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August 3, 2023

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FOR IMMEDIATE RELEASE
July 26, 2023

BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE,
File No. 2022-9

TORONTO – Take notice that the merits hearing in the above-named matter scheduled to heard on July 28, 2023 will not proceed as scheduled.

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A.2.2 Troy Richard James Hogg et al.

FOR IMMEDIATE RELEASE
July 28, 2023

TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC., ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC.
AND GABLES HOLDINGS INC.,
File No. 2022-20

TORONTO – The Moving Parties, Troy Richard James Hogg, Arbitrade Exchange Inc., Gables Holding Inc. and T.J.L. Property Management withdraw the Motion dated May 26, 2023, in the above-named matter.

A copy of the Notice of Withdrawal dated July 28, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
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A.2.3 Troy Richard James Hogg et al.

IN THE MATTER OF
TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC.
AND GABLES HOLDINGS INC.

File No. 2022-20

NOTICE OF WITHDRAWAL

The Moving Parties, Troy Richard James Hogg, Arbitrade Exchange Inc., Gables Holding Inc. and T.J.L. Property Management, withdraw the Motion dated May 26, 2023, as amended, seeking an order authorizing them to initiate an application to the Ontario Superior Court of Justice pursuant to section 152 of the Act.

July 28, 2023

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Staff of the Ontario Securities Commission

B. Ontario Securities Commission

B.1
Notices

B.1.1 Joint Canadian Securities Administrators / Canadian Investment Regulatory Organization – Staff Notice 31-363 Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CIRO · OCRI Canadian Investment Regulatory Organization Organisme canadien de réglementation des investissements

JOINT CANADIAN SECURITIES ADMINISTRATORS /
CANADIAN INVESTMENT REGULATORY ORGANIZATION
STAFF NOTICE 31-363
CLIENT FOCUSED REFORMS: REVIEW OF REGISTRANTS' CONFLICTS OF INTEREST PRACTICES AND ADDITIONAL GUIDANCE

August 3, 2023

INTRODUCTION

This is a joint staff notice published by staff of the Canadian Securities Administrators (**CSA**) and staff of the Canadian Investment Regulatory Organization (**CIRO**) (together **Staff** or **we**).

We are publishing this joint staff notice (the **Notice**) to summarize the findings of our review of firms' conflicts of interest practices and to provide additional Staff guidance to securities advisers, dealers and representatives (**registrants**) including suggested practices related to the conflicts of interest requirements. We reviewed firms across various registration categories and business models. In this Notice, we discuss the most common findings and identify applicable rules and guidance. The guidance set out below will be relevant to registrants to varying degrees, and will depend on the registration category/business model.

BACKGROUND

The CSA, the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) (IIROC and the MFDA amalgamated as of January 1, 2023 to continue as CIRO) adopted amendments to implement the Client Focused Reforms (**CFRs**), which made changes to the registrant conduct requirements in order to better align the interests of registrants with the interests of their clients, improve outcomes for clients, and make clearer to clients the nature and the terms of their relationship with registrants.

The CFRs introduced significant enhancements to the registrant conduct obligations which came into force in two stages in 2021 by amending National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), as well as the Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**). Each of IIROC and the MFDA also amended their member rules, policies and guidance to be uniform with the CFRs in all material respects.

Under the CFRs conflicts of interest requirements that came into force on June 30, 2021, registrants must take reasonable steps to identify existing and reasonably foreseeable material conflicts of interest, and must address those material conflicts in the best interest of clients. If there is no way to address the material conflicts of interest in the best interest of clients using controls, those conflicts must be avoided. This is an ongoing registrant obligation.

We expect firms to take the lead in addressing material conflicts of interest, including those related to the firm's product shelf and compensation structures. We expect registered individuals to comply with their firm's conflicts of interest policies and procedures and with their own obligations to identify and address material conflicts of interest in the best interest of the individual client, and must report conflicts of interest to their firm.

Registered firms are also required to provide affected clients with disclosure of material conflicts of interest before account opening or in a timely manner if the conflict has not previously been disclosed. We reiterate that disclosure alone is not sufficient to address a material conflict of interest in the best interest of clients. Therefore, to address a material conflict of interest in the best interest of clients, controls (including pre-trade controls, post-trade reviews etc.) must be used in conjunction with adequate disclosure.

The CFRs conflicts of interest requirements are fundamental obligations of registrants toward their clients and are essential to investor protection. They are an extension of the duty of registrants to deal fairly, honestly and in good faith with their clients.

OBJECTIVES OF THE REVIEW

The main objectives of the review were to:

- assess registrants' compliance with the conflicts of interest requirements, including reviewing the conflicts disclosure that registered firms provide to their clients,
- broaden Staff's understanding of, and assess, the controls used by registrants to address material conflicts of interest in the best interest of their clients, and
- develop a consistent compliance approach when reviewing a firm's conflicts of interest practices.

SCOPE AND METHODOLOGY

The CSA, IIROC and the MFDA conducted compliance reviews (the **reviews**) of 172 registered firms to assess their compliance with the CFRs conflicts of interest requirements. The sample included:

Registration Category	**Number of Firms Reviewed**
Investment Fund Manager / Portfolio Manager / Exempt Market Dealer	54
Exempt Market Dealer	32
Investment Dealer	28
Mutual Fund Dealer	26
Portfolio Manager	14
Investment Fund Manager / Portfolio Manager	11
Portfolio Manager / Exempt Market Dealer	7
Total	**172**

OUTCOME

No deficiencies relating to conflicts of interest were raised for 37 firms. For the remaining firms, compliance deficiencies were identified, and we required each firm to take corrective actions to address the deficiencies raised. We will work with these firms to ensure they address and resolve the deficiencies within a reasonable time frame. We may also consider other appropriate regulatory action as necessary.

CONFLICTS OF INTEREST REQUIREMENTS

When reviewing registrants' conflicts of interest practices, the following informed our review:

- the requirements set out in NI 31-103
- the guidance published in 31-103CP
- IIROC Rule 3100, Part B (currently Investment Dealer and Partially Consolidated (**IDPC**) Rule 3100, Part B)

- MFDA Rule 2.1.4 (currently Mutual Fund Dealer (**MFD**) Rule 2.1.4)
- the additional guidance set out in the CFRs Frequently Asked Questions (https://www.securities-administrators.ca/resources/client-focused-reforms/frequently-asked-questions-cfr/).

While the relevant securities legislation is generally principles-based, we intend the guidance in this Notice to provide direction to registrants regarding how to meet these obligations, which we will apply when assessing compliance with securities law. However, there may be other ways to meet these obligations that we will closely examine.

SUMMARY OF RESULTS

The following table sets out the common deficiencies identified and the percentage of firms reviewed with the noted deficiencies as observed during the reviews:

Deficiency Noted	% of Firms
Failure by registrants to identify one or more material conflicts of interest (see Section A)	34%
Inadequate controls to address certain material conflicts in the best interest of clients (see Section A)	28%
Missing or incomplete disclosure related to material conflicts of interest (see Section B)	53%
Inadequate policies and procedures related to conflicts of interest (see Section C)	66%
Lack of or inadequate training on conflicts of interest (see Section D)	17%
Inadequate conflicts of interest record keeping (see Section E)	under 10%

We observed that some firms were not familiar with the guidance published in 31-103CP and did not consider the examples of conflicts or controls provided when determining how to address material conflicts of interest in the best interest of their clients. These firms failed to identify certain conflicts of interest, assess them as material conflicts of interest, or implement controls sufficient to address them in the best interest of clients.

This Notice primarily focuses on the findings we observed as a result of our review of the firms included in the sample; therefore, there may be other deficiencies related to conflicts of interest which are not specifically discussed in this Notice.

A description of the specific issues observed and related guidance is provided in the Notice as follows:

A. Identifying material conflicts of interest and addressing material conflicts of interest in the best interest of the client. Examples of situations giving rise to conflicts of interest include:

1. Internal compensation arrangements and incentive practices
2. Third-party compensation
3. Proprietary products
4. Fees charged to clients
5. Supervisory compensation
6. Director positions with issuers
7. Referral arrangements
8. Trades alongside clients (exempt market dealer relationships)
9. Gifts / Entertainment
10. Managing and distributing prospectus-exempt proprietary issuers

B. Missing or incomplete disclosure related to material conflicts of interest.

1. Format of disclosure
2. Disclosure prepared by another entity

3. Timing of disclosure

C. Inadequate policies and procedures related to conflicts of interest.

D. Lack of or inadequate training on conflicts of interest.

E. Conflicts of interest record keeping obligations.

SPECIFIC ISSUES AND GUIDANCE

A. Identifying material conflicts of interest and addressing material conflicts of interest in the best interest of the client

Identifying conflicts of interest is a fundamental registrant obligation. We expect registrants to identify any circumstances where:

- the interests of a client and those of a registrant are inconsistent or divergent,
- a registrant may be influenced to put their interests ahead of their client's interests, or
- monetary or non-monetary benefits available to a registrant, or potential detriments to which a registrant may be subject, may compromise the trust that a reasonable client has in their registrant.

The materiality of a conflict will depend on the circumstances. While we recognize that registrants exercise their professional judgement to determine whether a conflict of interest is material, we expect registrants to consider whether the conflict may be reasonably expected to affect either of the following or both (i) the decisions of the client in the circumstances; (ii) the recommendations or decisions of the registrant in the circumstances.

We found that although some firms had appropriately identified certain conflicts of interest as material, they lacked controls to address the material conflicts of interest or the controls implemented were insufficient to address the material conflicts of interest in the best interest of clients.

Also, while certain firms had controls in place to effectively address certain material conflicts of interest, they had not identified those conflicts of interest or assessed them as material.

When addressing material conflicts of interest in the best interest of clients, a registered firm and its registered individuals must put the interests of their clients first, ahead of their own interests and any other competing considerations. Registrants must address material conflicts of interest by either avoiding those conflicts or by using controls to mitigate those conflicts sufficiently so that the conflict has been addressed in the client's best interest.

To comply with subsections 13.4(2) and 13.4.1(2) of NI 31-103 and subsection 3112(1) and subsection 3110 (3) of IDPC Rules and Rule 2.1.4.(1)(b) and 2.1.4.(2)(b) of MFD Rules, as applicable, registrants must avoid a material conflict of interest if there are no appropriate controls available in the circumstances that would be sufficient to otherwise address the conflict in the best interest of the client. Similarly, if a particular conflict is capable of being addressed by using controls, but the specific controls being used by a registered firm are not sufficiently mitigating the effect of the conflict, the firm must avoid that conflict until it has implemented controls sufficient to address the conflict in the best interest of the client.

Registered firms must avoid a conflict if that is the only reasonable response in the circumstances that is consistent with the obligation to address conflicts in the best interest of clients. Registered firms must avoid such conflicts even if this means foregoing an otherwise attractive business opportunity or type of compensation for the firm or its registered individuals.

We have set out below examples of specific conflicts of interest that were either:

- not identified by firms as material, or
- not adequately addressed by firms.

We have explained why we view these conflicts as material in the circumstances, and have also outlined suggested controls to comply with the requirement to address those material conflicts of interest in the best interest of clients.

1. Conflicts arising from internal compensation arrangements and incentive practices

While motivating registered individuals to generate revenue or grow assets is normal practice, some compensation practices can result in behaviour that is not in the best interest of clients. We found that some firms reviewed did not:

- recognize that their internal compensation arrangements and incentive practices are material conflicts of interest that must be addressed in the best interest of clients, and

- disclose this conflict to clients.

For example, in our view material conflicts of interest can arise when the compensation (or some proportion of the compensation) paid to registered individuals is tied to certain factors, including but not limited to:

- sales or revenue targets,
- performance of client accounts (including investment funds) managed by the advising representative,
- sales or distributions of products and issuers by the registered individual, including where the registered individual earns a proportion of the finder's fee or commissions generated by a firm when distributing issuers' securities,
- fees or revenue generated from clients, and
- net new assets or clients brought in by the registered individual.

Although we appreciate that firms incentivize their registered individuals in order for the firm to succeed, in our view, internal compensation arrangements and incentive practices, including those that incorporate bonus structures, must be considered from a conflicts of interest perspective because these arrangements and practices have the potential to strongly influence the recommendations of a registered individual to clients. While we recognize that certain incentives associated with the performance of client accounts in many instances align the interests of the client and the registrant, such performance incentives could simultaneously present a material conflict of interest. This conflict arises because such incentives could impact the recommendations or decisions of the registrant in the circumstances (e.g., by investing in riskier securities) in order to achieve the prescribed performance bonus. We expect firms to implement controls to ensure that their compensation arrangements and/or incentive practices do not influence registrants to put their interests ahead of their clients' interests, and must provide clients with the required conflicts of interest disclosure.

While some firms reviewed failed to identify the material conflicts of interest presented by internal compensation arrangements and incentive practices and therefore failed to disclose the conflicts adequately, almost all of those firms had internal controls in place to address the material conflicts of interest. As a reminder, the suggested controls to address the material conflicts of interest related to internal compensation arrangements and incentive practices are set out below, as well as some additional examples of controls that we noted were used by some firms reviewed.

Suggested Controls:

We direct you to section 13.4 of 31-103CP for detailed examples of controls relating to this conflict, including the following:

- maintaining internal compensation arrangements that do not differ by product or service sold or by account or client type,
- applying consequences for inappropriate behaviour or activities in pursuit of sales or revenue that are proportionate to the potential benefit for reaching targets or thresholds,
- tying a portion of variable compensation to the absence of valid client complaints or to compliance with policies and procedures,
- limiting the portion of compensation that is variable, and
- deferring payment of a portion of the compensation or incentive.

Other examples of controls that some firms reviewed had implemented include the following:

- annual review of compensation of registered individuals performed by senior management or board members (e.g., to identify situations where an individual's compensation indicates that the individual may have put their interest ahead of their client's interest by recommending investment actions in order to generate sales/revenue),
- separating the investment selection, portfolio construction or shelf construction decisions from individuals with broad business revenue generation goals, and
- performing periodic client account reviews for compliance where the outcomes impact the registered individuals' compensation.

2. Conflicts arising from third-party compensation

Some firms reviewed failed to identify the receipt of any third-party compensation, including the receipt of greater third-party compensation for the sale of certain securities relative to others, as a material conflict of interest. In addition, some firms failed to identify the material conflict of interest associated with receiving third-party compensation in the following specific scenarios:

- when the firm and registered individuals distributed a single product / issuer and earned commissions from the sale of that product, and
- when the firm and registered individuals distributed multiple products / issuers which all paid a commission, regardless of commission rates (including where the commissions are the same).

We note that material conflicts of interest almost always arise when a firm receives additional third-party compensation when making a product available for sale, such as due diligence or administrative fees received from an issuer.

Some firms reviewed lacked adequate controls on the conflicts of interest arising from third-party compensation and did not provide clients with adequate disclosure.

It is an inherent conflict of interest for a registrant to receive third-party compensation, such as commissions that the firm receives (which it may then share with registered individuals), for the distribution of products a firm sells to clients. We also consider circumstances where registrants receive greater third-party compensation for the sale or recommendation of certain securities relative to others to be an inherent conflict of interest. In our experience, these are almost always material conflicts of interest as it may influence the conduct of the firm and its registered individuals. For example, it may influence the selection of products that the firm puts on its product shelf, and the recommendations or decisions of the registered individual may also be affected by the incentive to earn the commission. The decisions of clients to invest may also be affected by the existence and/or amount of the third-party compensation.

Firms should be able to demonstrate that both product shelf development and client recommendations are based on the quality of the security without influence from any third-party compensation associated with the security.

With respect to disclosing the nature and extent of such conflict, the firm should include language in its conflicts of interest disclosure that states that a particular product or a group of products pays a larger percentage commission than other products available to the client and the extent of the compensation difference should be explained.

Suggested Controls:

We direct you to section 13.4 of 31-103CP for detailed examples of controls relating to this conflict, including the following:

- include securities that provide lower levels of third-party compensation or no third-party compensation in the firm's product shelf evaluation process, and ensure that the process is free from bias towards securities that provide third-party compensation or higher third-party compensation, including requiring that all securities be subject to the same know your product processes and selection criteria regardless of their levels of third-party compensation,
- as part of the firm's product shelf development, conducting periodic due diligence on securities on the firm's shelf that provide third-party compensation to determine whether such securities are competitive with comparable alternatives available in the market (including those that do not provide third-party compensation),
- clearly documenting how securities that provide third-party compensation fit within the firm's business model and strategy and how they are aligned with client interests and the services provided to clients, including a consideration of the following factors:
    - the range of ongoing investment and financial services provided to clients
    - the extent of such services, and
    - controls to confirm that the services are provided;
- developing client profiles setting out the types of investors for whom securities that provide third-party compensation may be suitable,
- maintaining internal compensation arrangements for registered individuals that do not solely tie the registered individual's compensation, either directly or indirectly, to commission revenue that is based on securities recommended or sold,

- monitoring registered individuals' recommendations to determine whether predominance is given to securities that provide third-party compensation or higher third-party compensation, and to assist in evaluating whether the conflict is being addressed in the best interest of clients, and

- imposing consequences on registered individuals for breaches of the firm's conflict of interest policies and procedures that are sufficiently robust to counteract the potential incentives that registered individuals might have to put their own interests ahead of their clients' interests.

3. Conflicts arising from proprietary products

Some firms we reviewed did not recognize that a registrant trading in, or recommending, proprietary products, is an inherent conflict of interest that is almost always material, as there is the potential that the registrant will put their interest, or the interests of related entities, above their clients' interests when making such trades or recommendations.

In addition, we found that firms that only trade in, or recommend, proprietary products, relied primarily on performing suitability determinations and providing clients with the conflicts disclosure to address these material conflicts of interest. In our view, this generally will not be adequate to address these material conflicts of interest in the best interest of clients.

We direct you to section 13.4 of 31-103CP for detailed examples of controls relating to this conflict, including the following:

For firms who only trade in, or recommend, proprietary products:

- documenting how those products fit within the firm's business model and strategy, and how they are aligned with clients' interests,

- providing clear disclosure to clients that only proprietary products will be included in their portfolios,

- developing client profiles setting out the types of investors for whom the proprietary products may be appropriate and turning away any potential clients who do not fit the profile,

- ensuring robust oversight of know your client, know your product and suitability determination processes, as well as a robust know your product process, including subsequent performance and other monitoring, and an ongoing evaluation of the suitability of the securities for client portfolios,

- conducting periodic due diligence on comparable non-proprietary products available in the market and evaluating whether the proprietary products are competitive with the alternatives available in the market, and

- obtaining independent advice on, or an independent evaluation of, the effectiveness of the firm's policies, procedures, and controls to address this conflict.

We refer you to *E. Conflicts of interest record keeping obligations* for guidance about our expectations related to the information firms should maintain when conducting periodic due diligence on comparable non-proprietary products available in the market.

For firms who trade in, or recommend, proprietary products in addition to non-proprietary products:

- prohibiting monetary or non-monetary benefits that could bias individual recommendations towards proprietary products,

- ensuring that proprietary products are subject to the same know your product processes and selection criteria, as well as ongoing performance and other monitoring, as non-proprietary products,

- documenting how proprietary products fit within the firm's business model and strategy, and how they are aligned with client interests,

- monitoring the use and level of proprietary products in client portfolios,

- making non-proprietary products as easy to access for its registered individuals and its clients as proprietary products,

- providing clear disclosure to clients about the nature of the firm's product and service offering and the extent to which proprietary products may be included in client portfolios, and

- obtaining independent advice on, or an independent evaluation of, the effectiveness of the firm's policies, procedures, and controls to address this conflict.

4. Conflicts arising from fees charged to clients

Our reviews found that some firms did not identify that different / multiple fee schedules could be a material conflict of interest in certain circumstances as it could affect either or both of the decisions of the client or the services or products offered by the registrant. In addition, where a client is charged more than other clients for the same or substantially similar products or services, there could be a breach of the registrant's duty to treat clients fairly, honestly and in good faith.

We expect firms to demonstrate how any material conflict of interest associated with the fees charged to clients has been addressed and how the firm's standard of care has been met. Disclosure alone is not sufficient to address this conflict in the best interest of clients, nor would disclosure alone be sufficient to demonstrate that the firm has met its standard of care.

We observed the following practices related to fees charged to clients at some firms and concluded that there were inadequate controls to address the material conflict in the best interest of clients and firms did not meet their duty to treat clients fairly, honestly and in good faith:

- firms had a standard fee schedule but allowed some clients to negotiate fees or deviate from the standard fee schedule, and clients were not aware that fees could differ or that fees could be negotiated,
- firms allowed registered individuals to use different fee schedules with different clients when the same products and services were received by those clients (i.e., all client portfolios were invested in the same model portfolio(s) and used the same investment strategies, and all clients received the same services), and
- firms changed their standard fee schedule to offer new clients fees based on a revised calculation methodology for the same products and services but continued to charge their legacy clients fees based on the original calculation methodology without considering the impact.

