



May 3, 2021

BY LINK

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Financial and Consumer Affairs Authority of Saskatchewan
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames,

Re: Proposed Amendments to National Instrument 33 – 109 Registration Information and Changes to Companion Policy 33 – 109 CP Registration Information

and

Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting and Updating Filing Deadlines

Portfolio Strategies Corporation (“PSC”) is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a mutual fund dealer and exempt market dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, Northwest Territories and Quebec, and as an investment fund manager in Alberta and Ontario.

Opening Comments

We appreciate the efforts and changes that the CSA are proposing to reduce the regulatory burden on registered dealers and individual advisors. Historically, registrants have volunteered their time to give back to their communities, serving on boards, working with charities, teaching part time at colleges or assisting at their church, coaching or managing youth sports, yet we find ourselves facing business restrictions and CSA reporting requirements because a segment of regulators feel that most registrants have ulterior motives for volunteering their time, and that they can’t possibly be volunteering their time without an expectation that this volunteer work might generate new business. That was not the case, in our experience, and it is nice to receive the benefit of the doubt in the end.

Some of the current reporting requirements are very onerous, and there is not much of a distinction between material and non material information that needs to be reported, potentially involving fines for late reporting of information that has absolutely nothing to do with CSA matters – serving on boards of non profits, including charities or condo boards, church involvement, coaching sports, or changing insurance Managing General Agents when insurance sales are not conducted for or on behalf of a dealer. For example, some years ago a B.C resident advisor left our firm and returned to us two or three months later. When he transferred his registration back to our dealer, he failed to mention that he had switched insurance MGAs because he did not feel that this was material to his securities registration at the BCSC. The change was discovered several months later during an annual compliance attestation and we reported it on NRD. We were fined several thousand dollars for late reporting this nonmaterial change, but our frustration did not end there. The fine was assessed by and paid to the OSC – not the BCSC where the advisor was registered and lived.

Questions for Comment

(i) Outside Activities and positions of influence

Question 1 : *Are there other categories of Outside Activities that should be reportable to regulators? If so, please describe what categories of Outside Activities should be reportable to regulators.*

Response :

No other categories of Outside Activities come to mind that should be reportable to regulators.

Question 2 : *Considering the proposed framework for reporting of Outside Activities, are there categories of Outside Activities that should not be reportable to regulators? If so, please describe what categories of Outside Activities should not be reportable to regulators.*

Response :

In our opinion life and disability insurance, including segregated fund sales (it is an insurance product), should not be reportable to securities regulators because the CSA has no jurisdiction in the insurance industry ; provincial insurance regulators / councils have that oversight. It provides no real benefit from a public interest standpoint and it appears to be nothing more than a data gathering exercise. Historically the CSA, through NRD, has fined mutual fund dealers and investment dealers for late filings of insurance related information or activities, even though insurance activities are not under CSA jurisdiction, and these activities have no impact on dealer activities. In fact, in the majority of cases, insurance sales are not even part of the registrant dealer's business. Dealer fines resulting from salesperson insurance sales activities disclosure seem unreasonable, if not blatantly unfair.

Question 3 : *Are there any challenges that Regulated Persons may face to administer the proposed reporting regime for Outside Activities? If so, please explain the challenges.*

Response :

As stated above we do not feel that insurance sales should be captured under the proposed Outside Activities. The challenge for regulated persons is that it is not obvious to them that they should report insurance licensing activities, overseen by provincial insurance councils, or changes in their Managing General Agencies, to any CSA member that has no oversight role here. The disclosure that someone has an insurance license should end there. It serves no regulatory purpose to disclose that their MGA is ABC vs XYZ, and it is outside the dealer's control, hence dealers should not be fined for late reporting of such nonmaterial information.

Question 4 : *Is 7 years an appropriate amount of time to report on past Outside Activities that involved raising money for an entity through the issuance of securities or derivatives or promoting the sale of an entity's securities or derivatives? Please explain your view.*

Response :

Yes, we feel that 7 years is an appropriate amount of time to report on past Outside Activities that involved raising money.

