under these exemptions must comply with the terms of each prospectus exemption.

For information regarding our compliance program surrounding the new prospectus exemptions, please see section 3.2(b)(i) of this annual report.

5.3 Targeted reforms and best interest standard



“We used to have a sales culture where firms simply sold what was suitable. We now have an advisory culture, but the old sales mentality and regulations remain. It’s time to correct that. Advisers will be obligated to put their clients’ best interest first. This will be the governing principle under which they act.”

April 28, 2015 - Maureen Jensen, Chair, Ontario Securities Commission, Developments in Financial Institutions, Governance, and Misconduct Symposium - CFA Institute and York University’s Schulich School of Business.

Along with the CSA, we published [CSA Consultation Paper 33-404](#). Consultation Paper 33-404 is the next step in the CSA’s work toward improving the relationship between clients and their advisers, dealers and representatives. It follows the comments received on the original consultation paper ([CSA](#)

[Consultation Paper 33-403](#)) and the key themes the CSA summarized in a staff notice ([CSA Staff Notice 33-316](#)), and builds on subsequent work conducted by the CSA, including

related consultations and research, on the relationship between clients and registrants (the client-registrant relationship).

Comments must be submitted in writing by August 26, 2016. We encourage commenters to provide constructive comments on the 68 questions provided in the paper and specific suggestions for alternatives if certain elements of the proposals may be considered unworkable in practice.

5.4 Outbound advising and dealing

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](#)) came into force. Its Companion Policy became effective on the same date.

OSC Rule 32-505 provides exemptions from the relevant dealer and adviser registration requirements under the Act, subject to certain conditions, for broker-dealers (U.S. broker-dealers) and advisers (U.S. advisers) with offices or employees in Ontario, who are acting as advisers to or trading to, with, or on behalf of, clients that are resident in the U.S. The exemptions in OSC Rule 32-505 are not available to U.S. broker-dealers that trade to, with, or on behalf of, persons or companies that are resident in Ontario (Ontario residents), or U.S. advisers that act as advisers to Ontario residents.

To date, at least forty U.S. broker-dealers and/or U.S. advisers have indicated their reliance on OSC Rule 32-505 by filing a Form 32-505F1. This fall, we will be asking firms who are relying on either or both of the exemptions in OSC Rule 32-505 to complete a questionnaire regarding their business activities in Ontario to gain a better understanding of market participant business models.

5.5 Derivatives regulation

CRR staff have been working with the OSC Derivatives Branch in developing a number of rules relating to the regulation of derivatives, including a rule that will set out the principal registration requirements and exemptions for derivatives market participants, including derivatives dealers, derivatives advisers and large derivatives participants (the Derivatives Registration Rule) and amendments to the rule that requires reporting of derivatives transaction data by market participants to designated trade repositories (the TR Rule).

In April 2013, the CSA Derivatives Committee published for comment [CSA Consultation Paper 91-407 – Derivatives: Registration](#), a consultation paper in relation to the proposed Derivatives Registration Rule. We are reviewing the comments received on the consultation paper and developing the proposed Derivatives Registration Rule. We anticipate that the proposed Derivatives Registration Rule will be published for comment on or before March 31, 2017.

On January 3, 2014, the OSC published a Notice of Ministerial Approval in connection with the TR Rule, [OSC Rule 91-507 – Trade Repositories and Derivatives Data Reporting](#), and the related product determination rule, [OSC Rule 91-506 – Derivatives: Product Determination](#). The rules became effective December 31, 2013. Subsequent amendments to the TR Rule became effective on July 2, 2014, September 9, 2014, and April 30, 2015, and further amendments are scheduled to come into force shortly. Reporting obligations under the TR Rule have been in effect for certain market participants including derivatives dealers and clearing agencies since October 31, 2014.

On June 29, 2015, OSC Staff published [OSC Staff Notice 91-704 – Compliance Review Plan for OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting](#). This Notice describes how OSC staff intends to review compliance with reporting requirements of the TR Rule in fiscal 2015/2016. Since the publication of this Notice, OSC CRR staff together with Derivatives staff have commenced reviews of a number of large derivatives market participants to review and test their compliance with these new reporting requirements.

We encourage registrants to review their policies and procedures in relation to the reporting of over-the-counter derivatives transactions and OSC staff will continue to monitor and test registrant compliance with these new requirements.

5.6 Independent dispute resolution services for registrants

All registered dealers and all registered advisers operating outside of Québec are required to use the Ombudsman for Banking Services and Investments (OBSI) as the common service provider for dispute resolution services. This requirement is set out in amendments to section 13.16 of NI 31-103 (see CSA Notice of Amendments to NI 31-103 and to NI31-103CP [Dispute Resolution Services](#)). Registered dealers and registered advisers are subject to this requirement unless an exemption is available. In order to meet this requirement, a firm must join OBSI as a “Participating Firm” and maintain ongoing membership with OBSI

by paying the membership fee on time. During our compliance reviews, we noted that some firms did not provide adequate disclosure to their clients on how to make use of OBSI's services. We remind firms of their obligations to provide such disclosure to their clients. For further guidance, see [CSA Staff Notice 31-338](#) - *Guidance on Dispute Resolution Services - Client Disclosure for Registered Dealers and Advisers that are not Members of a Self-Regulatory Organization*. The Notice includes a sample of a client disclosure document.

Publication of OBSI Joint Regulators Committee (JRC) Annual Report

On April 7, 2016, the CSA, IIROC and the MFDA jointly published the second annual JRC report, see [CSA Staff Notice 31-344](#) - *OBSI Joint Regulators Committee Annual Report for 2015*.