For example, we noted that for one firm, although clients paid different fees, all client portfolios were invested in the same model portfolio(s) and used the same investment strategies, all clients received the same services, and the firm did not have acceptable measurable criteria in place to justify the fee differences among clients. In these specific circumstances (i.e., the clients are receiving the same products and services), we do not view, for example, the geographic location of the registered individuals or their level of seniority as relevant measurable criteria to justify the use of different fee schedules. Measurable criteria that would be acceptable in these circumstances would include the client's account size, for example. Without adequate targeted controls, our view is that the material conflict of interest is not being addressed in the best interest of clients, and the firm has not sufficiently shown that it has met its duty to treat clients fairly, honestly and in good faith.

We reviewed a few portfolio management firms that only offered their products or services to *non-individual permitted clients* and that had determined that different fees were not a material conflict of interest in their specific context, based on their view that it is general industry practice for this client base to negotiate fees when they retain the services of a portfolio management firm. In these specific circumstances, we agreed with the materiality determination made by these firms.

Suggested Controls:

Registrants could consider the following controls when considering how to address this material conflict of interest in the best interest of their clients:

- implement targeted controls for fees charged to clients, such as by setting up standard fee schedules that are based on *measurable criteria* such as, for example, the client's account size (e.g., assets under management) and type (e.g., fee based, commission based, or order execution only), types of products sold or managed (e.g., customized portfolio service offering or model portfolio service offering), the nature of the client-registrant relationship, and the level of service provided to the client;
- where the firm has a standard fee schedule but allows some clients to negotiate fees or deviate from the standard fee schedule, the firm is expected to:
    - implement guidelines or criteria for circumstances where a deviation from the standard fee schedule would be acceptable, to help ensure consistent application of the process across clients,
    - implement a process requiring a registered individual that proposes to deviate from the standard fee schedule to seek prior approval from an authorized supervisor, the firm's chief compliance officer or senior management, as applicable, and
    - disclose to all clients and describe the circumstances under which the firm is prepared to negotiate fees or deviate from the firm's standard fee schedule,

- where the firm changes its calculation methodology for fees for new clients (e.g., metrics related to performance bonuses) in respect of the same products and services received by legacy clients:
    - for each legacy client, assess the impact of the new fee schedule that includes the revised fee calculation methodology and if the registrant concludes that switching to the new fee schedule with the revised calculation methodology would be in the legacy client's best interest, then disclose and explain to each affected legacy client what this fee change means and offer to switch the legacy client to the new schedule.

We note that conflicts of interest also arise in connection with spreads, mark-ups, mark-downs, commissions, and service charges applied to trades by exempt market dealers (in addition to the dealers' overall obligation to deal fairly, honestly and in good faith with clients). For example, conflicts of interest arise where an exempt market dealer recommends a private debt instrument (e.g., loan or mortgage) to different clients and the exempt market dealer chooses the rate spread it will charge to each client. In these circumstances, in addition to the obligation to deal fairly, honestly and in good faith with clients, the suggested controls above apply, and in our view the exempt market dealer must have measurable criteria in place to determine the applicable rate spreads and must document its rationale for the spread chosen. We expect the exempt market dealer to justify situations where certain clients receive a higher interest rate than other clients for the same instrument. The exempt market dealer must also provide disclosure and make all clients aware that there may be differences in the spread that clients receive or if the spread is negotiable.

Finally, as noted below, the CSA and CIRO will conduct reviews to specifically assess registrants' compliance with other CFRs obligations, including the know your client, know your product and suitability determination requirements that came into force on December 31, 2021. We will continue to review potential issues associated with fees charged to clients with the goal of issuing additional guidance.

5. Conflicts arising from supervisory compensation

Some firms did not identify tying a supervisor or branch manager's compensation to the sales and revenue of registered individuals whose conduct the supervisor or branch manager is responsible for reviewing as a material conflict of interest. There is an inherent conflict of interest in this type of compensation as supervisory staff's compensation is not independent of the activities they supervise. This may cause supervisory staff to put their own interests ahead of clients' interests and not effectively oversee the registered representative's activities.

The separation, or independence, of supervisory staff compensation encourages effective oversight of representative activities. We expect that the majority of the compensation of supervisory staff would not be tied to the revenue generation of representatives, the branch or the business line that the supervisory staff oversees. We noted that certain firms reviewed have moved away from a branch-level supervision to a corporate level supervision model.

However, we recognize that in some situations, producing or non-producing branch managers may be compensated partly on the basis of branch or business line profitability. In these cases, we expect firms to assess the design of their compensation models, and ensure that the controls they have in place are sufficient to address, in the best interest of clients, these compensation-related conflicts at the supervisory level.

Suggested Controls:

We suggest the following controls to address this conflict of interest in the best interest of their clients:

- ensure that most of the supervisory staff's compensation is not tied to the revenue generation of registered individuals or branch(es) they oversee,
- set up compensation models to have supervisory staff pay authorized by head office or other independent staff, and
- setting a low level of bonus compensation versus base salary, ensure bonus is also tied to measurable compliance criteria and combined with strict measures that penalize non-compliance.

6. Conflicts arising from director positions with issuers

We noted that some firms failed to identify instances where a registered individual was a member of the board of directors of an issuer whose securities the firm distributed or advised in as a material conflict of interest.

Directors owe a fiduciary duty to the issuer(s) on whose board(s) they serve, but the same individuals are also required to address material conflicts of interest in the best interest of the firm's clients and owe their clients a duty to act fairly, honestly, and in good faith. These conflicting obligations may give rise to a material conflict of interest. Firms should not approve this type of outside activity unless there are stringent controls put in place that address this material conflict in the best interest of clients.

In addition, we note that section 13.5 of NI 31-103 includes restrictions on registered advisers engaging in certain discretionary transactions for investment portfolios where the firm's relationship with an issuer may give rise to a conflict of interest, including trades in securities in which a responsible person (defined in section 13.5(1) of NI 31-103) may have influence or control (including through acting as a partner, officer, or director of the issuer of such securities). Furthermore, CIRO Rules have specific requirements regarding trades made for discretionary accounts (IDPC Rule section 3276) or managed accounts (IDPC Rule section 3280) when the individual authorized to deal with the discretionary or managed account is an officer or director of the issuer.

Suggested Controls:

Registrants could consider the following controls when considering how to address this conflict of interest in the best interest of their clients:

- Compensation: Restrict the compensation that directors may accept for acting in the role of director.
- Recusal from discussions / decisions at the board of directors of an issuer: In addition to applicable corporate law restrictions, the director recuses themselves from board discussions or decisions that involve the firm, its clients, or any companies or investments with which the registrant is involved.
- Recusal from discussions / decisions at the firm - for firms that are able to segregate employee duties: The director recuses themselves from any discussions or decisions at the firm that involve the issuer (specifically discussions or decisions about the firm's product offering), is removed from any decision-making roles at the firm, or ethical walls are established at the firm between the directors and other employees of the firm as may be required to avoid actual or potential conflicts of interest.
- Resignation: Require that directors resign from the board of an investee company when material conflicts of interest arising from this role cannot be addressed in the best interest of the firm's clients.
- Supervision: Require that the firm's compliance or supervisory staff monitor compliance with conflict of interest requirements (e.g., monitor the individual's trades or recommendations which involve the issuer's products) and adherence to any terms and conditions put in place in connection with the approval of the director position outside activity.
- Disclosure: In addition to implementing adequate controls, the firm must comply with its disclosure requirements under the CFRs and corporate law, including the requirement for (i) the firm to disclose the director role to all clients of the firm and (ii) the director to disclose their role and the nature of their responsibilities at the firm to the issuer's board of directors and shareholders.

7. Conflicts related to referral arrangements

Paid referral arrangements, whether they are referrals into a registered firm or referrals of a registered firm's clients out to another entity, are inherent conflicts of interest which, in our experience, are almost always material conflicts of interest, and must be addressed in the best interest of the client. The payment of a referral fee to obtain a client, or the receipt of a referral fee to refer a client, can influence a registrant to put their interests in growing their business or receiving referral fee revenue ahead of their client's interests. Registrants should also be mindful that referral fees include any benefit, and not only monetary benefits, provided for the referral of a client to or from a registrant. For example, a mutual referral arrangement between two firms is a form of referral fee.

We observed the following referral arrangements at reviewed firms:

- **referrals in**: referral fees are provided by the registrant to another party in exchange for that party referring clients or potential clients to the registrant, and
- **referrals out**: referral fees are received by the registrant for referring a client to another party.

We noted that many firms did not identify **referrals in** as material conflicts of interest. Most firms identified **referrals out** as a material conflict of interest.

Referrals in arrangements

When assessing whether **referrals in** are material conflicts of interest, we expect firms to consider the following factors:

- the number of clients that have been referred to the firm through the referral arrangement,

- the extent to which the firm depends on the referral arrangement to maintain and/or grow its client / asset base, and
- the amount of revenue earned by the firm or registered individual from referred clients as compared to non-referred clients.

The firm's analysis and determination as to whether the **referrals in** are a material conflict of interest should consider the factors above and must be adequately documented, especially where the registrant has concluded that there is no material conflict of interest.

As a general rule, if a client is referred to a registrant, the registrant may not charge the client more than other (non-referred) clients for the same, or substantially similar, products and services.

Suggested Controls:

Registrants could consider the following controls when addressing material conflicts of interest associated with **referrals in**:

- oversight by the firm's chief compliance officer, compliance staff or senior management, as applicable, to ensure that all clients (i.e., referred and non-referred clients) are treated fairly by the registrant – for example:
  - no preferential treatment is extended to referred clients in order to attract more referrals from a referral agent (e.g., in a significant market downturn, the registrant is more responsive to the needs of referred clients in order to maintain a positive relationship with the referral agent), or
  - referred clients' needs are not neglected because the registrant views these clients are less profitable than non-referred clients,
- oversight of the activities conducted by the firm's registered individuals to ensure that all registrable activities are conducted by the registrant(s) and not delegated to the referral agent(s) (e.g., this may require in some circumstances, an assessment of the activities engaged in by the referral agent(s) when interacting with the registrant's client(s), calling clients, or assessing complaints and other information received in connection with the referral arrangement to ensure compliance),
- contractually requiring that unregistered referral agents that make referrals to a firm attend training on how to adequately conduct referrals,
- requiring that unregistered referral agents that make referrals to a firm only use pre-approved marketing materials and social media content in relation to their referral business, and
- to the extent that the registrant collects fees from a client's account and remits those fees to the referral agent to pay for additional services provided by the referral agent to the client (e.g., service fee collection arrangements for insurance or financial planning), a process is in place for the registrant to verify that the referral agent did in fact provide the services for which they are being compensated before collecting and remitting the fees.

Referrals out arrangements

Before a registrant refers a client, in exchange for a referral fee, to another party, the registrant must determine that making the referral is in the client's best interest. In making that determination, we expect registrants to consider the benefits to the client of making the particular referral over alternatives or at all.

In making a referral, registered firms and individuals must be guided only by the client's interests. We therefore expect that a registrant will not make a client referral to a party solely because of the referral fee that they will receive from that party, or because the amount or duration of the referral fee that they will receive from that party may be greater than the amount or duration of the referral fee that they would receive from a competitor to that party. If a client pays more for the same, or substantially similar, products or services as a result of a referral arrangement, we would not consider the inherent material conflict of interest to have been addressed in the best interest of the client, nor would this be consistent with a registrant's obligation to deal fairly, honestly and in good faith with its clients.

In our view, registered firms must conduct a due diligence analysis to assess options that could be made available to the client. This applies equally whether the firm has referral arrangements in place with a single provider or multiple providers.

We expect registered firms to exercise professional judgement when assessing whether they have obtained sufficient information in the circumstances to determine that making the referral is in the client's best interest. In our view, this determination should include a judicious assessment of any detrimental information obtained through the due diligence process.

For example, registrants should take reasonable steps to consult publicly available databases, search engines and make inquiries of the other party (whether registered or not) to ascertain:

- their status, including their registration or licensing status as applicable,
- their financial health (e.g., bankruptcy or insolvency),
- their professional qualifications and history,
- whether they are or have been subject to any disciplinary actions, proceedings or any order resulting from disciplinary proceedings related to their professional activities under their governing body or similar organization,
- whether they have been the subject of any investigation by any securities or financial industry regulator,
- for an individual, whether they have been subject to any significant internal disciplinary measures at the firm they worked/work at related to their professional activities, and
- whether there are or have been any complaints, civil claims and/or arbitration notices filed against them related to their professional activities.

We expect a firm's due diligence to also include an assessment of the quantum of the referral fee and duration of the referral arrangement, to determine whether the referral fee and the length of time for which it will be received are reasonable in the circumstances taking into consideration the nature and extent of the products or services being provided to the client by the other party. Firms must maintain records of the due diligence conducted and their determination that the referral would be in the best interest of the client, and must have controls in place to monitor and supervise the referral arrangement on an ongoing basis.

Referrals out include referrals to the firm's affiliate(s). In these circumstances, we also expect the registrant to assess the affiliate's products or services offering to confirm that the referral arrangement is in the best interest of the client.

Suggested Controls:

When addressing material conflicts of interest associated with **referrals out**, in addition to the elements noted above (performing an assessment of the benefits of the referral arrangement, conducting the necessary due diligence and keeping such due diligence updated, and making a determination that the referral arrangement would be in the best interest of the client), registrants could consider the following controls related to the ongoing monitoring and supervision of referral arrangements:

- annual questionnaires sent to registered individuals who participate in referral arrangements on the nature and extent of their involvement in referral arrangements,
- interviews of registered individuals receiving referral fees during the branch review process,
- ongoing assessment of compensation received by registered individuals under the referral arrangements, including an assessment of the quantum and duration of the compensation and whether this is reasonable in the circumstances, taking into account the nature and extent of the products or services being provided to the client by the other party,
- conducting ongoing compliance calls to investors who have been referred to (or by) the firm to assess how the process is being conducted by each referral party, and
- assessing complaints and other information received in connection with referral arrangements to ensure compliance by all referral parties.

8. <u>Conflicts arising from trades alongside clients (exempt market dealer relationships)</u>

We noted that some exempt market dealer firms allowed their dealing representatives to trade in the same issuers alongside their clients (or the firm's clients) but failed to identify this as a conflict of interest. In our view, this is a material conflict of interest because it may impact the recommendations or decisions of the dealing representative in the circumstances. For example:

- when an issuer's offering of securities is limited, the dealing representatives could prioritize their own trade before recommending an investment in the issuer's securities to a client, or
- when a registrant becomes aware that an issuer, which normally permits redemptions (e.g., monthly or quarterly) is about to freeze or gate redemptions, the dealing representative may act on that information at the expense of the exempt market dealer firm's clients.

In addition to not identifying this conflict of interest, we noted that the exempt market dealer firms did not have adequate controls to address this material conflict of interest in the best interest of clients.

We expect registered exempt market dealer firms to establish policies, procedures and controls related to personal trading by dealing representatives and the fair allocation of investment opportunities. Material conflicts of interest associated with trades alongside clients must be addressed in the best interest of clients and accordingly:

- when an issuer's offering of securities is limited, the exempt market dealer firm's dealing representatives and employees should not be allowed to trade in the issuer's securities until all client orders are fulfilled, and
- if a registrant becomes aware that an issuer that normally permits redemptions (e.g., monthly or quarterly) is about to freeze or gate redemptions, the exempt market dealer firm's dealing representatives and employees must not be allowed to redeem their own securities before all affected clients are informed and given the opportunity to redeem.

9. Conflicts of interest related to gifts / Entertainment

We note that the firms reviewed generally identified the provision or receipt of gifts and entertainment as a material conflict of interest. However, the firms did not always have adequate controls in place to address this material conflict of interest in the best interest of clients.

Examples of Controls:

We observed that firms reviewed took various approaches based on their size and circumstances, to address this conflict, and controls implemented by firms included the following:

- maintain, review, monitor and assess a log of all gifts / entertainment provided and received, regardless of value
  - the log includes sufficient detail for the firm to perform an adequate review and assessment,
  - the periodic review occurs annually (or more frequently depending on the firm's business model and size) to verify that no individual is receiving an unreasonable number or value of gifts / entertainment and that no individual has exceeded any prescribed limits imposed by the firm, and
  - monitor the gifts / entertainment log to assess if excessive or frequent gifts / entertainment are received from a particular party that may call into question the legitimacy of the gifts / entertainment or indicate that the scenario presents a material conflict of interest that must be avoided,
- prohibit the receipt or provision of any monetary gifts,
- implement guidelines on what the firm considers to be a reasonable amount for the receipt / provision of gifts / entertainment, including a stipulation that any gift / entertainment above a prescribed dollar amount requires the approval of compliance or supervisory staff before the gift / entertainment can be accepted or provided by a registered individual,
- set prescribed limits (i.e., prescribed dollar amounts) associated with gifts / entertainment that can be received by registered individuals during a stipulated period (e.g., quarterly or annually),
- set prescribed limits (i.e., prescribed dollar amount) associated with gifts / entertainment that can be provided by registered individuals to clients or other individuals during a stipulated period (e.g., quarterly or annually),
- consider requiring that any gift / entertainment provided to clients must be nominal in value and requires the pre-approval by compliance or supervisory staff, and
- where gifts / entertainment are received by, or provided to, compliance or supervisory staff, require pre-approval of another member of the senior management.

10. Conflicts arising from managing and distributing prospectus-exempt proprietary issuers

We have observed that certain registered firms have not appropriately addressed material conflicts of interest arising from performing certain activities for proprietary issuers (including issuers that are investment funds) that they manage and distribute on a prospectus-exempt basis. The types of firms where we have noted this issue have been registered as exempt market dealers or as investment fund managers / exempt market dealers, where the issuers managed have been proprietary issuers distributed on a prospectus-exempt basis, such as mortgage investment entities. These firms did not appropriately identify and address

certain material conflicts of interest as described below, nor did they sufficiently comply with other regulatory requirements associated with their management and distribution activities in connection with these issuers.

Specifically, we observed that these firms did not identify and address material conflicts of interest associated with the following activities:

- Calculation of the value of the underlying portfolio: The firms did not conduct an independent assessment of the value of the issuer, including that of any illiquid assets held by the issuer (such as, for example, mortgages or factoring loans). We also observed issuer securities that were redeemed or purchased at a fixed dollar amount without due consideration of known potential impairments of the underlying assets at the time of these transactions. This resulted in investors purchasing and redeeming securities of the issuer at a price that did not reflect the fair value of the security,

- Calculation of management and performance fees: The firms used stale values for the underlying assets when calculating management fees and performance fees, such as the amount raised under the initial offering or the purchase price of illiquid assets held by the issuer when a lower fair value of the underlying assets was required to reflect known potential impairments of the underlying assets, and

- Allocation of expenses: The firms did not have processes in place to properly document and allocate how each issuer pays for any shared expenses.

Material conflicts of interest associated with managing and distributing prospectus-exempt proprietary issuers such as those described above must be addressed in the best interest of the clients of the registered firm. In addition, firms must ensure that their processes when managing and distributing issuers meet all other regulatory requirements.

Suggested Controls:

We expect registrants to consider the following controls when considering how to address these material conflicts in the best interest of their clients (in addition to having appropriate processes in place to meet all other regulatory requirements associated with their management and distribution activities in connection with the issuers, including those relating to valuation):

- use independent third-party resources, such as auditors, to calculate and/or verify the value of the underlying assets, management fees and performance-based compensation,

- establish clear criteria for how the issuer will process purchases and redemptions and identify instances when purchases and redemptions must not be processed (e.g., when the value of the assets of the issuer is stale dated), with such criteria clearly disclosed to investors, and

- establish clear criteria for how shared expenses will be allocated between multiple issuers managed by the same firm, with such criteria clearly disclosed to investors.

B. Missing or incomplete disclosure related to material conflicts of interest

A significant number of firms reviewed did not provide any disclosure to their clients about the material conflicts of interest identified by the firm (approximately 10% of firms), or, where disclosure was provided, it was incomplete (approximately 43% of firms). For example, we noted that reviewed firms did not adequately disclose the following material conflicts of interest:

- internal compensation and incentives such as bonus structures,

- compensation from clients including variances in fee structures,

- third party compensation,

- outside activities,

- distribution of proprietary products,

- referral arrangements,

- related / connected issuers, and

- leverage recommendations (i.e., where a registered individual recommends that the client borrow/leverage money in order to invest in securities offered by the firm).

When disclosing conflicts of interest, registered firms are required to include a description of:

- the nature and extent of the conflict of interest,
- the potential impact on and the risk that the conflict of interest could pose to the client, and
- how the material conflict of interest has been, or will be, addressed.

During our reviews, we noted that some firms did not update their conflicts of interest disclosure to comply with these new requirements. We also noted that even when the disclosure was updated by firms, the disclosure did not consistently cover all three required elements listed above. In particular, we noted that while many firms disclosed the nature and extent of a material conflict of interest, disclosure relating to the potential impact on and risk that the material conflict of interest could pose to a client and how the firm has addressed the material conflict of interest was often missing.

