



OSC Staff Notice 11-784 Burden Reduction

The OSC is seeking suggestions on ways to further reduce unnecessary regulatory burden, as provided in OSC Staff Notice 11-784.

We invite your comments on the Staff Notice through the survey below. Please note that each question has a 4000 character response limit.

Closing date: March 1, 2019

Thank you for sharing your thoughts with the OSC Burden Reduction Task Force.

*** Required**

1. Please provide your name. *

Chair – The Canadian Advocacy Council for Canadian CFA Institute Societies

2. What is the name of your firm or company, if applicable?

The Canadian Advocacy Council for Canadian CFA Institute Societies

3. What is your role in the capital markets? *

Advocacy Group

4. Do you have any general comments on the topic of regulatory burden reduction related to securities regulation? If so, please enter only the legislative reference for your suggestions in the box below (for example 31-103 1.1)

(i) Part 13 (Dealing with Clients) of NI 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations

5. Please use the space below to provide your general comments.

Prior to proposing new prescriptive rules, staff should clearly enunciate regulatory expectations for client interactions in a transparent fashion and apply the guidance evenly across registrants.

Prior to introducing new rules, the OSC should be required to prove with the use of data that the current rules do not address a particular investor or marketplace harm; for example, that a number of enforcement files were opened and/or actions taken in order to address the risk permitted by the current rules.

Staff should take more of a risk-based approach in compliance reviews when identifying significant deficiencies that could actually harm investors or the market; the regulatory burden of new rules and ad-hoc interpretation is falling on everyone as a result of one-off "bad actors".

6. Are there operational or procedural changes that would make market participants' day-to-day interaction with the OSC easier or less costly? If so, please enter only the legislative reference for your suggestions in the box below.

(i) s. 20(1) of the Securities Act (Ontario)

7. Please use the space below to provide your suggestions for operational or procedural changes.

In a focused compliance review where Terms & Conditions are not being recommended, there is little recourse or ability to dispute staff's findings with respect to deficiencies that then remain on the record. It would be helpful to have the ability to have an independent staff member or formal internal escalation process (that does not result in an OTBH) to resolve misunderstandings or disagreements.

With respect to reporting issuers, as result of the relatively small size of the Canadian market place, enforcement proceedings taken against issuers for disclosure deficiencies that could otherwise be rectified can have unintended consequences and impact the issuer as well as the entire marketplace.

8. Are there ways in which we can provide greater certainty regarding regulatory requirements or outcomes to market participants? If so, please enter only the legislative reference for your suggestions in the box below.

s. 20(1) of the Securities Act (Ontario)

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9. Please use the space below to provide your suggestions regarding how the OSC could provide greater certainty regarding regulatory requirements or outcomes.

(i) The results of a focused compliance review are inconsistent from registrant to registrant (and from year to year for the same registrant). A list of common significant deficiencies should be made available, transparent and kept up to date so registrants can easily access them in real time.

(ii) The enforcement outcomes from issuer reviews should be more transparent and accessible in real time (vs. summary in annual reports); staff at the OSC should indicate when they are using evidence based data to be proactive in areas requiring regulatory attention to provide comfort to the market that "bad actors" are being dealt with

10. Are there forms and filings that issuers, registrants or other market participants are required to submit that should be streamlined or required less frequently? If so, please enter only the legislative reference for your suggestions in the box below.

(i) 81-101F1 – Contents of Simplified Prospectus (ii) 81-102F3 – Contents of Fund Facts Document

11. Please use the space below to provide your suggestions regarding forms and filings.

The intent of the Fund Facts document requirement is to ensure in part that investors are provided with point of sale disclosure of key features of a fund, and investors can request a copy of the simplified prospectus and/or annual information form for additional information. However, it may be burdensome for the issuer to include information in the prospectus and annual information form that are already included in the Fund Facts. Staff at the OSC may wish to consider, in conjunction with other discussions with CSA members, whether duplicative disclosure can be removed from the prospectus or annual information form if it is already mandated to be provided (albeit in a different format) in the Fund Facts document.

12. Are there particular filings with the OSC that are unnecessary or unduly burdensome? If so, please enter only the legislative reference for your suggestions in the box below.

13. Please use the space below to provide your comments regarding burdensome filings.

14. Is there information that the OSC provides to market participants that could be provided more efficiently?

The legislation, rules and guidance (contained in notices, as well as FAQs and responses to comment letters) are spread out and difficult to access. While the

Topical Guide for Registrants and the Investment Fund Practitioner are helpful starting points, they are not always up to date, comprehensive or easy to find and navigate. The applicable prime legislation, rules and commentary should be consolidated by topic on the OSC website and easily accessible. The rules should also be presented in a consolidated format rather than by amendment. Registrants in particular would benefit from the increased use of published FAQs and expanded / more frequent staff notices addressing hot topics.

15. Are there requirements under the OSC rules that are inconsistent with the rules of other jurisdictions and that could be harmonized? If so, please enter only the legislative reference for your suggestions in the box below.

16. Please use the space below to provide your comments and suggestions around harmonization of rules.

17. Are there specific requirements that no longer serve a valid purpose? If so, please enter only the legislative reference for your suggestions in the box below.

18. Please use the space below to provide your comments and suggestions around requirements that may no longer serve a valid purpose.

19. Are there ways to enhance and improve how investors experience disclosure provided: (i) before they invest; (ii) as part of ongoing public disclosure; and (iii) by registrants?

Retail discount brokerage investors should be informed about holding period risks of leveraged ETFs (i.e. a fund will not meet the objective of a 2X leveraged exposure if held for longer than a single trading session).

20. Please use the space below to provide your suggestions for modernizing information provided to investors because of regulatory requirements. For example, specific areas where we could promote the use of plain language?

The National Registration Database is very difficult to search and analyze data on firms. There is no simple way for investors to search the disciplinary history or information on a representative of a CSA registered firm (similar to the IIROC Advisor Report).

21. Do you have any other comments for the OSC Burden Reduction Task Force?

(i) The whistleblower program as set out in OSC Policy 15-601 may require some adjustments to increase the rewards and/or additional promotion of the program to encourage usage. It may be helpful to re-write the policy in plain language as the current complexity may require market participants to hire counsel, resulting in higher costs and hinder the prospects of bringing legitimate issues to light. While recent press releases regarding awards are helpful, the Office of the Whistleblower could also consider publishing (subject to confidentiality/identification concerns) how the program has in general led to specific types of enforcement or settlement cases.

(ii) As an alternative to new rules, staff could increase the OSC's outreach programs and making targeted programs easier to access and bring them to the registrant or issuer's attention; one method could include assigning each registrant /issuer a "contact person" in the Compliance & Registrant Regulation and/or Corporate Finance Branch for inquiries, or create a centralized help desk.

(iii) When responding to an inquiry from staff at the OSC, it is possible that similar inquiries are being made by other CSA members, SROs, OBSI, etc. It is burdensome for the respondent to answer each inquiry separately in different formats and on different timeframes.

22. If you don't have enough space for your response to any question above, please use the space below to continue your comments. Please indicate which question these comments relate to.

#9 – The report summarizing a compliance review often contains statements which suggest new rules and/or implement rules that are only at the proposal stage (e.g. with respect to staff's view on concentration risk for certain types of products). Reports should not be used as a rule-making tool because the information and expectations are not then generally shared with other market participants.