The report provides an overview of the JRC and also highlights the major activities conducted by the JRC in 2015. These activities include establishing a systemic issues protocol, monitoring compensation refusal cases and enhancing the quarterly reporting from OBSI to allow for better tracking of complaint trends and patterns.

As required by the [Memorandum of Understanding](#), OBSI underwent an independent review of its operations and practices by an external evaluator approved by the CSA (in consultation with the JRC) in early 2016. The final report, along with any recommendations from the external evaluator will be reviewed by the JRC. The JRC comprises of representatives from the participating CSA jurisdictions and the SROs.

The JRC meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system.

5.7 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* (the Proposed Rule) and proposed Companion Policy 72-503CP (the Proposed Companion Policy).

The substance and purpose of the Proposed Rule and the Proposed Companion Policy is to provide certainty to participants in cross-border transactions by providing explicit exemptions that respond to the challenges that issuers and intermediaries face in determining whether a prospectus must be filed or an exemption from the prospectus requirement must be relied on, and the effect of related dealer registration requirements, in connection with a distribution of securities to investors outside of Canada.

The initial comment period on the Proposed Rule ends on September 28, 2016.

5.8 Efforts to move to T+2 settlement cycle

The securities industry in Canada is working to change 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 trade (T+2) to coincide with the expected change to a T+2 settlement cycle in the securities markets of the United States on September 5, 2017.

As outlined in [CSA Staff Notice 24-312 – Preparing for the Implementation of T+2 Settlement](#) published on April 2, 2015, CSA staff strongly supports the importance of the Canadian industry migrating to T+2 on the same timetable as the United States.

On May 26, 2016, we published [CSA Staff Notice 24-314 - Preparing for the Implementation of T+2 Settlement: Letter to Registered Firms](#). This notice reproduces a letter sent to UDPs and CCOs of registered firms. The letter was sent to raise awareness of:

- the Canadian industry's move to T+2,
- the Canadian Capital Markets Association's initiatives to prepare for such a move, and
- the September 5, 2017 transition date announced by the securities industry in the U.S. for implementing T+2.

The letter also states that registrants will need to assess all of the potential impacts of a transition to a T+2 settlement cycle, including examining how their systems and processes for settling trades should be changed to support their clients.

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

We continued to participate in IOSCO C3 during 2015. This committee is focused on issues related to market intermediaries (primarily broker dealers) and comprises representatives from 34 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 [*Market Intermediary Business Continuity and Recovery Planning*](#), which provides two standards for regulators and sound practices that regulators should consider as part of their oversight of market intermediaries and that such intermediaries may find useful in the development and implementation of their business continuity plans,
- its final report on [*Sound Practices at Large Intermediaries Relating to the Assessment of Creditworthiness and the Use of External Credit Ratings*](#), which sets forth a number of sound practices for large market intermediary firms to consider in the implementation of their internal credit assessment policies and procedures, and
- [*Crowdfunding 2015 Survey Responses Report*](#), which followed a fact finding survey meant to accomplish two goals – first, to enhance IOSCO’s understanding of developments in members’ current or proposed investment based crowdfunding regulatory programs and second, to highlight emerging trends and issues in this area. The report provides a summary of the responses from the survey.

Current IOSCO C3 initiatives include:

- preparing a report on a survey of regulators focused on three particular types of over the counter products that are offered and sold to retail investors (rolling spot forex contracts, contracts for differences, and binary options),
- preparing a report on order routing incentives, which will examine regulatory initiatives on incentives, such as discounts or rebates to direct order flow to one particular venue, which may influence the execution of customer orders (“order routing incentives”) at regulated market intermediaries, along with the current relevant regulatory and market developments in IOSCO member jurisdictions, and

- updating the July *Report on the IOSCO Social Media and Automation of Advice Tools Survey*, with respect to the significant recent developments in the use and regulation of automated advice tools.



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 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.

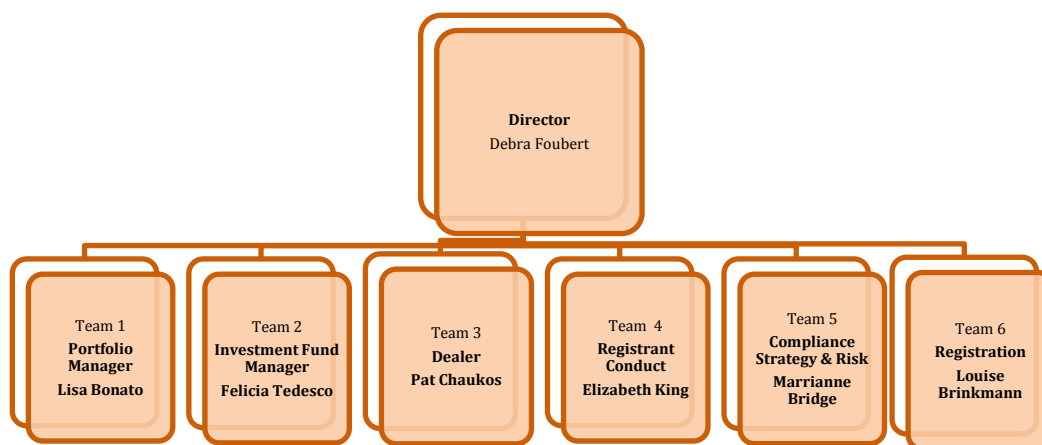
The [Industry: Dealers, Advisers and IFMs](#) section on the OSC website provides detailed information about the registration process and registrants' ongoing obligations. It includes information about compliance reviews and acceptable practices, provides quick links to forms, rules and past reports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

Appendix A – Compliance and Registrant Regulation Branch and contact information for registrants



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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

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