Registrants must ensure that their conflicts disclosure includes all of the required elements, including the potential impact on and risk that the conflict could pose to a client and how the registered firm has addressed or will address the material conflicts of interest in the best interest of its clients. In general, as noted in 31-103CP, disclosure regarding material conflicts of interest must be fulsome in content, must be prominent, specific and written in plain language, and must be disclosed at the appropriate time in order to be meaningful to clients.

1. Format of disclosure

Registered firms that successfully complied with the disclosure requirement were able to do so because they expressly laid out each element of the required disclosure in a clear and concise manner (e.g., by using headings related to each of the three elements or by using tables or other formats). We encourage firms to consider what format would enable them to provide the required disclosure clearly to clients.

2. Disclosure prepared by another entity

We note that some firms reviewed relied on disclosure documents prepared by another entity. For example, some registered firms referred clients to disclosure related to conflicts of interest described in an issuer's documents (e.g., the issuer's offering memorandum) to discharge the registered firm's conflicts of interest disclosure obligation under the CFRs. However, where this type of conflicts disclosure is prepared solely from the issuer's perspective and does not reflect the registered firm's perspective, this disclosure would not be adequate. This type of reliance could result in non-compliance by the registered firm with its own conflicts of interest disclosure obligations under the CFRs.

3. Timing of disclosure

Some firms we reviewed provided disclosure to clients, but the disclosure was not provided in a timely manner as required. A firm must disclose a material conflict of interest:

- during the account opening process, if the conflict has been identified at that time, or
- in a timely manner, upon identification of a material conflict that must be disclosed that has not previously been disclosed to a client (e.g., in the case of an upcoming investment commitment, in time for the customer to consider the implications before the trade).

As further described below, firms must periodically review their conflicts of interest disclosure and consider whether any updates are needed.

C. Inadequate policies and procedures related to conflicts of interest

Without robust policies and procedures relating to conflicts of interest, there is a risk that material conflicts of interest may not be identified, reported or addressed by a registrant and may not be appropriately disclosed to clients.

Approximately 66% of the firms reviewed had inadequate written policies and procedures relating to conflicts of interest. Some of these firms had policies and procedures related to conflicts of interest, but had not updated these policies and procedures to comply with the CFRs conflicts of interest requirements, or the updates made were not sufficient.

A firm's written policies and procedures related to conflicts of interest should include the following:

- a definition of conflicts of interest that enables the firm, and each individual acting on its behalf, to understand and identify conflicts of interest that may arise,
- clear delineation of the firm's and the registered individuals' responsibilities with respect to identifying and addressing material conflicts of interest,

- the process for registered individuals to promptly report or escalate existing or reasonably foreseeable conflicts of interest that have been identified to the firm,
- the process and criteria used by the firm to determine the materiality of conflicts of interest identified,
- guidance on how a material conflict of interest will be addressed in the best interest of the client,
- the controls the firm has in place to address the material conflicts of interest identified and how those controls will be tested,
- the process for training employees regarding conflicts of interest,
- the process for regular reporting on conflicts of interest by the chief compliance officer to the firm's ultimate designated person, executive management, and board of directors (or equivalent), including how the firm has / is addressing material conflicts of interest,
- the content of the required conflicts of interest disclosure for clients, and the process and timing for preparing and delivering the disclosure to clients, as well as any updates to that disclosure,
- the process for periodic review (to be conducted at least annually, or more frequently as needed (e.g., if the firm's business structure, model, product or service offering changes)) of the firm's inventory of actual and potential conflicts of interest, as well as the firm's conflicts of interest disclosure for clients, to identify if:
    - there are any new material conflicts of interest, or changes to an existing material conflict of interest,
    - the existing controls are no longer adequate to address a material conflict of interest or additional controls need to be added,
    - any material conflict of interest needs to be avoided as it can no longer be otherwise addressed in the best interest of clients,
    - the conflicts of interest disclosure for clients needs to be updated, and
- the content and process for recordkeeping related to conflicts of interest.

D. Lack of or inadequate training on conflicts of interest

We noted that approximately 83% of the firms reviewed provided adequate training about conflicts of interest. We determined that training was inadequate when:

- it was too generic and not specific or tailored to the firm's business operations or size,
- it did not provide descriptions or examples of the material conflicts of interest that exist at the firm,
- all individuals that should have been included in the training were not included, and
- it did not mention or provide details of the reporting or escalation process at the firm for when an individual has identified a material conflict of interest.

Firms are expected to train all appropriate staff on conflicts of interest generally. This would include all registered individuals and supervisory staff, and additional staff as may be necessary depending on their roles and responsibilities. We expect that this would include compliance staff. For example, most firms provide their staff with training on the firm's code of conduct, which generally includes training about conflicts of interest policies, procedures and controls. Depending on the content, this may be sufficient to evidence training of staff on conflicts of interest generally. Specific training modules may be required for certain material conflicts in respect of certain staff. For example, training on conflicts of interest and firm controls related to compensation arrangements may be needed for all registered individuals and compliance / supervisory staff. We recognize that registrants will exercise their professional judgement when developing / implementing training modules and determining which staff require the training.

In some cases, firms provided training but did not maintain adequate documentation to evidence that such training was provided. In order to demonstrate compliance with the training requirement, firms should maintain documentation such as the following:

- copies of the training modules / content (e.g., slide presentations along with speaking notes) used at the training session,
- attendance logs to track which employees attended and completed the training sessions, and

- for employees that missed the scheduled / organized training sessions, details with respect to how they were trained at a subsequent date.

E. Conflicts of interest record keeping obligations

The requirement for a registered firm to maintain records to accurately record its business activities, financial affairs and client transactions, and to demonstrate the extent of the firm's compliance with applicable requirements of securities legislation, predates the CFRs, and details of the requirement are set out in section 11.5 of NI 31-103 (IDPC Rule subsection 3804(1)). However, the CFRs introduced additional specific requirements relating to conflicts of interest for firms to maintain records to:

- demonstrate compliance with the conflicts of interest obligations, and
- document (i) the firm's sales practices, compensation arrangements and incentive practices, and (ii) other compensation arrangements and incentive practices from which the firm or its registered individuals, or any affiliate or associate of that firm, benefit (specific guidance relating to the recordkeeping requirements for sales practices, compensation arrangements and incentive practices is set out in section 11.5 of 31-103CP).

Although there is no prescribed format, firms must document their identification, review and analysis of conflicts of interest, their determination as to whether a conflict is material, and the controls used by the firm to ensure that material conflicts of interest have been addressed in the client's best interest.

Registrants should exercise their professional judgement to assess what level of detail needs to be documented in records in order for them to demonstrate that they have complied with their conflicts of interest obligations. As the materiality of a conflict increases, there should be greater detail in the records maintained to demonstrate compliance.

Firms should:

- Create and maintain a conflicts inventory, such as a conflicts matrix, which includes the following:
  - a description of each material conflict of interest identified by the firm,
  - a description of the firm's assessment for concluding whether or not the conflict is material, including the criteria considered in making the assessment,
  - the potential impact and risk that the conflict can pose,
  - who at the firm was involved in identifying the conflict and making the assessment of whether it is material,
  - the controls the firm has in place to manage or address each material conflict of interest, and how these controls are sufficient to address the material conflict in the best interest of clients, and
  - how the firm has disclosed the conflict to clients.
- Maintain evidence of periodic reviews of the conflicts inventory and controls associated with each material conflict of interest:
  - firms should perform periodic reviews in order to confirm that all previously identified conflicts of interest remain relevant and to confirm that there are no new conflicts of interest,
  - periodic reviews should include testing by the firm of the controls implemented and their effectiveness in addressing each material conflict in the best interest of the clients,
  - firms should maintain evidence of these periodic reviews, and
  - the reviews should be completed as often as needed (e.g., when the firm's business structure, model, product or service offering changes) but at a minimum should be completed on an annual basis.

Specifically with respect to the documentation of controls implemented to address material conflicts of interest, firms should maintain detailed information to evidence the use of the control. For example:

- If a firm has developed client profiles setting out the types of investors for whom a product may be suitable (and turns away clients who do not fit the specific client profile) as a control, then each client profile should be documented, and the firm should maintain records to evidence the use of the control, including records to explain how each client fits the profile created.

- If a firm sells only proprietary products and conducts periodic due diligence on comparable, non-proprietary products available in the market to assist in evaluating whether the proprietary products are competitive with alternatives as a control, then the firm should maintain records to evidence the due diligence, comparison and evaluation, including which non-proprietary products were examined and how these compared against the firm's proprietary products, including details as to which factors / attributes were considered for the comparison (e.g., performance, costs, fees, returns, risk).

OTHER MATTERS

Interaction of CFRs Conflicts of Interest Requirements with National Instrument 81-107 Independent Review Committee for Investment Funds

We noted there was some confusion with respect to how National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) and section 13.4 of NI 31-103 interact.

Section 13.4 and 13.4.1 do not apply to investment fund managers in respect of investment funds that are subject to NI 81-107 in respect of conflicts of interest matters relating to those investment funds.

However, section 13.4 applies to the investment fund manager in respect of other conflicts of interest in its business and also in respect of the investment funds it manages that are not subject to NI 81-107.

NEXT STEPS

All registrants must have policies, procedures and systems that are appropriate to their business models in order to comply with regulatory requirements. The suggested practices identified in this Notice are intended to provide additional Staff guidance on how we expect registrants to comply with the CFRs conflicts of interest requirements. The suggested practices outlined in this Notice will serve as guidance that Staff will apply when assessing compliance with these regulatory obligations.

We will continue to review and evaluate firms' compliance with securities legislation, including all CFR requirements during regular compliance examinations and will use all tools available along the compliance enforcement continuum to address any non-compliance. The CSA and CIRO will conduct reviews in 2023 to specifically assess registrants' compliance with other CFRs obligations, including the know your client, know your product and suitability determination requirements that came into force on December 31, 2021.

Additional rules will be considered if we do not observe the results we expected from the CFRs, including the conflict of interest provisions.

We established the CFRs Implementation Committee in 2020, which considered operational challenges industry stakeholders were facing when implementing the CFRs. We compiled a list of questions received by the CFRs Implementation Committee and have set out our responses to provide additional guidance (see Frequently Asked Questions https://www.securities-administrators.ca/resources/client-focused-reforms/frequently-asked-questions-cfr/).

We encourage registrants to refer to this Frequently Asked Questions document for additional guidance on complying with the CFRs.

Firms can also keep up to date on regulatory developments by reviewing Staff notices and publications, participating in information outreach sessions organized by, and signing up for mailings from, the various CSA members and CIRO.

QUESTIONS

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B.1.2 OSC Staff Notice 33-755 – Compliance and Registrant Regulation Branch – Summary Report for Dealers, Advisers and Investment Fund Managers

OSC Staff Notice 33-755 – Compliance and Registrant Regulation Branch – Summary Report for Dealers, Advisers and Investment Fund Managers is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 33-755

Compliance and Registrant Regulation Branch

Summary Report for Dealers, Advisers and Investment Fund Managers

July 27, 2023

Ontario

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Director's Message

We are pleased to share this year's Summary Report for Dealers, Advisers and Investment Fund Managers, which provides an overview of our work during the 2022-2023 fiscal year.

As of May 1, 2023, we have reincorporated an in-person component to our compliance reviews. Being mindful of hybrid work arrangements, we will continue to use electronic means for the collection of materials and other aspects of our work, but you can expect to have in-person meetings at various stages of the review process. If we are not able to attend in-person at the registrant's offices, then we will ask the registrant to attend meetings in our offices.

Highlights from the past year include compliance sweeps of high-impact firms, firms with limited compliance staff, registered firms that distribute mortgage investment entities, and reviews of Crypto Asset Trading Platform custody arrangements.

Additionally, together with the Canadian Securities Administrators and Canadian Investment Regulatory Organization, the OSC conducted reviews focused on the implementation of the Client Focused Reforms (**CFR**s) conflicts of interest requirements. The findings from these reviews, along with guidance, is expected to be published shortly. However, I want to emphasize that the regulatory expectation is that registrants have taken steps to review all aspects of their operations to fully implement the CFRs. As stated previously, if we do not see the intended outcomes, then further regulatory action may be required.

As the complexity of business models and products continues to increase, we formed a new operational team that is focused on specialized dealer business models such as derivatives dealers and restricted dealers.

Looking ahead, our compliance review activity for 2023-2024 will prioritize:

- review of know-your-client (**KYC**), know-your-product and suitability determination to assess the effectiveness of the implementation of the CFRs
- compliance reviews of high-risk firms, following the analysis of the data collected in response to the 2022 Risk Assessment Questionnaire (**RAQ**)
- compliance reviews of crypto asset trading platforms

Our Registrant Outreach program remains a priority, and we continue to provide tools and programs to help registrants with their compliance obligations. Visit the Registrant Outreach webpage to access the Topical Guide for Registrants, Director's decisions, and calendar of events for past and upcoming educational webinars.

If you have a question, comment, or would like to discuss regulatory matters, please feel free to reach out to us. As always, we look forward to engaging with you.

Debra Foubert
Director, Compliance and Registrant Regulation

Glossary of legislative references

Act: *Securities Act*, RSO 1990, c. S. 5

Form 13-502F4: Form 13-502F4 *Capital Markets Participation Fee Calculation*

Form 13-503F1: Form 13-503F1 *(Commodity Futures Act) Participation Fee Calculation*

Form 33-109F3: Form 33-109F3 *Business Locations Other Than Head Office*

Form 33-109F4: Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*

Form 33-109F5: Form 33-109F5 *Change of Registration Information*

Form 33-109F6: Form 33-109F6 *Firm Registration*

Form 45-106F1: Form 45-106F1 *Report of Exempt Distribution*

NI 31-103: National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

NI 31-103CP: Companion Policy to NI 31-103

NI 33-109: National Instrument 33-109 *Registration Information*

NI 33-109CP: Companion Policy to NI 33-109

NI 45-106: National Instrument 45-106 *Prospectus Exemptions*

NI 45-106CP: Companion Policy to NI 45-106

NI 45-110: National Instrument 45-110 *Start-up Crowdfunding Registration and Prospectus Exemptions*

NI 81-102: National Instrument 81-102 *Investment Funds*

MI 32-102CP: Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers*

OSC Rule 13-502: OSC Rule 13-502 *Fees*

OSC Rule 13-503: OSC Rule 13-503 *Commodity Futures Act Fees*

OSC Rule 31-505: OSC Rule 31-505 *Conditions of Registration*

OSC Rule 32-505: OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*

OSC Rule 72-503: OSC Rule 72-503 *Distributions Outside Canada*

Introduction

Who we are

The Compliance and Registrant Regulation (**CRR**) Branch of the Ontario Securities Commission (**OSC**, **Commission**) is responsible for the registration and ongoing regulation of firms and individuals who are in the business of trading in, or advising on, securities or commodity futures and firms that manage investment funds in Ontario. The OSC's mandate is to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair, efficient and competitive capital markets and confidence in capital markets,
- foster capital formation, and
- contribute to the stability of the financial system and the reduction of systemic risk.

CRR's activities are integral to the OSC's vision of being an effective and responsive securities regulator, fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

The purpose of this report

This Summary Report for Dealers, Advisers and Investment Fund Managers (**Summary Report**), prepared by staff of the CRR Branch, is designed to assist registrants by providing information about:

Education and outreach

Part 1 of this report provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.

Regulatory oversight activities and guidance

Part 2 of this report can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.

Impact of upcoming initiatives

Part 3 of this report provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

Registrant conduct activities

Part 4 of this report is intended to enhance a registrant's understanding of our expectations for conduct of registrants and applicants for registration. This section also provides insight into the types of regulatory actions the CRR Branch may take to address non-compliance.

Who this report is relevant to

This Summary Report provides information for registrants that are directly regulated by the OSC. These registrants primarily include investment fund managers (**IFMs**), portfolio managers (**PMs**), exempt market dealers (**EMDs**) and scholarship plan dealers (**SPDs**). At present, registrants overseen by the OSC include:

Firms	Individuals
1,161[1]	70,077

IFMs	PMs	EMDs	SPDs
546[2]	334[3]	277[4]	4[5]

In general, firms must register with the OSC if they conduct any of these activities in Ontario:

- are in the business of trading in, or advising on, securities (this is referred to as the "business trigger" for registration)
- direct the business, operations or affairs of an investment fund
- act as an underwriter
- conduct trading or advising activities involving commodity futures contracts or commodity futures options

Individuals must register if they trade, advise or underwrite on behalf of a registered dealer or adviser, or act as the Ultimate Designated Person (**UDP**) or Chief Compliance Officer (**CCO**) of a registered firm.

There are seven dealer and adviser categories for firms trading in or advising on securities, or acting as an underwriter, as applicable:

- EMD

[1] Excludes firms registered solely in the category of MFD, ID, commodity trading adviser, commodity trading counsel, commodity trading manager and futures commission merchant.
[2] Includes firms registered only as IFMs and IFMs also registered in other registration categories (other than SPD).
[3] Includes firms registered only as PMs, RPMs, and PMs/RPMs also registered in other registration categories (other than IFM).
[4] Includes firms registered only as EMDs, RDs, and EMDs/RDs also registered in other registration categories (other than IFM or PM).
[5] Includes firms registered only as SPDs and SPDs also registered in other registration categories.

- SPD
- restricted dealer (**RD**)
- PM
- restricted portfolio manager (**RPM**)
- investment dealer (**ID**) – firms in this category must be a member of the Canadian Investment Regulatory Organization (**CIRO**) (previously the Investment Industry Regulatory Organization of Canada (**IIROC**))
- mutual fund dealer (**MFD**) – firms in this category must, except in Quebec, be a member of CIRO (previously the Mutual Fund Dealers Association of Canada (**MFDA**))

There are four dealer and adviser categories for firms trading in or advising on commodity futures:

- commodity trading adviser
- commodity trading counsel
- commodity trading manager
- futures commission merchant

IFM is a separate category for firms that direct the business, operations or affairs of investment funds.

Although firms registered in the category of MFD, ID or futures commission merchant and their registered individuals, are directly overseen by the self-regulatory organization CIRO, the OSC approves the registration of firms in these categories and approves the registration of individuals sponsored by a MFD. Applications for firm registration are reviewed by CRR staff, but we remind firms seeking registration in the category of MFD, ID or futures commission merchant to also apply separately for membership with CIRO.

While this report focuses primarily on registered firms and individuals directly overseen by the OSC, firms directly overseen by CIRO are encouraged to review the Summary Report as certain information is applicable to them as well.

Service standards

The CRR Branch is committed to accountability and transparency, and to ensuring services are delivered in the most efficient and effective ways possible. All CRR service standards and timelines are incorporated into the OSC Service Commitment. Information about CRR-specific service standards and timelines can also be accessed at:

- Exemption Application
- Registration Materials
- Notices of End of Individual Registration or Permitted Individual Status
- Compliance Reviews: Registrants

Organizational structure

The CRR Branch is led by the Director, Debra Foubert. The Director is supported by:

- Elizabeth King, Deputy Director, Registrant Conduct
- Felicia Tedesco, Deputy Director, Operations

The CRR Branch consists of seven teams:

- Operations, which comprises four compliance teams
- Registrant Conduct Team
- Data Strategy and Risk Team
- Registration Team

Operations

Operations is comprised of four teams of lawyers and accountants and is responsible for conducting compliance field reviews, reviewing applications for exemptive relief and working on policy initiatives. The four teams are:

- Investment Fund Manager Team
- Portfolio Manager Team
- Dealer Team
- Specialized Dealer Team

Operations staff are subject matter experts and provide support to the Registration team.

Registrant Conduct Team

The Registrant Conduct Team handles files referred from other CRR teams and other OSC branches for matters that require further regulatory action to remediate registrant misconduct or to review higher-risk registration applications.

Registrant misconduct may be addressed by applying terms and conditions to registration, suspension of registration or being referred to the Enforcement Branch. This team is also responsible for working on policy initiatives.

Data Strategy and Risk Team

The Data Strategy and Risk Team performs financial analysis of registrants' interim and annual financial statements and capital calculations, leads the Capital Markets Participation Fee process and oversees all fee matters. This team also supports CRR's data requirements and conducts data analytics.

Registration Team

The Registration Team focuses on the initial registration of firms and individuals, subsequent changes to registration, including the surrender of registration, and ongoing maintenance of registration information.

This team is also responsible for processing registration-related applications for exemptive relief and working on registration-related policy initiatives.

Staff contact information

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Dena Staikos	Manager, Specialized Dealer Team	416-593-8058
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Elizabeth Topp	Manager, Portfolio Manager Team	416-593-2377

The format for our email addresses is first initial and last name: First Last, flast@osc.gov.on.ca.

For registration or fee inquires, please use the following contact information:

- Registration inquiries: registrations@osc.gov.on.ca
- Fees inquiries: annualfees@osc.gov.on.ca

Part 1: Outreach

1.1 Outreach program and resources

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

Registrant Outreach statistics since inception

Sessions (in-person and webinars)	Replays viewed	Individual attendance	Topical Guide for Registrants – annual page views
73	11,607	15,766	> 8,600

Interested in attending an upcoming Registrant Outreach seminar?