Question 5 : *Is 30 hours per month (based upon 7.5 hours per week for four weeks) an appropriate cumulative minimum time threshold for reporting all Outside Activities? Please explain your view.*

Response :

No. If insurance sales are considered to be Outside Activities the 30 hours per month cumulative minimum time is not appropriate. When you consider the fact that most Regulated Persons are dual licensed for insurance sales it would take just over one hour per day to reach the 30 hours per month cumulative minimum, so every other minor Outside Activity would automatically become reportable, and that would defeat the purpose of the new proposals. For example, young advisors entering the industry often find it quite difficult to establish sufficient regular income to cover their family living expenses (unintended consequence of eliminating DSC funds). If they choose to take part time work over the weekend, outside normal business hours, does the CSA really need this to be reported? Even a 4 hour shift at a local hockey rink would need to be reported if they spent 26 hours per month in insurance sales. 30 hours per month is not a high enough minimum. If the CSA really wants to reduce the regulatory burden of reporting Outside Activities the minimum time threshold should be increased to 50 hours per month.

Question 6 : *Will Regulated Persons have sufficient time to report Outside Activities given the Proposed Revisions? If not, please explain the challenge in reporting Outside Activities within the proposed revised deadline.*

Response:

Yes, we feel that extending the deadline for reporting new Outside Activities to 30 days is sufficient time.

Question 7 : *Are there other positions that should be considered positions of influence? If so, please describe these positions and explain why they should be positions of influence.*

Response :

Lawyers and accountants can also be in a position of influence, so we recommend that these positions be added to the list of individuals who are in a position of influence.

Examples would include : Lawyers who handle mortgages where the use of proceeds could be deployed into new investments and lawyers who write wills and handle estates. As for the accounting profession, many clients rely on their accountants quite heavily for their personal and business affairs. Some accountants now offer investments, while others are set up in some provinces to be able to accept insurance commissions or referral fees for insurance sales. We feel that these two professions are stronger “positions of influence” than some of the other positions listed, such as clergy or professor.

Question 8 : *Is “susceptibility” the appropriate term to describe the impact of the influence on the individual subject to the influence? If not, please explain why not and propose alternative language.*

Response :

Yes, “Susceptibility” is an appropriate term to describe the impact of the influence on the individual subject to the influence. Another term that could be used might be “Vulnerability”, which has been inappropriately used almost exclusively for seniors, or those suffering from mental capacity issues.

Question 9 : *Are there any aspects of the new rule on positions of influence that you expect will be difficult to administer? If so, please describe the difficulty.*

Response :

We do not anticipate that any aspects of the new rule on positions of influence will be difficult to administer if a principles – based approach is applied in this matter.

(ii) Reporting deadlines

Question 10 : *Do you see any challenges in reporting updates to registration information by the proposed deadlines? If so, please identify the registration information that this would be challenging for and explain the challenges.*

Response :

Moving the deadline for reporting updates to registration information from 10 days to 30 days is both reasonable, and less burdensome, in our opinion, and should apply to **all** updates except terminations of registration. For those we feel that 15 days is a reasonable deadline.

(iii) Regulatory burden of certain reporting requirements

As the CSA has noted it is burdensome to annually report the renewal of an insurance policy (FIB , E & O). Some CSA members demand evidence of policy renewal 30 days in advance of the policy renewal date. That makes no sense because insurance does not work that way. A June 30 renewal is not done in May.

Question 11 : *Are there any other thresholds where a change in percentage ownership in the ownership chart should be reported or any thresholds where changes should not be reported? If so, please explain what other thresholds should be included or what thresholds should not be reported.*

Response :

We can't think of any other thresholds where a change in percentage ownership should be reported, or thresholds where changes should not be reported.

Question 12 : *Do you foresee any legal, operational or other challenges for a registered firm to delegate to another affiliated registered firm the requirement to notify the regulator of changes in certain registration information? If so, please explain the challenges.*

Response :

No, we do not foresee any legal, operational or other challenges for a registered firm to delegate this reporting to another affiliated registered firm.

Question 13 : *Are there circumstances where a notice of change in registration information should not be delegated to an affiliate? Please describe.*

Response:

If there is a change in registration information that only applies to one of the firms, such as a change in UDP or CCO, that should not be delegated to an affiliate in our opinion.

Question 14 : *Are there other circumstances where a notice of change in registration information may be delegated to an affiliate? Please describe.*

Response :

The only other circumstances where a notice of change in registration information may be delegated, would be for simple address changes that may apply to one or more affiliates.

Question 15 : *In a legal action, are there changes other than documentary discovery and adjournments that could significantly affect the firm, its business or the outcome of the legal action but should not be reported for other reasons or would be captured in reporting elsewhere?*

Response :

We can't think of any other changes related to a legal action that should not be reported, or would be captured in reporting elsewhere.