Click here for our calendar of upcoming events.

Looking for information about regulation matters?

Take a look at our Registrant Outreach program webpage or our Topical Guide for Registrants for help with key compliance issues and policy initiatives.

Want to be informed about newly released guidance?

Register to receive our email alerts here.

Looking for a listing of recent email alerts and links to each?

Refer to the Compliance-related reports, staff notices and email notifications webpage.

Interested in reading previously published Director's decisions?

Refer to the Opportunity to be heard and Director's decisions webpage.

If you have questions related to the Registrant Outreach program or have suggestions for seminar topics, please send an email to RegistrantOutreach@osc.gov.on.ca.

1.2 Registration Outreach Roadshow

The Registration Team held its annual Registration Outreach Roadshow in early 2023 with various registered firms and law firms. These outreach sessions are aimed at continuing to strengthen working relationships with the registration teams of the registered firms we frequently interact with, as well as disseminating information to legal counsel who work with firms that we do not interact with as often.

The OSC reviewed deficiencies frequently seen in filings to offer insights to firms on how to avoid filing pitfalls and inefficiencies. We provided tips and commentary on the main individual registration form (Form 33-109F4), as well as the form for changes in registration information (Form 33-109F5) and the main firm application form (Form 33-109F6). Other topics included the new ability to open virtual business locations through Form 33-109F3, an approach developed to assist registered firms by providing added flexibility on National Registration Database (**NRD**) to reflect evolving work arrangements – see the Virtual Business Locations on NRD webpage. We discussed the implementation year ending June 6, 2023 for filing information updates on NRD for individual registrants or permitted individuals under the amendments to NI 33-109. We also reviewed statistics showing areas of success attending firms had on certain registration-related processes, as well as areas that could benefit from additional focus.

We continue to see the benefits of these outreach sessions. We received positive feedback from firms on the value of the sessions to their businesses. We also received feedback through our Roadshow participation survey which will help us develop future outreach sessions.

1.3 Registrant Advisory Committee

Established in January 2013, the Registrant Advisory Committee (**RAC**) is in its sixth term, and is chaired by the Director of CRR, Debra Foubert. In 2022, it was comprised of nine external members whose term ended on December 31, 2022. In January 2023, new RAC membership began with 14 external members. The RAC meets quarterly, with members serving a minimum two-year term.

The RAC's objectives are to:

- advise on issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including matters related to registration and compliance
- provide feedback on the development and implementation of policy and rule-making initiatives that promote investor protection, fair and efficient capital markets, and contribute to the stability of the financial system

Discussion topics during the fiscal year (April 1, 2022 – March 31, 2023) included:

- CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure*
- 2022 CRR RAQ - discussion of content changes, completion process and general registrant feedback after RAQ delivery
- CSA and Canadian Council of Insurance Regulators Joint Notice and Request for Comment on Total Cost Reporting for Investment Funds and Segregated Funds
- Amendments to NI 33-109

Part 2: Information for dealers, advisers and investment fund managers

How to navigate Part 2 of the Summary Report

Part 2 of the Summary Report provides an overview of the key findings and outcomes from compliance reviews conducted during the 2022-2023 fiscal year:

- Section 2.1 discusses the annual highlights of the work completed by CRR during the 2022 – 2023 fiscal year
- Section 2.2 discusses key or novel issues, suggests best practices, and specifies applicable legislation and relevant guidance to assist firms in addressing each of the topic areas. For ease of reference, registration categories are listed beside each deficiency heading to indicate that the information is relevant to firms registered in those categories

We encourage registrants to review all the information set out in Part 2 of this report as the guidance presented may be helpful to registration categories other than those listed.

2.1 Annual highlights

2.1.1 High-impact firms

2.1.2 Conflicts of interest sweep

2.1.3 Mortgage investment entities

2.1.4 Firms with limited compliance staff sweep

2.1.5 High-risk firms identified through "Registration as the First Compliance Review" program

2.1.6 Registration of Crypto Asset Trading Platforms (CTPs)

2.1.1 High-impact firms

As part of our risk-based approach to selecting firms for review, we select firms that, given the size of their assets under management (**AUM**), could have a significant impact on the capital markets if there was a breakdown in their compliance structure or key operations (**high-impact firms**).

In 2023, we commenced compliance reviews of four high-impact firms with a combined AUM of approximately $530 billion as of December 31, 2022. We apply a modified approach to reviewing high-impact firms as part of our continued efforts to assess the most effective way to oversee our registrant population. Specifically, the reviews for high-impact firms focus on assessing each firm's ability to identify and effectively manage its regulatory and compliance risks by reviewing each firm's:

- governance structure
- risk framework, including the risk identification and risk management process
- compliance issues identified during the review period, including how any non-compliance was remediated and what steps were put in place to prevent re-occurrence

2.1.2 Conflicts of interest sweep

The CFRs are a set of amendments to NI 31-103 designed to better align the interests of registrants, both firms and individuals, with the interests of their clients, improve outcomes for clients, and make clearer to clients the nature and the terms of their relationship with registrants. The CFRs introduced requirements for registrants to address material conflicts of interest in the best interest of the client. The amendments that relate to conflicts of interest came into effect on June 30, 2021.

The key concept that the CFRs introduced into the conflicts of interest requirements is the obligation to address material conflicts of interest in the best interest of the client. Registrants are required to take reasonable steps to identify existing and reasonably foreseeable material conflicts of interest and address them in the best interest of the client. If it is not possible to address a material conflict in the best interest of the client, then the conflict must be avoided.

In 2022, we commenced a review of registered firms to assess their compliance with the conflicts of interest requirements, including reviewing the conflicts disclosure that the firms provide to their clients. These reviews were done in conjunction with the Canadian Securities Administrators (**CSA**) and CIRO. The OSC reviewed 46 firms to assess their compliance with the conflicts of interest amendments. The findings of our review will be summarized in a joint CSA/CIRO staff notice which we expect to publish shortly.

2.1.3 Mortgage investment entities

Staff conducted a desk review of registered firms that distribute mortgage investment entities (**MIEs**) to obtain a better understanding of any recent trends noted, given the rising interest rate environment and potential effect on mortgage defaults.

The review consisted of a series of questions related to the MIEs distributed by the firms. Questions focused on gathering background information about the MIE issuer and current information related to the MIE's loan portfolio performance.

The desk review is on-going, and staff may perform an in-depth review of certain firms in the coming months.

2.1.4 Firms with limited compliance staff sweep

As reported in last year's summary report, we continued our sweep of firms with a small number of compliance staff (less than or equal to one full-time employee) and AUM of at least $25 million.

The purpose of the sweep was to determine whether:

- these firms have adequate resources and an effective compliance system to provide reasonable assurance that the firm and each individual acting on the firm's behalf complies with securities law
- these firms pose a higher risk of non-compliance with securities law
- there are trends in the type of deficiencies arising from this business model

While most of the firms in the sample for this sweep had adequate resources and an effective compliance system, we found that non-compliance with securities law spanned some key operational areas. We also identified trends in the deficient areas raised for these firms. These deficiencies were common to at least 40% of the firms in the sample. The trends included deficiencies in the following areas:

- Compliance system
    - inadequate written policies and procedures covering cyber security, key person risk, portfolio management and trusted contact person
    - language in employment agreements that precludes employees from reporting securities-related misconduct to authorities
- Reporting to clients
    - some relationship disclosure required by subsection 14.2(2) of NI 31-103 was missing
    - trade confirmations were missing information required by subsection 14.12(1) of NI 31-103

  - investment performance reports were missing information required by subsection 14.19(1) of NI 31-103
  - various statements to clients did not include the firm's letterhead or legal name
- KYC - inadequate collection and documentation of KYC information
- Portfolio management
  - investment management agreements were not in place for all clients
  - investment management agreements were missing certain information such as the party responsible for insider reporting and proxy voting
- Books and records - missing or inadequate documentation to support the firm's client asset reconciliation between its records and custodian records
- Use of service providers - no or inadequate oversight procedures to ensure that the service providers are adequately performing the business functions that have been outsourced to them. For example, no oversight procedures of the calculation of net asset value (**NAV**), income and expense accruals, performance fee calculation, valuation of securities, etc.
- Client assets - not holding client assets in trust
- Accredited investor exemption - adequate documentation to support the reliance on an accredited investor exemption was not maintained

2.1.5 High-risk firms identified through "Registration as the First Compliance Review" program

As part of our "Registration as the First Compliance Review" program, certain firms may be categorized as high-risk firms. Through the program, we gather information on the firms' proposed business operations, compliance systems and proficiency of the firms' individuals. As a result, targeted reviews of these firms may be scheduled within a certain period of time following the commencement of operations.

During the year, we conducted compliance reviews of these firms categorized as high-risk to assess their compliance with Ontario securities law.

For more information on the "Registration as the First Compliance Review" program, please refer to section 3.1 a) of OSC Staff Notice 33-745 *2014 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*.

2.1.6 Registration of Crypto Asset Trading Platforms (CTPs)

As reported in last year's summary report, we continue to review CTPs seeking registration as part of the "Registration as the First Compliance Review" or pre-registration review process.

Additionally, in February 2023, we began a desk review of registered restricted dealer CTPs where the OSC is the principal regulator. The purpose of the desk review is to understand key practices and controls around custody arrangements over clients' crypto assets, corporate governance structures, insurance bonding policies, and management of conflicts of interest.

2.2 Registration and compliance deficiencies

2.2.1 Common issues identified in Crypto Asset Trading Platform reviews (CTP)

In February 2023, we began a desk review of registered restricted dealer CTPs, where the OSC is the principal regulator, to understand key practices and controls around custody arrangements over clients' crypto assets, corporate governance structures, insurance bonding policies and management of conflicts of interest.

The following sections highlight common areas where we have identified issues during our reviews, and includes guidance for CTPs applying for registration or those who are already registered.

a) Custody

In last year's summary report, we highlighted that section 14.6 of NI 31-103 requires CTPs to hold assets with an appropriate custodian, separate and apart from its own property and in trust for its clients. However, we continued to find CTPs that did not:

- hold client assets separate and apart from their own property and in trust for their clients
- have policies and procedures related to custodial arrangements and how the CTPs will oversee outsourced functions such as custody
- maintain an effective system of controls and supervision to address custodial risks and safeguard crypto assets held in their custody

Specifically, we noted instances where the CTPs:

- did not have policies to regularly monitor that the third-party custodian continues to be acceptable
- entered into agreements with third-party custodians where the custodians held client assets in trust for the CTPs rather than in trust for the CTPs' clients
- did not implement adequate policies and procedures to ensure that the CTP did not breach the threshold of clients' crypto assets that may be held in self-custodial wallets, as required by exemptive relief granted to CTPs

In CSA Staff Notice 21-332 *Crypto Asset Trading Platforms: Pre-Registration Undertakings*, published in February 2023, we set out provisions for the custody and segregation of crypto assets held on behalf of Canadian clients that must be provided in the pre-registration undertakings given by unregistered CTPs. These commitments are generally consistent with requirements currently applicable to registered CTPs and are intended to address investor protection and level-playing-field concerns. CSA Staff Notice 21-332 includes enhanced guidance for the use of

third-party custodians that hold clients' crypto assets (**Acceptable Third-party Custodian** or **Custodian**).

Registered CTP dealers and CTP dealer applicants should:

- ✓ review custodial arrangements with Acceptable Third-party Custodians to:
  - check that written custody agreements contain language that clearly sets out that the Custodian cannot pledge, re-hypothecate or otherwise use any crypto assets held in custody
  - confirm that the books and records maintained by the Custodian reflect that the CTP's clients' crypto assets are held separate and apart from any other crypto assets custodied by the Custodian, including its own or any of its affiliates' property
  - verify that the Custodian is holding the CTPs' clients' crypto assets "in trust for" or "for the benefit of" the CTPs' clients (as opposed to being in trust for, or for the benefit of, the CTP itself) and that each account with the Custodian is clearly designated as such in the books and records maintained by the Custodian
  - develop and maintain ongoing monitoring procedures to evaluate whether the Custodian continues to qualify as an Acceptable Third-party Custodian and continues to maintain effective safekeeping controls for the proper segregation of custodied crypto assets
- ✓ maintain an effective system of controls and supervision to address custodial risks and safeguard clients' crypto assets, including:
  - implementing and maintaining an adequate process to recover clients' assets custodied in the event of a bankruptcy, insolvency, or other business disruptions at any Custodian or self-custodial service provider used by the CTP
  - clearly disclosing the details of the custody arrangement to clients, including how clients' assets are held; who acts as the Custodian or self-custodial service provider; that the assets are held in trust (or equivalent status) separate and apart from the CTP's own property; and that the clients' crypto assets cannot be pledged, re-hypothecated or otherwise used by the CTP, Custodian, or any of their affiliates
- ✓ perform reconciliations on a regular basis of the crypto assets held in custody for clients to the clients' crypto asset liabilities. Reconciliations should:
  - have complete coverage over the clients' crypto assets held by each CTP on their platform, including assets held in self-custodial solutions and held with Custodians
  - be performed using the CTP's own records of client holdings compared against third-party records, such as those maintained by any of its Custodians and liquidity providers, and using blockchain records

- identify any discrepancies that must be escalated for review, and remediated in a timely manner
- be designed to have appropriate segregation of duties, including maintaining evidence of the reconciliation approval process

✓ maintain written policies and procedures that address custodial arrangements, including documentation of the:

- reconciliation controls, including frequency, coverage, records compared, escalation process, segregation of duties and evidence maintained of reviews and approvals
- controls and procedures adopted to:
  - identify, escalate and remediate any instances of potential commingling of the CTP's own crypto assets with clients' crypto assets
  - monitor and approve transfers of clients' crypto assets between wallets used by the CTP and the Custodian's crypto asset wallets
  - to monitor and manage access controls to all crypto asset wallets containing clients' crypto assets
- ongoing review and monitoring procedures of service providers utilized by the CTP, including Custodians

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 14.6 *Client and investment fund assets held by a registered firm in trust*
- OSC Staff Notice 33-754 *2022 Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 30-31
- CSA Staff Notice 21-332 *Crypto Asset Trading Platforms: Pre-Registration Undertakings Changes to Enhance Canadian Investor Protection*, pages 5-6

b) Compliance and Supervision Structure

During our reviews, we identified instances where the CCO either:

- did not prepare an annual compliance report for the CTP's board of directors (or individuals acting in a similar capacity for the CTP), or
- prepared a report which lacked sufficient detail to support the CCO's assessment of the CTP's compliance function given the context of the CTP's business as a crypto-asset trading platform.

The CCO must assess and report on the overall compliance structure and internal controls at least annually. We observed that key matters, such as compliance

reporting and communications with regulators, were not discussed in detail or appeared as a lower risk item in the report (refer below for examples of key matters that should be considered for discussion in the CCO's report). In some instances, Board of Director meeting minutes were used, in lieu of a standalone report, to evidence that the CCO has met their obligations. While this may be appropriate for smaller firms with minimal activity, where there is significant registerable activity and compliance matters, this type of reporting may not be appropriate. The CCO must consider the nature, size and operations of the CTP when determining how to report and document their annual compliance assessment (e.g. via a CCO report or simply relying on Board of Director meeting minutes).

We also remind CTPs to implement adequate business continuity plans (**BCPs**) which will establish a system of controls and supervision to manage the risks associated with their business. The recent string of bankruptcies and insolvencies in the crypto asset sector (most notably throughout 2022) highlight the importance of implementing robust BCPs that cover potential business interruptions and potential downstream implications of failures arising from various market participants in the crypto asset sector.

CTPs must adequately oversee their third-party service providers as the CTP firms remain responsible for all functions they have outsourced. We identified instances where CTPs did not review and approve marketing materials prepared by their third-party service providers prior to publication to make certain that the marketing materials did not contain misleading or inaccurate statements.

Registered CTP dealers and CTP dealer applicants should:

- ✓ assess the overall compliance structure and internal controls of CTPs at least annually, and keep board members up to date regarding any key compliance matters which impact the CTP's operations and compliance with securities law
- ✓ review and assess the CTP's internal controls and compliance with securities obligations, including:
    - discussion of key compliance risk areas identified during the reporting period
    - any significant areas or instances of non-compliance by the CTP or individuals acting on behalf of the CTP, including any steps taken to deal with the non-compliance and/or to prevent future non-compliance
    - effectiveness of the CTP's internal controls, monitoring and supervision
    - status and outcome of regulatory reviews and correspondence
    - impact of lawsuits or complaints against or filed by the CTP or its individuals

  - changes to the legal or regulatory environment, and potential impact to the CTPs' operations and processes

- ✓ prepare and submit the annual CCO's report in a timely manner and in a reasonable format given the nature, size, and operations of the CTP
- ✓ develop a BCP that clearly outlines the steps individuals must take when responding to different scenarios caused by business disruptions and other potential disturbances that could disrupt the CTP's day-to-day operations; potential disturbances may include any instances or events outside of the CTP's control, which could have a contagion effect on the CTP's operations
- ✓ implement BCP procedures to address the handling of clients' assets in the event of a disturbance at the CTP or at the Custodian, including methods to recover clients' assets and migration of clients' assets to another Custodian
- ✓ test its BCP at least annually (or on a more frequent basis depending on the CTP's risk assessment of its business) to assess if the plan continues to be effective
- ✓ ensure adequate analysis has been conducted to address any contingencies or risks which may be considered difficult to test, such as legal processes related to a bankruptcy or insolvency situation, or not contemplated at the time the BCP was initially developed
- ✓ implement ongoing review and monitoring procedures of service providers utilized by the CTP, including the review and approval of marketing materials prepared by service providers prior to publication

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 5.2 *Responsibilities of the chief compliance officer*
- NI 31-103 and related NI 31-103CP s. 11.1 *Compliance system and training*
- NI 31-103 and related NI 31-103CP s. 11.5 *General requirements for records*
- OSC Staff Notice 33-752 *2021 Summary Report for Dealers, Advisers and Investment Fund Managers*, page 17
- OSC Staff Notice 33-751 *2020 Summary Report for Dealers, Advisers and Investment Fund Managers,* page 28
- OSC Staff Notice 33-746 *2015 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, page 41

2.2.2 IFM registration considerations (All)

A firm is required to register as an IFM if it directs or manages the business, operations or affairs of an investment fund. The companion policy to MI 32-102 provides guidance on the functions and activities that are typically performed by an IFM. While the list in the guidance is not exhaustive, it includes the following:

- establishing a distribution channel for the fund
- marketing the fund
- establishing and overseeing the fund's compliance and risk management programs
- overseeing the day-to-day administration of the fund
- retaining the portfolio manager, custodian and other service providers of the fund
- overseeing advisers' compliance with investment objectives
- preparing the fund's offering documents
- preparing and delivering security holder reports
- calculating the NAV of the fund
- calculating, confirming and arranging payment of subscriptions and redemptions

The standard of care in s. 116 of the Act requires IFMs to "exercise the powers and discharge the duties of their office honestly, in good faith and in the best interest of the investment fund" and to "exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances". We are of the view that arrangements or agreements that restrict an IFM from exercising its standard of care are not in compliance with securities law. This includes agreements or arrangements that:

- limit or restrict the IFM's ability to change service providers, including portfolio managers and sub-advisers, for the funds
- limit or restrict the IFM's ability to make decisions on the operation of a fund (e.g. whether to terminate a fund, or to merge funds)
- require the IFM to obtain permission from another firm to direct or manage the business, operations or affairs of the fund

Subsection 25(4) of the Act prohibits a person or company from acting as an IFM unless the person or company is registered as an IFM or is exempt from the registration requirement. Staff is of the view that a firm that is not registered as an IFM but attempts to direct the business, operations or affairs of an investment fund by either taking on the responsibilities of an IFM, or by entering into agreements that impose restrictions on the registered IFM from exercising its powers, is not in compliance with the Act.

Legislative reference and guidance

- Act, s. 25(4) *Registration, investment fund managers*
- Act, s. 116 *Standard of care, investment fund managers*
- MI 32-102CP, under *Requirement to register as an investment fund manager* of Part 1 *Fundamental Concepts*

2.2.3 Online advice (PM)

a) Online adviser limiting available products to clients

This past year we became aware of problems in the way that some online advisers registered in the category of portfolio manager offered third-party securities through their online platforms.

In one situation, clients were only offered securities associated with a third-party's business. In this case, the online adviser did not consider a reasonable range of alternative products available through the online adviser when making a recommendation to the client.

Staff is of the view that the practice of limiting products offered to clients, depending on how the client is being referred to the online adviser, is inconsistent with the online adviser's obligations to address material conflicts in the best interest of the client and to make suitability determinations that put the client's interests first. The limiting of products deepens the extent of the firm's referral arrangement conflicts because the online adviser is aligning its services with the third-party's (i.e. referral party's) interests rather than with the interests of its clients.

Section 13.7 of NI 31-103 defines "referral arrangement" and "referral fee" in broad terms. The definition of "referral fee" includes any benefit provided for the referral of a client to or from a registrant. As such, the business arrangement between the online adviser and the third-party is a referral arrangement that involves a form of benefit even though the third-party does not receive a referral fee directly from the online adviser. Both the online adviser and the third-party benefit from the arrangement: in this case, the third-party received management fees from the investment by the online adviser's clients in its products, and the online adviser received management fees on its management of model portfolios that included the third-party's securities.

Registered firms are required to have a process in place for identifying material conflicts of interest that arise at both firm and individual registrant levels and must address those material conflicts of interest in the best interest of their clients. Registrants must also have a process in place for suitability determinations that ensures any investment actions taken for clients, such as the selection of securities, are suitable for those clients (with regard to the specific suitability factors in section 13.3(1)(a) of NI 31-103) and that put the clients' interests first.

PMs should:

- ✓ develop policies and procedures for identifying, addressing and disclosing material conflicts of interest that arise at both firm and individual registrant levels
- ✓ develop a process for suitability determinations that ensure that investment actions proposed or taken for clients are suitable for those clients and put the clients' interests first
- ✓ implement a process and controls to monitor and supervise business arrangements, including referral arrangements

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP s. 11.1 *Compliance system and training*
- NI 31-103 and related NI 31-103CP s. 13.3 *Suitability determination*
- NI 31-103 and related NI 31-103CP, s. 13.4 *Identifying, addressing and disclosing material conflicts of interest – registered firm*
- NI 31-103 and related NI 31-103CP, s. 13.4.1 *Identifying, addressing and disclosing material conflicts of interest – registered individual*
- NI 31-103 and related NI 31-103CP, s. 13.7 *Definitions – referral arrangements*
- NI 31-103, and related NI 31-103CP, s. 13.10 *Disclosing referral arrangement to clients*
- Client Focused Reforms – Frequently Asked Questions (updated April 29, 2022)
- OSC Staff Notice 33-750 *2019 Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 41-42

b) Onboarding process if not calling every client

We have found inadequacies in the online KYC questionnaires used by some online advisers that operate under the "call-as-needed" model[6]. In some cases, the software for the KYC questionnaire, as part of the onboarding process, did not include adequate mechanisms (such as a feature or capability coded in the software) to identify inconsistencies in responses and other triggers that would require an advising representative (**AR**) to contact a client.

Generally, under the "call-as-needed" model, a firm will only require an AR to have a direct interaction with a client during the onboarding process if the AR has questions or concerns about the information gathered through the questionnaire or

[6] The "call-as-needed" model refers to online advisers whose onboarding process does not require an AR to always communicate with the client before its KYC information gathering is completed. In this model, the firm will only require an AR to have direct communications with a client or prospective client if the AR has questions or concerns about the information gathered through the online platform. For firms using this model, we may recommend terms and conditions be imposed on their registration limiting them to using relatively simple investment products.

if a client wishes to communicate with an AR (there must always be means for clients to initiate direct interaction with an AR). As such, the online KYC questionnaire must include mechanisms to identify inconsistencies in responses and other triggers that signal that an AR must contact the client.

Firms operating in this way must do so under terms and conditions limiting them to offering model portfolios of relatively simple investment funds. We stress that a "call-as-needed" onboarding process is not acceptable for services and investments that are not contemplated in a firm's terms and conditions. If a "call-as-needed" online adviser wishes to offer a client services or investments that are not contemplated in its terms and conditions, such as investments in securities other than relatively simple investment funds (e.g. unleveraged exchange-traded funds and simple mutual funds), it must always have a direct interaction with the client based on a questionnaire tailored to the nature of the offering and it must open a separate account for those services or investments.

We remind firms to refer to previous guidance in CSA Staff Notice 31-342 on the design of online KYC questionnaires.

Online advisers operating under the call-as-needed model should:

- ✓ ensure that their KYC questionnaires have an adequate number of triggers to identify when an AR must initiate a direct interaction with a client
- ✓ have ARs and other applicable staff regularly conduct representative sample-testing and regularly review exception reports to ensure that sufficient KYC is being gathered and suitable investments are being made, and take appropriate steps to address items noted as exceptions
- ✓ take timely corrective action when the testing processes finds deficiencies to ensure the effectiveness of the mechanisms and other triggers are kept up to date, particularly since the online KYC questionnaires are used by clients on an on-going basis without direct interaction with an AR, unless required

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- NI 31-103 and related NI 31-103CP, s. 13.3 *Suitability determination*
- CSA Staff Notice 31-342 *Guidance for Portfolio Managers Regarding Online Advice*

2.2.4 Hypothetical performance data that is widely disseminated (PM)

We continue to see instances of PMs presenting hypothetical performance data that is widely disseminated (e.g. on the firm's website that is accessible to all investors including retail investors). Hypothetical performance data is performance data that is not the performance of actual client portfolios. It consists of either back-tested

performance data (i.e. past period) or model performance data (i.e. real time or future periods). As highlighted in CSA Staff Notice 31-325, we have concerns with the presentation of hypothetical performance data on a widely disseminated basis to clients that lack the sophisticated investment knowledge to fully understand the inherent risks and limitations of this type of performance presentation. In cases where performance data is widely disseminated on a public website, it is often done in an effort to attract new clients. In these circumstances, it is not possible to ascertain the prospective client's level of investment knowledge or sophistication. In these cases, we expect PMs to present their actual client performance returns.

We remind firms that, in limited cases where it may be appropriate to present hypothetical performance data in marketing materials, the presentation must be fair and not misleading by providing the hypothetical performance data to clients who have the sophisticated knowledge sufficient to fully understand the risks and limitations of the hypothetical performance data, as part of a one-on-one presentation. The hypothetical performance data should be calculated on a reasonable basis and be accompanied with clear and meaningful disclosure that the data is hypothetical and not actual, as well as the underlying assumptions used, the calculation methodology, the risks and limitations of the hypothetical performance data and other relevant factors.

PMs should:

- ✓ present actual performance returns for clients of the firm
- ✓ establish and maintain policies and procedures to ensure the actual performance returns are calculated accurately and that the presentation is not misleading
- ✓ verify that performance return presentations are accompanied by clear and meaningful disclosure explaining the calculation methodology and whether the returns are presented net or gross of fees
- ✓ provide adequate disclaimers regarding past performance returns
- ✓ present hypothetical performance data only in very limited circumstances considering the factors noted in CSA Staff Notice 31-325
- ✓ have written policies and procedures for the calculation, presentation and disclosure of performance returns

Legislative reference and guidance

- Act, s. 44(2) *Representation prohibited*
- OSC Rule 31-505, s. 2.1(1) *General Duties*
- CSA Staff Notice 31-325 *Marketing Practices of Portfolio Managers*, pages 4-5

2.2.5 Marketing partnerships with third parties (All)

As expected, with the continued adoption of digitized marketing within the industry, a number of registered firms have engaged the services of third parties (**marketing partners**) to assist them in establishing a digital presence in an effort to promote the firm's products and services. The marketing partners, which are corporations or individual bloggers/influencers with an established online audience or following, use their own digital footprint to share information (often via posts, videos, and podcasts on popular social media platforms) about the registered firm and are remunerated for their services.

Registered firms must establish policies, procedures and controls to monitor and oversee their arrangements with marketing partners and to verify that claims and statements made about the firm's products and services are fair, substantiated and not misleading.

Registered firms should:

- ✓ prior to engaging a third-party for their services, perform adequate due diligence to verify that the firm will be working with a reputable third-party who will share information about the registered firm's products and services in a competent manner
- ✓ establish written agreements with the marketing partner that clearly sets out the purpose of the arrangement and each party's roles and responsibilities
- ✓ develop written policies and procedures that establish an adequate process, including maintaining adequate books and records, allowing the firm to oversee and monitor the marketing partner and to verify that any claims or statements made by it about the registered firm's products and services are fair, substantiated and not misleading
- ✓ provide sufficient disclosure to make clients aware of the arrangement between the firm and the marketing partner, any associated conflicts of interest, including compensation paid to the marketing partner, and to help clients make an informed decision about engaging the firm's services and products

Legislative reference and guidance

- NI 31-103, s. 11.1 *Compliance system and training*

2.2.6 Registered firms operating start-up funding portals (All)

Staff reviewed firms registered as EMDs with online portals, where issuers are offering securities via the portal in reliance on the crowdfunding prospectus exemption in NI 45-110 in addition to other prospectus exemptions. Staff noted issues specific to this business model.

a) Insurance

The duration of a typical crowdfunding campaign is 90 days. Funds raised for investments during the 90-day campaign are held by the firm in trust until the end of the campaign. If the campaign is successful, the firm sends the money to the issuer, and if the campaign is not successful, the money is returned to the investors. During the campaign, the EMD firm has access to the client assets which may affect the level of insurance required by the firm.

b) Suitability

Registered EMDs that use an online crowdfunding portal must meet their existing registration obligations, including the requirement to make a suitability determination for transactions. For example, before accepting the transaction, the firm must consider factors such as the investor's concentration in exempt-market products after the transaction. We found that some firms did not assess the concentration of investments causing investors to be overconcentrated in the exempt market. It is not sufficient to limit the required suitability determination to a general assessment of whether start-up crowdfunding could be suitable for a potential investor.

c) Other requirements for registered dealers that operate a funding portal

EMD firms are required to confirm to issuers that the portal is operated by a registered dealer. The firm's portal also has to prompt any person entering the portal to acknowledge the portal is operated by a registered dealer who will provide suitability advice.

Registered firms should:

- ✓ verify that they have sufficient insurance to cover material increases in client funds held in trust during a crowdfunding campaign
- ✓ have algorithms and dealing representatives adequately consider the KYC information provided to the firm for the suitability determination of each transaction
- ✓ obtain acknowledgment from any person entering the portal that they are aware the portal is operated by a registered dealer who will provide suitability advice

Legislative reference and guidance

- NI 45-110, Part 3 *Registered Funding Portals*
- CSA Staff Notice 45-329: *Guidance for using the start-up crowdfunding registration and prospectus exemptions* (see Annex D of NI 45-110)

2.2.7 Onboarding registered representatives from other firms (PM)

We have seen a number of examples of PM firms growing their business by attracting individuals or groups of individuals with books of business who were previously registered with CIRO-member firms. Staff identified the following concerns during recent compliance reviews.

a) Registration in appropriate category to service managed accounts

All individuals conducting registerable activity at a PM firm must be appropriately registered in the category of AR or associate advising representative (**AAR**). In some cases, former CIRO representatives did not have the proficiency required to be registered in the category of AR or AAR at a PM firm. It is not appropriate for individuals to conduct registerable activity at a PM firm unless they are appropriately registered to do so.

We also observed situations where, during the period between when an individual applied for registration at a PM firm and the time they obtained registration, the applicant continued to service their existing clients who had transferred to the PM firm. PM firms should put controls in place, such as assigning a temporary AR or AAR to service new clients during any transition period, to ensure that only appropriately registered individuals engage in registerable activity.

When considering a relationship with a new representative, PM firms should always assess the individual's relevant investment management experience (**RIME**) and qualifications to determine if sponsoring their application for registration to service managed accounts is appropriate.

b) Client relationship manager

In a number of reviews, we found that former CIRO-registered individuals continued to service clients and conducted registerable activity without being appropriately registered as either an AR or AAR. Sometimes these unregistered individuals were called 'client relationship managers' or 'wealth advisors' and were responsible for client-facing activities that require registration, including:

- having meaningful discussions regarding the clients' personal and financial circumstances, including collecting and updating KYC information,
- explaining and discussing securities and investment models with clients, and
- discussing investment performance and conducting portfolio reviews with clients.

PM firms must ensure only individuals appropriately registered in the categories of AR or AAR are providing registerable activity to managed account clients. This is still the case, even if a properly registered AR is responsible for the portfolio management activity at the registered firm.

With respect to use of the 'client relationship manager' title, we remind firms that the CSA has published guidance on the appropriate use of this title in CSA Staff Notice 31-332. A sponsored individual who works directly with clients but does not select securities, may be registered as an AR who specializes in client relationship manager activity. These individuals must demonstrate that they meet all the other requirements required for registration as an AR (such as education requirements), in addition to significant experience relevant to client relationship manager activity.

c) Inappropriate registration as a dealing representative to service managed accounts

We noted that in some cases individuals that joined a PM/EMD firm were inappropriately registered in the category of dealing representative. In these situations, an individual was registered under the EMD category despite the fact that they were engaged in registerable activity that triggered adviser registration in the AR or AAR category.

It is not acceptable for PM firms to register an individual as a dealing representative when the individual's registerable activities are to service the firm's managed account clients. As noted above, when servicing managed account clients, all individuals must be registered as an AR or AAR. It is not appropriate for firms to sponsor an individual's registration in a specific category simply because the firm maintains registration in the corresponding firm category, or in the case of a PM, the individual does not meet the proficiency requirements to be approved in the category.

Firms are reminded to seek registration in the correct category for any sponsored individual based on the firm's determination of what category is applicable to the individual's registerable activities.

d) Inadequate number of AR and AARs

Certain PM firms experienced rapid growth that, due to inadequate planning and risk management, led to staff identifying an insufficient number of ARs or AARs based on the number of clients.

We noted from our compliance reviews that each AR or AAR provided managed account services for an unreasonably large number of clients. This caused us to raise questions as to how each registered AR or AAR has the capacity to discharge its respective duties and obligations (e.g. KYC, suitability, and supervision and monitoring) under Ontario securities law and properly and adequately service clients given the high ratio of AR and AAR to clients.

PM firms must adequately plan to have a sufficient number of ARs and AARs to manage their growth and meet their regulatory obligations while maintaining appropriate service levels to its clients.

PMs should:

- ✓ perform due diligence to understand the experience and qualifications of a representative that wish to join the PM firm and address the lack of proficiency, if any, before applying for registration
- ✓ confirm that only people that meet the proficiency required for the PM firm can service its managed account clients
- ✓ if the firm is registered in multiple categories and/or Canadian jurisdictions, determine whether the representative will require registration in multiple individual categories and in which jurisdictions
- ✓ assess whether any other factors (for example, where the representative will provide non-registerable client-facing services such as financial planning) present unique supervisory or oversight risks that would require the firm to develop new policies and procedures above and beyond what has already been established
- ✓ establish internal controls to monitor and oversee the activities of all individuals acting on behalf of the firm
- ✓ develop processes to confirm all registerable activities are performed by individuals registered in the correct category, and that the firm implements an adequate documentation process to evidence that a clear delineation between registerable and non-registerable activity is made across the firm's operations
- ✓ provide adequate training to employees on the registration requirements, including activities they are permitted to perform (and restrictions, if applicable) under their category of registration or position
- ✓ clearly communicate the role of the registered individuals and the unregistered individuals to clients and prospective clients
- ✓ review appropriateness of titles used to avoid confusion or misleading representations
- ✓ assess, as part of its business risk, whether the firm has an adequate number of ARs or AARs to manage its business growth and service its clients
- ✓ have written policies and procedures to address all the above

Legislative reference and guidance

- Act, s. 25(3) *Registration*
- Act, s. 32(2) *Duty to establish controls, etc.*
- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*
- NI 31-103CP, s 1.3 *Fundamental concepts*

- CSA Staff Notice 31-332 *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers*
- 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*
- OSC Staff Notice 33-747 *2016 Annual Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 52-54
- OSC Staff Notice 33-750 *2019 Summary Report for Dealers, Advisers and Investment Fund Managers*, pages 27-28
- OSC Staff Notice 33-751, *2020 Summary Report for Dealers, Advisers, and Investment Fund Managers*, page 54
- OSC Staff Notice 33-752, *2021 Summary Report for Dealers, Advisers, and Investment Fund Managers*, page 20
- *Client Relationship Management specialists*, webpage on osc.ca

2.2.8 Custody

a) Reconciling client assets between PM's internal system and custodian records (PM)

We noted instances where PMs did not perform, or adequately perform, reconciliations of clients' cash and security positions in the firm's portfolio management system as compared to the custodian's records. This reconciliation is necessary to confirm that client assets are properly custodied and that client accounts are complete and accurate for the purposes of client reporting.

In some cases, PMs stated that performing asset reconciliations of the clients' entire cash and security position holdings were not necessary given their established process to reconcile trades when trades are made. Although trade reconciliations help PMs reconcile that trades entered on behalf of client accounts were appropriately executed and settled in the correct client account and at the correct quantity and amount, these trade reconciliations do not capture all transactions. For example, corporate actions or transfers resulting in changes to a security position or the quantity held in a security position within a client account, do not stem from a trade order previously executed by a PM. Due to the limited nature of such trade reconciliations, PMs must perform additional reconciliations to regularly monitor that client assets are safely custodied and that positions reported on client account statements are complete and accurate before they are delivered.

PMs should:

- ✓ implement a process to regularly reconcile clients' cash and security positions recorded in its portfolio management system with those in the custodian's records
- ✓ perform reconciliations on a timely basis (e.g. timely with the firm's delivery of client account statements)

- ✓ maintain adequate documentation to evidence the reconciliation process including its preparation, review and approval
- ✓ maintain documentation detailing both reconciled and/or unreconciled balances, explanations of any unreconciled balances and the steps taken to remediate unreconciled balances
- ✓ have written policies and procedures on the firm's reconciliation process

Legislative reference and guidance

- NI 31-103 and related NI 31-103CP, s. 11.1 *Compliance system and training*

b) Client asset records not maintained in order to perform asset reconciliation (PM)

We noted instances where PMs did not maintain their own records of their clients' cash and security positions and relied entirely on the clients' custodian as a substitute for their own records. This practice raises regulatory concerns. Without maintaining their own independent records, PMs have not complied with their books and records obligation under securities law. PMs are not able to reconcile client assets between their internal system and custodian records to demonstrate that client assets are adequately safeguarded. In addition, without an independent book of records, PMs are not able to verify the completeness and accuracy of cash and security positions reported on client account statements or confirm the accuracy of management fees charged to clients.

PMs should:

- ✓ maintain independent records to demonstrate the extent of the firm's compliance with applicable requirements of securities legislation

c) Custody requirements for cash-in-transit to and from a fund (All)

In reviewing the process used by dealers that distribute units of investment funds which are not subject to the terms of NI 81-102, we noted that cash in transit (client monies pending subscription on the next valuation date) is not being held in a manner that shows the beneficial ownership of those assets (which is with the dealer's clients). In these cases, the cash in transit was held in the investment fund's operating account until the subscription date rather than being separately designated in a manner that shows that the beneficial ownership of the cash is vested in the dealer's clients, as is required by section 14.5.3 of NI 31-103.

Firms should:

- ✓ hold client monies pending subscription showing the beneficial ownership of those assets

Legislative reference and guidance

- NI 31-103, s. 14.5.3 *Cash and Securities held by a qualified custodian*
- NI 31-103CP, Part 14, Division 3 *Client assets and investment fund assets*

2.2.9 Outbound advice (PM)

The requirement to register as an adviser applies to any firm or individual located in Ontario who advises in securities for a business purpose or holds themself out as an adviser. This requirement applies regardless of whether they have clients in Ontario.

OSC Rule 32-505 provides a registration exemption for advisers located in Ontario that advise only United States persons if the adviser is registered or exempt from registration under U.S. federal securities law. There is no comparable relief available under Ontario securities law for advisers whose clients are located elsewhere outside of Canada. However, exemptive relief may be granted on broadly similar conditions where clients are located in a jurisdiction that is a "specified foreign jurisdiction," as defined in OSC Rule 72-503. Exemptive relief may also be granted on certain conditions in respect of an investment fund incorporated in a jurisdiction that is not a specified foreign jurisdiction if the fund is controlled by the principals of the adviser, so that they are effectively advising themselves, and all the investors in the fund will be residents of a specified foreign jurisdiction.

For more information, see *In the Matter of Fountainhead Pte. Ltd.* dated June 16, 2022.

Firms and individuals located in Ontario that plan to provide advice should:

- ✓ consider whether they are providing registerable advice, regardless of the location of their clients and if so, must either register as an adviser, identify an available exemption, or apply for and receive exemptive relief

Legislative reference and guidance

- Act, s. 25(3) *Registration, advisers*
- NI 31-103CP, s.1.3 *Fundamental concepts*
- OSC Rule 32-505
- OSC Rule 72-503
- OSC Staff Notice 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*

2.2.10 Surrender applications by entities that have failed to cease registerable activity (All)

We have received a number of applications by firms registered as EMDs seeking to surrender their registration as an EMD. These surrender applications are typically accompanied by an Officer's Certificate in which an officer has represented that the

firm "ceased registerable activities" as of a specified date. However, we have noted some cases where firms have continued operating on substantially the same basis as before they filed the surrender application.

In Ontario, a surrender application is made under section 30 of the Act, which provides that "the Director may accept the application and revoke the registration if the Director is satisfied … that the surrender of the registration is not prejudicial to the public interest". As explained in Part 10 of NI 31-103CP, the Director may consider, among other things, "whether the firm has stopped carrying on activity requiring registration".