(iv) Common errors and updated certification requirements

As stated in this paper, "incomplete or inaccurate information, or even information that is not provided in a clear manner, increases the regulatory burden on regulated persons as they must spend additional time and resources to respond to our inquiries". It goes on to list a number of possible reasons for this. This is particularly problematic when individual persons change sponsoring dealers. What the CSA needs to do in these cases is pursue the previous dealer for answers to the suitability questions, or why disclosures were not made by the previous firm. Instead the CSA puts all of the regulatory burden on the new dealer to clean up the deficiencies when it has no history whatsoever on the individual. Sometimes the previous dealer simply forgot to submit the disclosure. They should be asked to clean it up.

Question 16 : *Do the Proposed Revisions offer sufficient clarity to the registration information requirements? If not, please explain which registration information requirement remains unclear and why.*

Response :

The Proposed Revisions are somewhat clear, while certain aspects are not clear, such as reporting all “non – securities licenses, including medical licenses”. This seems to be a bit excessive, unless the objective is to ramp up data gathering at the expense of reducing regulatory burden. We have never come across doctors that are also securities registrants, so the risk of doctors being in a position of influence over retail wealth clients seems to be overstated. As this abbreviated summary currently reads we have to assume that possessing a firearms license for self defense for those camping in remote areas, or hunting at certain times of the year would also be reportable, even though this would have nothing to do with an individual’s securities registration.

As for reporting education and course information required for registration it should be clarified that this should only apply to **securities** registration applicable to the individual’s registration category. For example, CFP and CLU would not be reportable items because they are not recognized by the CSA as supporting securities registration. Similarly, CFA and CIM would not be reportable unless the individual was registered as a portfolio manager, or in a supervisory role that required the CFA or CIM, such as supervision of Liquid Alt trades.

Question 17 : *Are there any circumstances where the certification standard may not be met or be applicable? If so, please describe the circumstances.*

Response :

We can’t think of any obvious circumstances where the certification standard may not be met or be applicable, other than what was stated in #16 above.

(v) Collecting information on professional titles

Question 18 : *Do you see any challenges in reporting the title(s) used by Individual Registrants? If so, please explain*

Response :

No, we do not see any challenges in reporting the title (s) used by individual registrants.

Question 19 : *Registered firms are required to keep accurate records, including copies of forms submitted to the regulators. Are there any circumstances where an Individual Registrant will need to request a copy of their Individual Registration Form from the regulator to update information that is not complete or accurate? If so, please describe these circumstances.*

Response :

Yes. The request for historical information on file is particularly important when a registered individual applies for registration at a new sponsoring firm. Questions on dealer application forms will often vary by dealer, and it would be prudent for individuals to verify previous regulatory disclosures to see what new information requires disclosure, and also to answer the new sponsoring dealer's questions accurately or in a fulsome manner. Some examples would be bankruptcies, garnishees not previously reported, DUIs, not following the previous dealer's policies and procedures. Unfortunately, with the current regulatory structure the new dealer is held responsible for making required regulatory disclosures for events that occurred many years before the new registration application is submitted, even though the new dealer had no knowledge of those events, nor were they responsible for previous disclosures by previous dealers. This causes extensive registration delays, and could result in extensive, time consuming work that should be the responsibility of the prior dealer.

Question 20 : *What are your views on the transition plan for the proposed amendments to NI 31-103 relating to positions of influence?*

Response :

A six month transition plan seems reasonable but the timing of year end 2021 could cause unnecessary stress for registrants as it would coincide with year end compliance attestations by individual advisors. These annual attestations have to be reviewed one by one, and some answers will require additional last minute Outside Activity reporting for NRD renewals at year end.

Further, there will be new requirements under Client Focused Reforms that will become effective at year end, placing additional regulatory burden on dealers and individual advisors. For all of these reasons and considering the heavy workload of RRSP season, we feel that March 31st is a more reasonable Proposed Effective Date.

Question 21 : *Are there any significant operational changes that you need to make in order to implement the Proposed Revisions? If so, please describe these operational changes.*

Response :

We do not anticipate having to make any significant operational changes in order to implement the Proposed Revisions.

Thank you for the opportunity to present our comments and recommendations. We look forward to the implementation of these new proposals.

Yours truly,

“Mark Kent”

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President & CEO
Portfolio Strategies Corporation