Accordingly, where an EMD files a surrender application but has indicated to us that the firm intends to continue operating on substantially the same basis as before it filed the application, we may request additional information from the firm including:

- a description of all activities conducted by the firm and its principals over a specified period that may reasonably be considered to constitute or involve a "trade" (including solicitations and other activities that may be considered "acts in furtherance" of a sale as set out in clause (e) of the definition of "trade" under section 1 of the Act)
- a list of all investors (including prospective investors) solicited or otherwise contacted by the firm and its principals during the specified period, and:
    - whether the solicitation or other contact resulted in a sale of securities to the investor
    - whether the investor was a permitted client as defined in section 1.1 of NI 31-103
    - the prospectus exemption relied on for such solicitation, contact and/or sale
    - all compensation and fees, including finder's fees, referral fees, investor relations fees, advisory fees and broker-type compensation (e.g., commissions, options or warrants) paid to the firm or its principals directly or indirectly in connection with the financing

We will also generally refer the firm to relevant Commission guidance and caselaw in relation to the concept of "registerable activities" including these recent Tribunal decisions:

- Re First Global Data Ltd. dated September 15, 2022
- Re Paramount Equity Financial Corporation et al dated April 25, 2022
- Re Moskowitz Capital Management Inc. and Brian Moskowitz dated February 22, 2021
- Re Kuber Mortgage Investment Corporation et al dated March 23, 2020

Where a firm provides additional information about the nature of its current and proposed activities, and staff are satisfied that the firm will either not be conducting registerable activities after the surrender is accepted and/or will take reasonable steps to confirm that such registerable activities are conducted in reliance on registration exemptions, such as the exemption in section 8.5 of NI 31-103, staff may require a supplemental Officer's Certificate confirming the factual representations that support the legal conclusion that "the firm ceased registerable activities".

Staff may also request certain disclosure on the firm's website and in client relationship disclosure explaining that the firm is no longer registered and is no longer permitted to conduct registerable activities except in accordance with exemptions from the registration requirement.

Legislative reference and guidance

- Act, s. 30 *Surrender of registration*
- NI 31-103, s. 8.5 *Trades through or to a registered dealer*
- NI 31-103CP, s. 1.3 *Fundamental concepts*
- NI 31-103CP, Part 10 *Suspension and Revocation of Registration - Firms*
- NI 45-106CP, s. 1.6 *Registration business trigger for trading and advising*
- NI 45-106CP, s. 3.2 *Soliciting purchasers - Ontario*

2.2.11 Recordkeeping obligations of registered firms based outside Canada (All)

Staff is aware of potential challenges in obtaining complete books and records of registered firms located outside of Canada. These issues may arise because of conflicting legal and regulatory requirements (for example, confidentiality, privacy and data protection) between the firm's domestic jurisdiction and the Canadian jurisdiction where the firm seeks registration. This type of conflict may impact the registered firm's ability to respond in a timely and complete manner to the OSC's books and records request.

In some cases for example, registered firms must seek permission from third parties, such as their clients or service providers, before sharing information with the OSC. In other circumstances, registered firms may conclude that certain information must be redacted where the firm has determined that it is necessary or where consent from relevant parties may not have been obtained, to ensure the registered firm remains in compliance with the legal and regulatory requirements applicable in the firm's domestic jurisdiction.

It is the registered firm's responsibility to comply with its local rules and regulations and assess their impact on compliance with Ontario securities laws. Registered firms must establish, maintain and apply policies, procedures and controls that are sufficient to provide reasonable assurance that the firm is able to respond promptly

to any requests for information from the OSC and comply with the OSC's books and records request, including in the context of a compliance examination and targeted sweeps by OSC staff to assess the firm's compliance with Ontario securities law.

Unrestricted access to the firm's books and records is necessary for the OSC to meet its oversight responsibilities and for the firm to demonstrate compliance with Ontario securities legislation. We may impose terms and conditions on the registration of a firm located outside Canada if necessary to secure access to books and records so that our ability to effectively oversee the firm is not hindered.

Foreign-based firms registered in Ontario should:

- ✓ identify as part of their business risk assessment, any conflicts of laws issues that may impact their ability to comply with Ontario securities law
- ✓ implement policies, procedures and controls that are sufficient to provide reasonable assurance that the registrant is able to respond promptly to any requests for information from the OSC

Legislative reference and guidance

- NI 31-103, s. 11.1(1)(b) *Compliance system and training*
- NI 31-103, s. 11.5 *General requirements for records*

2.2.12 Registration filings

Novel applications and pre-filing application process

We encourage applicants to contact the Registration Team to identify novel or challenging elements of an application for registration at the earliest time in the registration process. Where exemptive relief may be required and the matter is complicated or novel, applicants should consider using the pre-filing application process to obtain the OSC's perspective before the firm or individual files a formal application.

We have observed a trend where firm and individual applicants apply for registration, and it is questionable as to whether they meet the applicable requirements or may require exemptive relief. Three examples are:

- it is unclear that the individual meets the prescribed proficiency requirements or the general proficiency principle in accordance with section 3.4 of NI 31-103
- the individual has acquired non-traditional or unconventional RIME
- a firm's business model is novel or contains unique risks

There has also been a trend of applicants making inquiries with the OSC in advance of filing a registration application which should be the subject of a pre-filing

application given novel or complex elements and the likelihood of exemptive relief being required.

Bringing unique or challenging issues to the outset of the registration process can assist applicants in understanding or addressing any registration concerns earlier in the process and can create efficiencies in the registration review process. When identifying such issues, applicants should include their analysis on the matter, and may include supporting documents, such as the individual's resume, reference letters or a slide deck of a proposed novel/complex business model.

Please note that when the OSC reviews a pre-filing application, registration is not guaranteed. We will not perform a full suitability review until a formal application has been filed for review.

Part 3: Initiatives impacting registrants

3.1 2024 Risk Assessment Questionnaire

Preparation for the 2024 RAQ is well underway. Firms registered with the OSC in the categories of IFM, PM, RPM, EMD and RD will receive the RAQ in May 2024. Key information about the RAQ, such as the date firms will receive the RAQ, the deadline to submit the RAQ and any changes made to the RAQ questions, will be provided to firms in advance when we get closer to the 2024 launch date.

Communications about the RAQ will be sent to a firm's UDP and CCO using their email address reported on NRD. It is important that firms keep this information up to date to avoid missing RAQ related emails or delays in receiving the RAQ.

We continue to modify the RAQ process based on feedback we receive from firms. This includes continuing to pre-populate certain non-financial information in the RAQ based on a firm's previous responses, enhancing security by requiring both the firm's CCO and UDP to each create their own unique account in our system to access the RAQ, and continuing to review the RAQ to determine if any questions can be removed based on information already received through other OSC filings.

3.2 Total Cost Reporting

Total Cost Reporting (**TCR**) amendments to NI 31-103 were published on April 20, 2023. The TCR amendments and corresponding changes to CIRO-member rules will expand the annual report on charges and other compensation (**ARCC**) to include information about the ongoing costs of owning prospectus-qualified investment funds. Insurance regulators, i.e. Canadian Council of Insurance Regulators (**CCIR**), are also adopting harmonized requirements and guidance applicable to segregated funds.

With this information, clients will be better equipped to assess the value of the advice provided by their dealers and advisers concerning investment funds, and also the value of the advice they receive indirectly from IFMs in consideration for the payment of embedded fees.

We recognize that implementing TCR will be a complex exercise requiring firms to invest significant time and resources. Firms will have until January 2026 to begin preparing TCR-enhanced ARCCs for delivery to clients in January 2027. Staff do not expect this implementation date to be extended.

We strongly encourage IFMs and dealers and advisers that distribute prospectus-qualified investment funds to begin work on implementing TCR without delay, including participation in the development of common industry standards and arrangements for the delivery of information wherever possible.

The TCR Implementation Committee and your questions

The TCR Implementation Committee, composed of staff from the CSA, CIRO, CCIR and industry stakeholders, has been established to assist with the interpretation of TCR requirements and resolution of operational issues.

The TCR Implementation Committee will monitor industry stakeholders' progress toward implementing TCR on schedule. After the first delivery to clients of TCR-enhanced ARCC in January 2027, the CSA and CIRO will conduct reviews to test for compliance with the TCR requirements. As with all registrant conduct requirements, the compliance review process will be supported by the appropriate regulatory actions along the compliance-enforcement continuum.

3.3 Changes to fee rules: OSC Rule 13-502 and OSC Rule 13-503

Effective April 3, 2023, amendments were made to revise the fee rules: OSC Rule 13-502, OSC Rule 13-503 and their related companion policies, that included:

a) changes in respect of capital markets participation fees;

b) the elimination of duplicative activity fees in respect of investment fund families[7] and affiliated entities; and

c) the elimination of late fees for certain late filings.

We refer to the revised OSC Rule 13-502 and OSC Rule 13-503, as the **New Fee Rules**. OSC Rule 13-502 and OSC Rule 13-503 that were in effect prior to April 3, 2023, are referred to as the **Previous Fee Rules**.

a) Changes in respect of capital markets participation fees

Calculation

The New Fee Rules simplify:

- the annual capital markets participation fee calculation for registrant firms and unregistered capital markets participants, and
- the definition of "unregistered investment fund manager" by referring directly to Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*.

The Previous Fee Rules had provided for estimates with subsequent adjustments based upon the firm's or participant's actual financial information. Under the New Fee Rules, the participation fee calculation has been simplified to eliminate the estimate procedure, with a single participation fee calculation based on the most recently audited financial statements of the firm or participant. With these changes,

[7] Investment fund families are funds that are related because they are managed and/or created by the same entity.

we also introduced the new term "designated financial year," and simplified the term "previous financial year".

Forms 13-502F4 and 13-503F1 of the New Fee Rules are used to calculate participation fees and are posted on the OSC's website for the corresponding year. We addressed areas of potential confusion that had been identified by filers. Particularly:

- "revenues" in line 1 is now replaced with "gross revenues"
- figures are to be expressed as whole numbers and are no longer recorded in thousands

Filing and payment deadlines

The New Fee Rules require registrant firms and unregistered market participants to file, in each year, a completed Form 13-502F4 after August 31 and before November 2. This filing period now ends on November 2 (one month earlier than the December 1 deadline under the Previous Fee Rules) and was revised to reflect the elimination of the previous estimate procedure.

Registrant firms and unregistered capital markets participants are, in each year, required to pay their capital markets participation fees by December 31 for the upcoming calendar year. Updated versions of Form 13-502F4 *Capital Markets Participation Fee Calculation* for the 2024 calendar year are expected to be posted on the OSC website in August 2023.

The applicable participation fee amounts, in respect of the specified Ontario gross revenues of the firm or participant for their designated financial year, are identified in Appendix C of OSC Rule 13-502 and Appendix A of OSC Rule 13-503.

As in the previous OSC Rule 13-503, a firm registered under both the *Act* and the Commodity Futures Act that has paid its participation fee under the new OSC Rule 13-502, is not subject to participation fees under the new OSC Rule 13-503.

Participation fee amounts

Participation fees under the New Fee Rules have been reduced for certain levels of specified Ontario revenues (illustrated in red):

Specified Ontario gross revenues for the designated financial year	Previous Fee Rules participation fee amounts	New Fee Rules participation fee amounts
Under $250,000	$835	$700
$250,000 to under $500,000	$1,085	$975
$500,000 to under $1 million	$3,550	$3,200
$1 million to under $3 million	$7,950	$7,150
$3 million to under $5 million	$17,900	$16,100

Specified Ontario gross revenues for the designated financial year	Previous Fee Rules participation fee amounts	New Fee Rules participation fee amounts
$5 million to under $10 million	$36,175	$34,300
$10 million to under $25 million	$74,000	$70,000
$25 million to under $50 million	$110,750	$105,200
$50 million to under $100 million	$221,500	$217,000
$100 million to under $200 million	$367,700	$367,700
$200 million to under $500 million	$745,300	$745,300
$500 million to under $1 billion	$962,500	$962,500
$1 billion to under $2 billion	$1,213,800	$1,213,800
$2 billion and over	$2,037,000	$2,037,000

The above participation fee reductions are aimed at small and medium-sized businesses as part of the OSC's ongoing efforts to reduce regulatory burden and to foster capital formation and competitive capital markets.

b) Elimination of duplicative activity fees in respect of investment fund families

The New Fee Rules incorporated changes intended to avoid the unnecessary duplication of activity fees for certain applications in respect of applicants affiliated with each other. See sections 34 and 35 of the new OSC Rule 13-502, and sections 8 to 10 of the new OSC Rule 13-503.

c) Elimination of late fees for certain late filings

In the New Fee Rules, many late fees for the late filing or delivery of forms or documents have been eliminated. For example, in new OSC Rule 13-502 we have removed the late fee for the late delivery of a notice under section 11.9 *Registrant acquiring a registered firm's securities or assets* of NI 31-103; and the late fee for the late filing of a Form 33-109F5 for the purpose of amending certain items of Form 33-109F4.

In addition, late fee calculations that had previously used business days have been revised in the New Fee Rules to use calendar days.

For the New Fee Rules and their updated Companion Policies, please see:

- OSC Rule 13-502 *Fees*
- OSC Companion Policy 13-502CP *Fees*
- OSC Rule 13-503 (*Commodity Futures Act*) *Fees*
- OSC Companion Policy 13-503CP (*Commodity Futures Act*) *Fees*

3.4 Dual registered firms and CIRO

Effective January 1, 2023, IIROC and MFDA amalgamated to form the New Self-Regulatory Organization of Canada (the **New SRO**). New SRO was the temporary

legal name of the amalgamated entity, which was replaced on June 1, 2023 with the name: the Canadian Investment Regulatory Organization (**CIRO**). CIRO is recognized by the Canadian securities regulators, including the OSC, as a self-regulatory organization.

A key feature of CIRO is that it enables separate mutual fund and investment dealer businesses to be carried on in one legal entity, which removes barriers for investors seeking a broader product offering and for dealers wishing to attract dealing representatives and grow their businesses, and provides other operational and efficiency advantages[8]. Prior to the creation of CIRO, dual registered dealer firms (conducting investment dealer and mutual fund dealer activity in one legal entity) were not permitted.

We have been working closely with CIRO on dual-registered firm applications. The OSC registered the first firm as both an investment dealer and mutual fund dealer on March 24, 2023.

3.5 Information updates under NI 33-109

This was a key year in the efforts by the CSA to modernize the area of registration information. The implementation period for individual registrants and permitted individuals to file information updates on NRD, as required under amendments to NI 33-109, took place from June 6, 2022 to June 6, 2023. Overall, there has been success in having key and updated registration information inputted into NRD, which assists in regulatory oversight in the public interest.

We wish to acknowledge and thank Ontario registrants and their compliance and registration teams for their efforts in updating their registration information.

The amendments were an important initiative for securities regulation. The changes were adopted to help registrants provide current, accurate and complete registration information, while ensuring the CSA has the information it needs to carry out registrant oversight.

The amendments were also about regulatory burden reduction. For example, a new reporting framework for outside activities was established which reduces the scope of reporting on NRD. Deadlines were also extended for reporting changes in registration information and a new rule was introduced to reduce multiple filings of the same information by corporate groups (multiple affiliate filings).

[8] For more information, see CSA Position Paper 25-404 - *New Self-Regulatory Organization Framework*

Under the amendments, individuals were required to provide two new information items:

- Business titles and professional designations. This information is important for ongoing regulatory oversight of business titles used by individual registrants as envisioned by the CFRs.
- Non-securities regulation license numbers, where individuals are licensed in a non-securities capacity to engage with the public.

They were also required to update on NRD all responses that state "there is no response to this question" in accordance with section 4.3 of NI 33-109.

During the implementation year, we engaged in outreach with registration stakeholders on their experiences with filing the information updates, including at our annual Registration Outreach Roadshow held in January 2023, meetings with registered firms and RAC meetings. Technical staff with NRD expertise were also made available to firms that requested assistance with filings.

The OSC generally experienced a high volume of these filings during the year. A higher volume of processing is expected to continue during our fiscal year 2023-2024.

Despite the higher volume, we focused our resources on processing new business applications and registration filings subject to service standards. We engaged in efforts to streamline processes with other regulators during the implementation year, aimed at helping firms focus on making the required filings by the deadline. We were also active with the CSA in issuing an email blast reminding registrants of the June 6, 2023 deadline for submitting information updates.

For additional information, please refer to:

- NI 33-109 and related NI 33-109CP
- Email blast - Reminder: Deadline approaching for Form 33-109F4 questions requiring a response, March 30, 2023
- Amendments to NI 33-109 and Related Instruments - Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines, Annex A *Summary of Notable Changes to the Proposals*
- Amendments to NI 33-109 and Related Instruments - Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines, Annex F *Blackline of National Instrument 33-109 Registration Information*

- Implementation Guide to Amendments to National Instrument 33-109: *Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting and Updating Filing Deadlines*
- Annex C *Frequently Asked Questions on Updating Registration Information on NRD*
- The Registrant Outreach webinar relating to the amendments entitled Amendments Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines

3.6 OSC & Financial Services Regulatory Authority of Ontario (FSRA) co-ordination on syndicated mortgages

a) Recent transfer of regulatory oversight of syndicated mortgages

On July 1, 2021, amendments to Ontario securities law came into force that resulted in the transfer of primary regulatory oversight of most syndicated mortgages, particularly non-qualified syndicated mortgages offered to retail clients (non-permitted clients), from FSRA to the OSC[9,10].

The purpose of these amendments was to introduce additional investor protections related to the distribution of syndicated mortgages to retail investors and to increase harmonization regarding the regulatory framework for syndicated mortgages across all CSA jurisdictions.

The oversight of qualified syndicated mortgages (**QSMIs**) and syndicated mortgages distributed to permitted clients, by a person that is registered or licensed under the Mortgage Brokerages, Lenders and Administrators Act, 2006, remains with FSRA. In response to stakeholder comments received during the rule-making process to reflect this, the OSC introduced a new registration exemption in OSC Rule 45-501 *Prospectus and Registration Exemptions*[11] to exempt firms and individuals that distribute syndicated mortgages to permitted clients and QSMIs, from registration as a dealer, as long as they are FSRA-licensed mortgage brokers.

Compared to other syndicated mortgages, which may have more equity-like characteristics, QSMIs are less likely to give rise to the same level of investor protection issues.

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9 Refer to Syndicated Mortgage Amendments Outreach webpage

10 Refer to FSRA Syndicated Mortgage Investments – Information and Resources webpage

11 See the new exemptions in Amendments to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*

b) Co-ordination efforts between the OSC and FSRA

Since the new amendments came into force in July 2021, OSC staff have been consulting regularly with FSRA staff in relation to shared oversight matters. These consultations include:

- providing consistent guidance to help market participants navigate the new FSRA and OSC regimes
- assisting FSRA-licensed mortgage brokers and administrators that wish to apply for registration under the Act
- consulting on compliance reviews of entities that operate within both regimes

As one example of our co-ordination efforts, OSC staff have recently been consulted by FSRA staff on an ongoing matter in connection with a FSRA entity that had previously offered syndicated mortgages to retail investors and is now seeking to replace those syndicated mortgage investments with new investments by the same investors structured as:

- investments under the offering memorandum (**OM**) exemption,
- investments in units of a newly established fund managed by an affiliated entity, and
- investments made in reliance on other prospectus exemptions.

In addition, FSRA staff and OSC staff have discussed questions such as how conflicts of interest are managed by entities within the corporate group, suitability issues under the FSRA and OSC regimes, valuation issues in relation to the mortgages that are "transferred in" to the fund managed by the affiliated entity and disclosure issues in connection with distributions made under the OM exemption.

In another recent example, FSRA identified a FSRA mortgage brokerage that had purported to renew a syndicated mortgage transaction with investors, including retail investors, without being registered under the Act or making the required filings (such as Form 45-106F1) to the OSC. The brokerage told FSRA that they believed the mortgage renewal transaction was not a new "distribution" of the mortgage and therefore, the trigger to file a *Report of Exempt Distribution* on Form 45-106F1 had not been met. OSC staff advised FSRA that we generally view a renewal or rollover transaction to be a new distribution of a new security, for example, a mortgage or other debt security with a new maturity date and potentially other new terms. See the Tribunal decision dated January 15, 2020 *Re MOAG Copper Gold Resources Inc.*, paragraphs 39 to 47.

OSC staff are currently consulting with FSRA as to an appropriate regulatory response for situations where FSRA firms have purported to make "renewals" of

syndicated mortgages without complying with the registration and prospectus requirements of Ontario securities law.

3.7 Institutional Trade Matching and Settlement Blanket Orders

On July 1, 2020, the OSC amended NI 24-101 to provide a three-year moratorium on the applicability of section 4.1 *Exception reporting requirement* (**2020 Moratorium**). Pursuant to this moratorium, registered dealers and advisers were not required to deliver Form 24-101F1 to the Commission from July 1, 2020 to July 1, 2023.

Proposed amendments to NI 24-101 (**Proposed 24-101 Amendments**), which if implemented, would include the permanent elimination of the exception reporting requirement, are expected to come into force on May 27, 2024 (**Proposed 24-101 Amendments**).

To extend the 2020 Moratorium until such time that the Proposed 24-101 Amendments come into force, local blanket orders, which became effective July 2, 2023, provide relief from section 4.1. The blanket orders will cease to be in effect on the earlier of the effective date of the Proposed 24-101 Amendments or 18 months from July 2, 2023.

Part 4: Acting on registrant misconduct

4.1 Annual trends and highlights

The Registrant Conduct Team is responsible for investigating conduct issues involving individual and firm registrants, recommending regulatory action where appropriate, and conducting opportunity to be heard (**OTBH**) proceedings before the Director.

Before a Director of the OSC imposes terms and conditions on registration, suspends a registration, or refuses an application for registration, a registrant or an applicant has the right under section 31 of the Act to request an OTBH before the Director. A registrant or an applicant may also request a hearing and review by the Capital Markets Tribunal (the **Tribunal**) of a Director's decision under section 8 of the Act.

Identifying and acting on registrant misconduct

Potential registrant misconduct is identified through compliance reviews, applications for registration, disclosures on NRD, and by other means such as complaints, inquiries or tips. CRR also identifies registrant misconduct through background and solvency checks on individual registrants or individual applicants, responses to the RAQ, and referrals from SROs and other organizations.

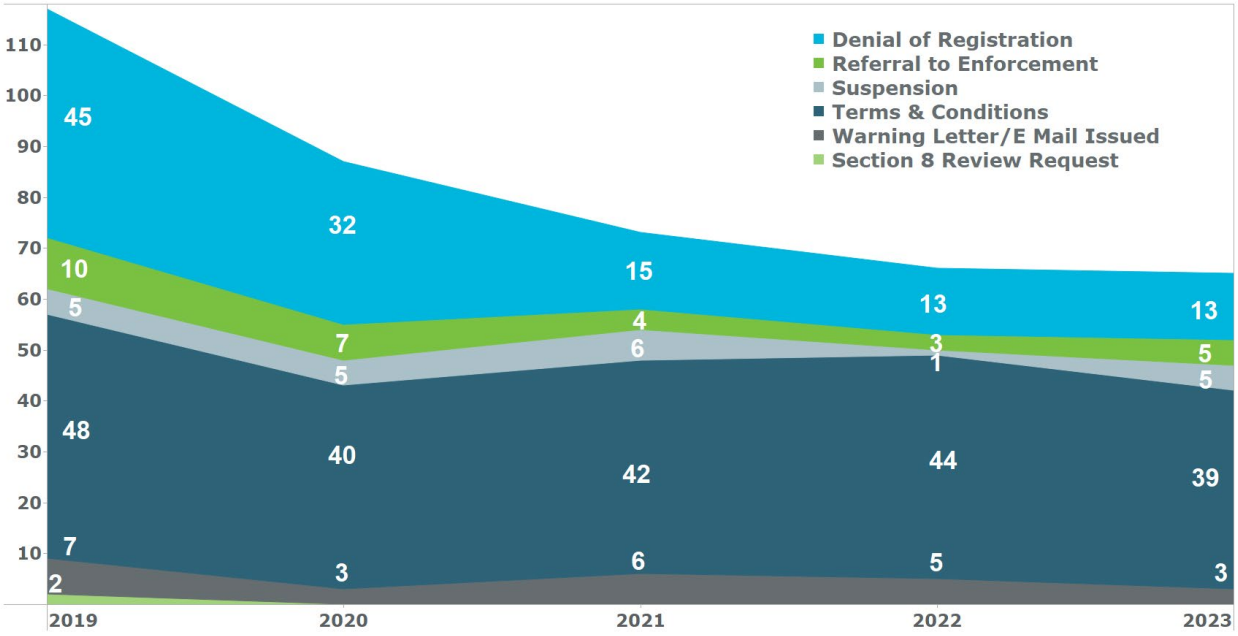
Acting on registrant misconduct matters is central to effective compliance oversight. It also promotes confidence in Ontario's capital markets, both among the investing public and among the registrants who make best efforts to comply with Ontario securities law. Registrants must remain alert and monitor for potential misconduct by enacting and implementing appropriate policies and procedures, and ensuring that controls are in place to detect and address instances of misconduct.

The Registrant Conduct Team is also responsible for overseeing terms and conditions on registered firms and individuals as a result of a regulatory decision, including a Director's decision or Tribunal Order. For registered firms, terms and conditions might require them to engage an independent compliance consultant or restrict business activity that is not compliant while remediation takes place. Terms and conditions might also require specific reporting by registered firms to the OSC.

In cases where there appear to be issues with an application that could bear on the individual's suitability for registration, such as past misconduct or untrue or misleading information given in the application itself, the file may be referred by the Registration Team to the Registrant Conduct Team for further investigation, requiring a longer review time. Each phase in the registration process when applications transition from the Registration Team to the Registrant Conduct Team are illustrated in this process chart.

The following chart summarizes the regulatory actions taken by CRR against firms or individuals engaged in registrant misconduct or serious non-compliance with Ontario securities law.

CRR Regulatory Actions FYE 2019 - 2023[12]



The chart illustrates that CRR makes use of regulatory actions along the compliance-enforcement continuum, the action being commensurate with the magnitude of misconduct or non-compliance in a given situation. Terms and conditions, denials of registration, and suspensions or revocations of registration are all tools available to CRR to address serious non-compliance.

Most categories of CRR regulatory actions remained fairly constant in fiscal 2022-2023 compared to the previous fiscal year. CRR continued to use appropriate business restrictions and other terms and conditions to permit a firm which engaged in significant non-compliance to remediate its deficiencies, or to permit individuals to enhance their proficiency. However, CRR remains committed to taking timely and effective regulatory action where misconduct is identified, and will recommend suspension or revocation of registration, subject to a registrant's right to request an OTBH before the Director, when warranted.

CRR continued to identify non-disclosure of material information by applicants and registrants, including instances where solvency events such as bankruptcies, requirements to pay and consumer proposals were not disclosed. In amendments to NI 33-109 that became effective on June 6, 2022, we updated our forms to further clarify that consumer proposals are among the solvency events that are required to be disclosed, and that any relevant solvency events must be disclosed regardless of how long ago they occurred. Sponsoring firms can expect that any application made using the new, clarified forms that fails to disclose solvency events will be taken out

[12] Figures for 2020 have been revised to correctly include the regulatory actions for the 2019 – 2020 fiscal year.

of the ordinary course and be subject to in-depth review by the Registrant Conduct Team.

The Registrant Conduct Team will conduct an in-depth review of applications when applicants fail to disclose any criminal convictions or charges, as required. We will also review the suitability for ongoing registration of any currently registered individual who has failed to disclose criminal charges or convictions. Additionally, even if criminal convictions or charges are appropriately disclosed, we may consider whether certain criminal charges or convictions bear on the integrity of an applicant or registered individual. For example, some *Criminal Code* offences relate to dishonest conduct, such as theft, fraud, identity theft, perjury or forgery. Other offences might reflect disregard for court orders, such as failure to comply with recognizance or driving while disqualified.

Although the most common concern with individual applicants and registrants is non-disclosure of material information, we continued to open a significant number of files based on dismissals for cause or other identified misconduct by individuals while registered with former sponsoring firms. In these cases, staff will make inquiries of both the applicant and the former sponsoring firm to determine whether the identified conduct bears on the applicant's suitability for registration. Typically, staff will conduct an interview of the applicant before making a recommendation. The timely co-operation of registered firms in these investigations is both appreciated and vitally important.

Referrals are made to the Enforcement Branch in cases where the appropriate tool is a power that can only be exercised by the Tribunal. In fiscal 2022-2023, there were five referrals to the Enforcement Branch.

4.2 Prompt and effective regulatory action

Where appropriate, CRR will recommend that terms and conditions be placed on the registration of a firm where CRR has identified an inadequate compliance system, or an error or oversight that creates undue risks or losses for investors.

These are situations where CRR will not recommend suspension, but where terms and conditions are nonetheless necessary to protect investors and remediate identified compliance deficiencies.

Over the past fiscal year, CRR obtained, on consent, several sets of terms and conditions designed to address complex compliance concerns. These terms and conditions have been drafted to increase the likelihood of compliance remediation to the benefit of present and future clients of the firm, while promoting fairness in the capital markets.

Two examples of novel terms and conditions imposed on consent are:

- Addressing fund accounting errors: A firm improperly valued some of the investments in its fund's portfolio since its inception, resulting in material errors with the fund's NAV, which is used to value investor transactions in the fund, and to determine the fees to be paid by the fund to the firm. Terms and conditions were imposed which required the firm to engage an independent consultant to re-calculate the fund's NAVs for each of its valuation days since its inception, and to identify any necessary adjustments or compensation to the fund and its investors that are to be implemented by the firm.

- Addressing activities of non-registered senior individual at firm, and lack of firm compliance: Terms and conditions were imposed on a firm to restrict the activities of one of its senior, non-registered individuals who engaged in activities requiring registration, and to restrict the business activities of the firm due to significant non-compliance with the management of its funds and other clients' accounts. The terms and conditions also require the firm to engage an independent monitor to oversee and report to staff on the firm's compliance with the restrictions and on the firm's progress with remediation efforts regarding the management of its funds and other clients' accounts.

4.3 Trading and advising prior to obtaining registration

The Registrant Conduct Team has identified a trend where applicants for registration, or applicants to add a jurisdiction of registration, have engaged in dealing, advising and/or IFM activities prior to obtaining appropriate registration. We remind applicants that appropriate registration is required before firms and individuals engage in or hold themselves out as engaging in the business of trading or advising in securities or before firms act as an IFM.

Firm applicants

We have identified applicant firms who have raised a significant amount of capital from substantial numbers of investors in Ontario prior to obtaining registration. Applicants for registration can expect that, if this issue is found, their application for registration will be taken out of the normal course while the Registrant Conduct Team reviews the pre-registration capital raises in detail. We may do one or more of the following in response to identifying firms engaged in registerable activity prior to obtaining registration:

- require payment of capital market participation fees and/or late fees in respect of years where the firm has engaged in registerable activity
- require key compliance roles (such as the UDP or CCO) be filled by individuals other than those who engaged in or authorized improper activity

- require that the firm, or a registered third-party, collect KYC information and perform a suitability assessment for pre-registration capital raises, including rescinding trades with ineligible investors or offering the right to investors to redeem unsuitable investments
- potentially refer applicants to the Enforcement Branch if we believe that the firm has contravened the registration requirements in section 25 of the Act

In some cases, we identified unregistered firms offering securities in related or connected issuers without complying with the filing requirements of National Instrument 45-106 *Prospectus Exemptions*. We may require that filings be made in respect of prior capital raises, and late fees may apply.

Individual applicants

We have identified individuals applying for registration who have engaged in registerable activity prior to obtaining registration in the correct individual category. Some examples include:

- providing investment advice while purportedly acting as a relationship manager, financial planner, or a party to a referral agreement
- collecting KYC information and performing suitability analyses despite not being registered

In addition, we have identified AARs applying for AR registration, who, while an AAR, have advised on securities without first getting the advice approved by an AR.

When we identify these types of conduct by an individual applicant, the application will be taken out of the normal course and referred to the Registrant Conduct Team for review. Pre-registration activity of this nature might result in terms and conditions requiring enhanced proficiency, or a potential refusal of registration.

Adding jurisdictions

For applicants applying to add another Canadian jurisdiction, we have identified some cases where registerable activity was conducted in that jurisdiction prior to obtaining registration. When this concern arises, the Registrant Conduct Team consults with the other jurisdiction and works with them to make sure their concerns are addressed prior to recommending that the Director grant registration in the additional jurisdiction.

Improper reliance on client mobility exemption

Some firms or individuals have attempted to rely on the client mobility exemptions set out in sections 2.2 and 8.30 of NI 31-103, by servicing clients in a jurisdiction where the firm or individual is not registered, without complying with the requirements of these exemptions. Use of the client mobility exemptions must be disclosed to the client *prior* to acting as a dealer or adviser to the client in the

client's new jurisdiction of residence where the firm or individual is not registered, and a Form 31-103F3 must be filed with the local jurisdiction. In addition, the client mobility exemption limits the number of eligible clients a firm or individual can service to 10 eligible clients per firm and 5 eligible clients per individual.

4.4 Director's decisions and settlements

Director's decisions on OTBH proceedings are published in the OSC Bulletin and on the OSC website at Opportunity to be heard and Director's decisions, where they are presented by topic and by year. Director's decisions can be used as an important resource for registrants, as they highlight matters of concern to the OSC, as well as the regulatory action that was taken as a result of misconduct and noncompliance. The publication of Director's decisions also ensures that CRR's response to serious misconduct is visible to market participants and investors.

Four Director's decisions were published in the fiscal year 2022-2023 on registrant conduct issues. Two decisions were issued in cases where CRR recommended suspension and the registrant did not request an OTBH, and two decisions approved settlement agreements between CRR and the registrant. A settlement agreement typically contains an agreed statement of facts and a joint recommendation to the Director. Proceeding by way of a settlement agreement with CRR allows the registrant to participate in setting out the factual narrative that becomes the basis for the Director's decision.

A summary of the Director's decisions and settlements for fiscal 2022-2023 follows:

Caitlin Eloise Gossage (March 29, 2023)

Topics: Non-Securities-Related Conduct; Rehabilitation of Fitness for Registration

Caitlin Gossage, a chief compliance officer with a firm registered in the categories of IFM, PM, and EMD, notified CRR in 2021 that she was the subject of a disciplinary proceeding brought by the Law Society of Ontario. In April 2022, as part of a joint settlement, Gossage was permitted to surrender her licence to practice law for conduct unbecoming a barrister and solicitor. Gossage had self-reported to the Law Society that she had submitted numerous false insurance claims through a former employer's insurance program over an extended period. Gossage had repaid the full amount falsely claimed on the insurer's request and cooperated with the investigation by her former employer. Gossage submitted a letter from her treating mental health professional who expressed an opinion regarding the cause of the behaviour and that Gossage is not at risk of engaging in similar behaviour in the future.

Gossage expressed remorse for and accepted responsibility for her conduct and, as set out in the Law Society Tribunal's decision, specific deterrence and rehabilitation have already been achieved. Gossage has also taken steps to ensure that she will not behave in a similar manner again. The Director approved a settlement

agreement which requires Gossage to meet continuing education requirements and be subject to supervisory terms and conditions for at least one year.

Alexandre Galasso (August 18, 2022)

Topic: Compliance With Securities Laws of Foreign Jurisdictions

Alexandre Galasso's registration as a dealing representative was suspended by his principal regulator, the Autorité des marchés financiers (**AMF**), for two months effective July 1, 2022. After he admitted that he failed to comply with certain regulatory obligations, including his KYC obligations under NI 31-103, terms and conditions were imposed on his registration requiring close supervision of his trading activities. Galasso consented to CRR staff's recommendation that his registration as an exempt market dealing representative also be suspended in Ontario until such time as his registration in Quebec was reactivated, and that substantially similar terms and conditions to those imposed in Quebec apply to his registration in Ontario.

Gilberto Arrieche-Sayago (July 12, 2022)

Topic: Misleading Staff or Sponsor Firm

Gilberto Arrieche-Sayago, a scholarship plan dealing representative, left one sponsoring firm to join another. As part of that process, he impersonated some of his clients in calls he placed to his former sponsoring firm and, posing as the client, asked that their contributions be paused or reduced. Arrieche-Sayago's spouse engaged in the same activity for some of his female clients. These calls were done so that the clients could begin investing with Arrieche-Sayago at his new firm. The clients had authorized Arrieche-Sayago to generally take the steps needed so they could follow him to his new firm, but some were not aware of the impersonation calls. When the matter came to the attention of the new and former sponsoring firms, Arrieche-Sayago falsely denied the conduct and offered a false alibi. The Director approved of a settlement agreement between CRR and Arrieche-Sayago whereby his registration was suspended for six months.

Keven Rivard (August 18, 2022)

Topic: Compliance With Securities Laws of Foreign Jurisdictions

Keven Rivard, a Quebec-based exempt market dealing representative, was suspended by the AMF, his principal regulator, for two months for not complying with his suitability obligations. The Director suspended Rivard's registration in Ontario on the basis that it would be objectionable for him to be registered in Ontario during such time as his registration in Quebec was suspended for disciplinary reasons.

Contact Information

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You can also use our online form located on the Contact us webpage on the OSC website www.osc.ca

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B.2
Orders

B.2.1 Anacortes Mining Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

July 25, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE A
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
ANACORTES MINING CORP.
(the Filer)

ORDER

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for this application,

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

¶ 3 This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets;*

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 security holders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

¶ 4 Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2023/0316

B.2.2 Superior Gold Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

July 24, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE A
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
SUPERIOR GOLD INC.
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

a) the Ontario Securities Commission is the principal regulator for this application, and

b) (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Marie-France Bourrett"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0310

B.2.3 Aumento Capital X Corp. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16 as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
AUMENTO CAPITAL X CORP.
(the "Applicant")

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **"Commission"**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. the Applicant is an "offering corporation" as defined in the OBCA;

2. The head office of the Applicant is located at Toronto-Dominion Centre, 77 King Street West, Suite 700, Toronto, ON M5K 1G8.

3. The Applicant has no intention to seek public financing by way of an offering of securities;

4. On July 18, 2023, the Applicant was granted an order (the "**Reporting Issuer Order**") pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or equivalent in any other jurisdiction in Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Application;* and

5. The representations set out in the Reporting Issuer Order continue to be true.

AND UPON the Commission being satisfied that to grant this order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public.

DATED at Toronto on this 27th of July 2023.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0308

B.2.4 CoinSmart Financial Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

July 28, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE A
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
COINSMART FINANCIAL INC.
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and British Columbia.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0313

B.2.5 BELLUS Health Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

July 27, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
BELLUS HEALTH INC.
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the Autorité des marchés financiers is the principal regulator for this application,

(b) the Filer has provided notice that subsection 4C.5(1) of Regulation 11-102 respecting Passport System (Regulation 11-102) is intended to be relied upon, and in British Columbia, Alberta, Saskatchewan, Manitoba, New-Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador;

(c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés
Autorité des marchés financiers

OSC File #: 2023/0304

DÉCISION No: 2023-IC-1043738
No dossier SEDAR+: 000033190

B.2.6 Dynamic Technologies Group Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – application for a decision that the issuer is not a reporting issuer under applicable securities laws – issuer is not an OTC reporting issuer – the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country – issuer is not in default of securities legislation except it has not filed certain annual and interim financial statements, related management's discussion and analysis and related certifications – requested relief to cease to be a reporting issuer granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s.1(10)(a)(ii).

Citation: *Re Dynamic Technologies Group Inc.,* 2023 ABASC 115

July 21, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE A
REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
DYNAMIC TECHNOLOGIES GROUP INC.
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the Alberta Securities Commission is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia; and

(c) this order is the order of the principal regulator and evidences the decisions of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. The Filer is a corporation existing under the laws of the Province of Alberta and is a reporting issuer in British Columbia, Alberta and Ontario.

2. The Filer does not have a head office. The Filer has identified its principal regulator to be the Alberta Securities Commission, based on the location of its management. Among the Filer's executive management, only the Chief Financial Officer works a substantial majority of the time from Canada, specifically, from Edmonton, Alberta.

3. On March 9, 2023 the Filer and its subsidiaries, Dynamic Attractions Ltd., Dynamic Entertainment Group Ltd., Dynamic Structures Ltd. and Dynamic Attractions Inc. initiated proceedings under the *Companies' Creditor Arrangement Act* (Canada) (**CCAA**). On March 16, 2023 the Filer obtained an amended and restated initial order (**AR Order**) for creditor protection from the Court of the King's Bench of Alberta (**Court**). The AR Order authorized and directed the Court-appointed monitor, FTI Consulting Canada Inc., to proceed with commencing and implementing a sales and investment solicitation process (**SISP Process**) with respect to the Filer and its subsidiaries.

4. The Filer failed to file annual audited financial statements, annual management's discussion and analysis and certification of the annual filings for the year ended 31 December 2022 (the **Annual Filing Default**). As a result of the Annual Filing Default, the Filer became subject to cease trade orders in Alberta and Ontario (the **Cease Trade Orders**). Subsequent to the Annual Filing Default, the Filer failed to file other continuous disclosure documents that it is required to file (the **Ongoing Filing Default**).

5. On June 23, 2022, an approval and reverse vesting order (the **ARVO**) and a sale approval and vesting order (together with the ARVO, the **Court Order**) were granted by the Court of King's Bench of Alberta. Among other things, the Court Order approved the execution of a transaction agreement (the **Transaction Agreement**) by the Filer,

authorized the cancellation of the issued and outstanding shares of the Filer, authorized the subscription and issuance of one new share of the Filer to a newly incorporated Canadian subsidiary of Promising Expert Limited, and authorized the associated reorganization transactions contemplated by the Transaction Agreement (the **Transaction**). The Transaction closed on July 21, 2023

6. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets.*

7. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide.

8. No securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

9. The Filer is unable to rely on the "simplified procedure" under Section 8 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because the Filer is in default of securities legislation. Other than the Annual Filing Default and the Ongoing Filing Default, the Filer is not in default of securities legislation.

10. The Filer acknowledges that obtaining the Court Order, carrying out the SISP Process and closing the Transaction were acts in furtherance of a trade or trades that were carried out without obtaining a partial revocation of the Cease Trade Orders. These actions were taken with the approval and supervision of the Court.

11. The Filer has applied for and anticipates being granted, following the Order Sought, full revocation of the Cease Trade Orders.

Order

Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2023/0290

B.2.7 Dynamic Technologies Group Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jusidictions – Section 144 of the Securities Act (Ontario) – Application for revocation of cease trade order – issuer subject to cease trade order as a result of failure to file annual and interim financial statements, related management's discussion and analysis and related certificates – issuer is also in default for failing to file interim financial statements and certificates subsequent to the cease trade order – issuer is also seeking to cease to be a reporting issuer in all jurisdictions of Canada in which it is currently a reporting issuer – full revocation granted effective as of the date the issuer is determined to not be a reporting issuer.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990 c. S.5, as am., ss. 127 and 144.

Citation: *Re Dynamic Technologies Group Inc.*, 2023 ABASC 114

July 21, 2023

ALBERTA SECURITIES COMMISSION

REVOCATION ORDER

UNDER THE SECURITIES LEGISLATION OF ALBERTA AND ONTARIO (the Legislation)

DYNAMIC TECHNOLOGIES GROUP INC.

Background

Dynamic Technologies Group Inc. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the regulator or securities regulatory authority in each of Alberta (**Principal Regulator**) and Ontario (each a **Decision Maker**) respectively on 9 May 2023.

On or about 21 July 2023 the Filer obtained a decision from the securities regulatory authorities in Alberta (the **Decision**) and Ontario deeming the Filer to no longer be a reporting issuer in the respective jurisdictions.

This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

Order

Each of the Decision Makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the FFCTO is revoked, as it applies to the Issuer.

"Timothy Robson"
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2023/0297

B.3
Reasons and Decisions

B.3.1 HSBC Global Asset Management (Canada) Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from section 2.4 of NI 81-102 to permit securities to be acquired under the registration exemption in Rule 144A of the US Securities Act – the funds purchasing securities will be "qualified institutional buyers" as defined in the US Securities Act, the securities will not be illiquid assets under part (a) of the definition in NI 81-102, the securities will be traded on a mature and liquid market, investors will be provided with disclosure of the relief provided.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.4 and 19.1.

July 10, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA
AND
ONTARIO
(the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
HSBC GLOBAL ASSET MANAGEMENT (CANADA) LIMITED
(the Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer on behalf of all current and future investment funds that are, or will be, managed by the Filer or an affiliate of the Filer and to which National Instrument 81-102 *Investment Funds* (NI 81-102) applies (collectively, the Funds) for a decision under the securities legislation of the Jurisdiction (the Legislation) for relief from the restrictions that apply to purchasing or holding illiquid assets under section 2.4 of NI 81-102 to permit:

(a) a Fund that is a Qualified Institutional Buyer (as defined below) to purchase fixed income securities that, at the time of purchase, qualify for, and may be traded pursuant to, the exemption from the registration requirements of the *Securities Act of 1933*, as amended (the US Securities Act), as set out in Rule 144A of the US Securities Act (Rule 144A) for resales of certain fixed income securities (144A Securities) to Qualified Institutional Buyers, in excess of 10% of the Fund's net asset value if the Fund is a mutual fund and in excess of 20% of the Fund's net asset value if the Fund is a non-redeemable investment fund,

(b) a Fund to hold 144A Securities purchased as a Qualified Institutional Buyer for a period of 90 days or more, in excess of 15% of the Fund's net asset value if the Fund is a mutual fund and in excess of 25% of the Fund's net asset value if the Fund is a non-redeemable investment fund, and

(c) a Fund that is a Qualified Institutional Buyer to not be required to take steps to reduce the Fund's holdings of 144A Securities to (i) 15% of the Fund's net asset value if the Fund is a mutual fund and its holdings of 144A Securities exceeds 15% of the Fund's net asset value, or (ii) 25% of the Fund's net asset value if the Fund is a non-redeemable investment fund and its holdings of 144A Securities exceeds 25% of the Fund's net asset value (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for the application;

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon, as applicable, in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon; and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulator in Ontario (together with Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon, the Applicable Jurisdictions).

Interpretation

¶ 2 Terms defined in National Instrument 14-101 Definitions, MI 11-102 and NI 81-102 have the same meaning if used in this decision, unless otherwise defined. In addition to the defined terms used in this decision, capitalized terms used herein have the following meanings:

IRC means the applicable independent review committee of each of the Funds.

Qualified Institutional Buyer has the same meaning given to such term in §230.144A of the US Securities Act.

Registered Securities means securities that have been registered with the United States Securities and Exchange Commission.

Rule 144 means Rule 144 of the US Securities Act.

Representations

¶ 3 This decision is based on the following facts represented by the Filer:

The Filer

1. The head office of the Filer is located in Vancouver, British Columbia.

2. The Filer is registered in the category of investment fund manager in British Columbia, Ontario, Quebec, and Newfoundland and Labrador and portfolio manager in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Newfoundland and Labrador.

3. The Filer, or an affiliate of the Filer is, or will be, the investment fund manager of the Funds and the Filer, an affiliate of the Filer or a third-party portfolio manager retained by the Filer is, or will be, the portfolio manager of the Funds.

4. The Filer is not in default of securities legislation in any of the Applicable Jurisdictions.

The Funds

5. Each Fund is, or will be, an investment fund organized and governed by the laws of an Applicable Jurisdiction or the laws of Canada.

6. NI 81-102 will apply to each Fund unless the Fund has obtained an exemption from NI 81-102 granted by the securities regulatory authorities.

7. Except with respect to the matters relating to the Exemption Sought, no existing Fund is in default of securities legislation in any of the Applicable Jurisdictions.

Definition of Illiquid Assets in NI 81-102 and 144A Securities

8. Pursuant to section 1.1 of NI 81-102, an "illiquid asset" is defined as:

   a. a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the investment fund; or

   b. a restricted security held by an investment fund.

9. Rule 144A provides an exemption from the registration requirements of the US Securities Act for resales of unregistered securities by and to a Qualified Institutional Buyer. Rule 144A also requires that there must be adequate current public information about the issuing company before the sale can be made.

10. The definition of a Qualified Institutional Buyer under §230.144A of the US Securities Act includes entities that in the aggregate, own and invest on a discretionary basis at least USD$100 million in securities of issuers that are not affiliated with such entity.

11. While issuers themselves cannot rely on Rule 144A, as Rule 144A provides an exemption for resales of unregistered securities, the existence of Rule 144A allows financial intermediaries to purchase unregistered securities from issuers and resell them to Qualified Institutional Buyers in transactions that comply with Rule 144A without registering such securities.

12. Pursuant to the terms of the US Securities Act, public resales of 144A Securities to non-Qualified Institutional Buyers must be conducted in reliance upon other available exemptions, such as Rule 144. Rule 144 allows a seller to sell 144A Securities to a purchaser who does not qualify as a Qualified Institutional Buyer after a prescribed period of time (ranging from six months to one year after issuance), if certain other reporting requirements of the issuer are satisfied.

13. Despite the foregoing, 144A Securities are immediately freely tradable among Qualified Institutional Buyers in accordance with Rule 144A without any holding periods. 144A Securities may also be sold to and purchased by non-Qualified Institutional Buyers at any time after registration of the securities, or pursuant to another exemption from registration under the US Securities Act, if any exemption is available at that time.

14. Because Rule 144A restricts resale of 144A Securities to investors that are not Qualified Institutional Buyers for a period of time, they are restricted securities for the purposes of the part (b) definition of an "illiquid asset" under section 1.1 of NI 81-102, and each Fund's holdings of 144A Securities would be subject to the limits on holdings of illiquid assets in section 2.4 of NI 81-102 (the Illiquid Asset Restrictions).

Reasons for the Exemption Sought

15. The Filer is of the view that certain 144A Securities provide an attractive investment opportunity for the Funds and that, from time to time, it will be desirable for the Funds to hold 144A Securities in excess of the Illiquid Asset Restrictions. As 144A Securities are "illiquid assets" under section 1.1 of NI 81-102, the Funds are unable to pursue these investment opportunities without breaching the Illiquid Asset Restrictions.

16. The ability of Qualified Institutional Buyers to freely trade 144A Securities pursuant to Rule 144A has substantially reduced the discounts and illiquidity that were present in unregistered offerings historically. The market for 144A Securities consists of a very deep pool of Qualified Institutional Buyers.

17. The most liquid 144A Securities have traded with comparable volumes to the most liquid corporate debt registered securities over the past few years. The segment of the U.S. investment grade corporate bond market that is made up of 144A Securities has grown substantially over the past 15 years. The segment of the U.S. high-yield corporate bond market that is made up of 144A Securities has also grown significantly over the past decade.

18. Daily market quotations are obtained in the same way through fixed income market platforms for 144A Securities as they are for registered securities. Real-time price quotes and market trade data are available for 144A Securities. Many fixed income trades including 144A Securities, are reported within minutes into the Trade Reporting and Compliance Engine, a program initially developed by the National Association of Securities Dealers, Inc. (now the Financial Industry Regulatory Authority, Inc.) that provides for the reporting of over-the-counter transactions pertaining to eligible fixed income securities, including 144A Securities, thus meeting market integrity requirements.

19. A Fund that qualifies as a Qualified Institutional Buyer at the time it purchases 144A Securities may trade those 144A Securities to another Qualified Institutional Buyer without further restriction (i.e. not subject to any holding period). Typically, a Fund would sell 144A Securities to other brokers or dealers that are Qualified Institutional Buyers themselves, who would then on-sell the securities to other Qualified Institutional Buyers.

20. A Fund is not required to maintain its Qualified Institutional Buyer status in order to be able to resell its holdings of 144A Securities to another Qualified Institutional Buyer at any time.

21. In the course of determining the potential liquidity of a security, the Filer or its sub-advisor uses a consistent list of factors. These factors may include, but would not be limited to, market volatility, trending credit quality, current valuation, maturity, size of the tranche or offering, the applicable underwriters, the status of well-covered credit or first-time issuer, index eligibility, and in the case of 144A Securities, whether the security falls under "144A for life" status (i.e. an offering that is not registered with the SEC and may therefore be considered less liquid than a 144A offering with registration rights). As a result, the Filer is of the view that it or its sub-advisor can determine whether a given 144A Security would have sufficient liquidity and market transparency such that it would not qualify as an “illiquid asset” under part (a) of the section 1.1 definition.

22. The Filer is of the view that it has the tools, resources and expertise necessary to assess issuances of 144A Securities and to evaluate the creditworthiness of issuers on a per issuance basis. The Filer or its sub-advisor have the ability to conduct sufficient analysis and should have the opportunity to invest in 144A Securities.

23. The purpose of the Illiquid Asset Restrictions is to govern a core investment fund principle: investors should be able to redeem mutual fund securities and, where applicable, non-redeemable investment fund securities on demand. Considering that 144A Securities trade in an active institutional market, the Filer is of the view that 144A Securities can be liquid relative to a Fund's need to satisfy redemptions. The result of the current part (b) definition of an "illiquid asset" in NI 81-102 is that all 144A Securities may be rendered illiquid, whereas 144A Securities may be more liquid than other types of securities that meet the liquidity criteria set out in NI 81-102.

24. The Filer is of the view that granting the Exemption Sought will not result in a Fund being unable to satisfy redemption requests. Investing in 144A Securities may actually be more beneficial to the Funds than various other securities in which the Funds may invest, and the liquidity determination regarding any such 144A Securities should be made on the actual trading liquidity of the security and any restrictions on the security and not simply based on the manner in which the security was offered into the market.

25. The Filer or its sub-advisor maintains investor protection policies and procedures that address liquidity risk, and uses a combination of risk management tools, which include (i) IRC approved governance policies that have been adopted to protect investors in the Funds, (ii) internal portfolio manager notification requirements of significant cash flows into the Funds, (iii) ongoing liquidity monitoring of each Fund's portfolio, (iv) real time cash projection reporting for the Funds, and (v) the consideration of factors set out in paragraph 21 above in order to assess the potential liquidity of a security.

26. If a Fund no longer meets the requirements for qualifying as a Qualified Institutional Buyer, then the Filer will arrange to immediately restrict any further purchases of 144A Securities until such time as the Fund regains its status as a Qualified Institutional Buyer.

27. If the Filer determines that a 144A Security qualifies as an “illiquid asset” under part (a) of the section 1.1 definition in NI 81-102, then the Filer will restrict any further purchases of "illiquid assets" (including such 144A Security that meets the definition under part (a) of section 1.1 definition of NI 81-102) that are in excess of the thresholds set out section 2.4 of NI 81-102.

28. The Filer is of the view that if the Funds continue to be unable to trade 144A Securities that are “illiquid assets” under part (b) of the definition but not under part (a), the Funds and their investors would lose out on potential investment opportunities in the fixed income space. The Filer is of the view that every basis point counts towards the total return opportunity of fixed income investors and investors would benefit from an expanded investment universe.

29. The Filer is of the view that it would not be prejudicial to the public interest to grant the Exemption Sought to the Funds.

¶ 4 **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

(a) a Fund that purchases 144A Securities is a Qualified Institutional Buyer at the time of purchase;

(b) the 144A Securities purchased pursuant to the Exemption Sought are not illiquid assets under part (a) of the section 1.1 definition of an "illiquid asset" in NI 81-102;

(c) the 144A Securities purchased pursuant to the Exemption Sought are traded on a mature and liquid market; and

(d) the prospectus of each Fund relying on the Exemption Sought discloses, or will disclose in the next renewal of its prospectus following the date of this decision, the fact that the Fund has obtained the Exemption Sought.

“Michael L. Moretto”
Acting Director, Corporate Finance
British Columbia Securities Commission

Application File #: 2022/0345
SEDAR File #: 3369664

B.3.2 Russell Investments Canada Limited

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients, including certain accounts of affiliated non-individual clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1(2)

July 19, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
RUSSELL INVESTMENTS CANADA LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Institutional Clients (as defined below) and clients holding Overflow Accounts (as defined below) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (together with the Jurisdiction, the **Jurisdictions**) in respect of the Exemption Sought.

Interpretation

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of the federal laws of Canada with its head office located in Toronto, Ontario.

2. The Filer currently is registered under the securities legislation in:

   (a) each Jurisdiction in the categories of investment fund manager, portfolio manager and exempt market dealer;

   (b) Ontario as a commodity trading manager and as a mutual fund dealer exempt from membership in the Mutual Funds Dealers Association of Canada (along with the Investment Industry Regulatory Organization of Canada, now the Canadian Investment Regulatory Organization or **CIRO**); and

   (c) Manitoba as an adviser (commodities).

3. Other than with respect to the subject of this decision, the Filer is not in default of securities legislation in any of the Jurisdictions.

4. The Filer is a wholly-owned subsidiary of Russell Investments Group, Ltd. which has its headquarters in Seattle, Washington (together with its worldwide affiliates, Russell Investments). Russell Investments had more than US$288 billion in assets under management as of March 31, 2023 and, as a consultant, Russell Investments had approximately US$956 trillion in assets under advisement as of December 31, 2022.

5. The Filer offers managed accounts to sophisticated institutional investors, including pension funds, insurance companies, charitable organizations and corporations, as well as mutual funds for which it acts as the portfolio manager. The vast majority of the Filer's institutional clients are non-individual "permitted clients" as defined in NI 31-103 or non-individual "institutional clients" as defined in Rule 1201 of the CIRO Investment Dealer and Partially Consolidated Rules (together, the Institutional Clients).

6. The Filer also has a small amount of accounts that it has opened at the request of certain Institutional Clients for related entities that are not individuals and which have the characteristics of an institutional investor except that they do not qualify as "permitted clients" under NI 31-103 or "institutional clients" under Rule 1201 of the CIRO Investment Dealer and Partially Consolidated Rules only because they fall short of the applicable financial tests (each, an Overflow Account) and the Filer anticipates that it may open additional Overflow Accounts for such entities in the future.

7. The individuals who make decisions on behalf of an Institutional Client also form the majority of the individuals who make decisions on behalf of each Overflow Account that is a related entity of the Institutional Client.

8. Overflow Accounts in aggregate do not exceed 5% of the Filer's total assets under management as at the date of this decision.

9. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the Registered Individuals). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately five Registered Individuals.

10. The current titles used by the Registered Individuals include the word "Director", and the Registered Individuals may use additional corporate officer titles in the future (collectively, the Titles). The Titles used by the Registered Individuals are consistent with the titles used by Russell Investments outside of Canada.

11. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

12. The Registered Individuals will interact primarily with Institutional Clients and Overflow Accounts.

13. To the extent a Registered Individual interacts with clients that are not Institutional Clients or Overflow Accounts, the Filer has policies, procedures and controls in place to ensure that such Registered Individual will only use a Title when interacting with Institutional Clients or Overflow Accounts, and will not use a Title in any interaction with clients that are not Institutional Clients or Overflow Accounts, including in any communications, such as written and verbal communications, that are directed at, or may be received by, clients that are not Institutional Clients or Overflow Accounts.

14. The Filer will not grant any registered individual that does not interact primarily with Institutional Clients, nor will such registered individual be permitted by the Filer to use, a corporate officer title other than in compliance with paragraph 13.18(2)(b) of NI 31-103.

15. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who

interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

16. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

17. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Institutional Clients or clients holding Overflow Accounts.

18. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that:

(a) when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively Institutional Clients and clients holding Overflow Accounts; and

(b) the Overflow Accounts in aggregate do not exceed 5% of the Filer's total assets under management at the end of each fiscal year of the Filer.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2023/0227

B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
THERE IS NOTHING TO REPORT THIS WEEK.		

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
FenixOro Gold Corp.	July 5, 2023	

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

NOTHING TO REPORT THIS WEEK.

NON-INVESTMENT FUNDS

Issuer Name:
Osisko Gold Royalties Ltd
Principal Regulator – Quebec
Type and Date
Shelf Prospectus dated Jul 26, 2023
NP 11-202 Final Receipt dated Jul 27, 2023
Offering Price and Description
$1,500,000,000.00
Securities
Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06000711

Issuer Name:
Toronto Hydro Corporation
Principal Regulator – Ontario
Type and Date
Shelf Prospectus dated Jul 27, 2023
NP 11-202 Final Receipt dated Jul 28, 2023
Offering Price and Description
$1,500,000,000.00
Securities
Debt
Filing # 06001424

Issuer Name:
EvokAI Creative Labs Inc. (formerly "Sebastiani Ventures Corp.")
Principal Regulator – British Columbia
Type and Date
Preliminary Shelf Prospectus dated Jul 27, 2023
NP 11-202 Preliminary Receipt dated Jul 27, 2023
Offering Price and Description
$125,000,000.00
Securities
Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06001160

Issuer Name:
Canadian Natural Resources Limited
Principal Regulator – Alberta
Type and Date
Shelf Prospectus dated Jul 27, 2023
NP 11-202 Final Receipt dated Jul 28, 2023
Offering Price and Description
$3,000,000,000.00
Securities
Medium Term Notes (unsecured)
Filing # 06000962

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Hybridge Investment Management Inc.	Portfolio Manager	July 25, 2023
Voluntary Surrender	Keira Capital Partners Inc.	Exempt Market Dealer	July 25, 2023
Name Change	From: Orthogonal Capital Management Corporation To: Wealthera Inc.	Portfolio Manager	November 19, 2021

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 Alpha Exchange Inc. – Notice of Approval

ALPHA EXCHANGE INC.

NOTICE OF APPROVAL

August 3, 2023

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto for recognized exchanges, Alpha Exchange Inc. ("**Alpha**") has adopted, and the Ontario Securities Commission (the "**OSC**") has approved, subject to certain conditions as set out below, certain public interest amendments to the Alpha Trading Policy Manual (the "**Alpha Rules**"), as applicable, to (i) introduce two new order books on Alpha (Alpha-X™ and Alpha-DRK™), including the introduction of two new order types, being the Smart Limit™ and Smart Peg™ order types; and (ii) make other ancillary amendments, all as set out in the Request for Comment (as defined below) (collectively, the "**Amendments**").

In connection with its approval of the Amendments, the OSC has imposed the following conditions on Alpha:

(i) Alpha must publish on its website a functionality guide, which will include disclosure on the TMX QDS;

(ii) Alpha must disclose the following information on the TMX QDS on a periodic basis: (a) statistics on the efficacy of the signal on a monthly basis; and (b) revisions and upgrades to the signal in advance of the release;

(iii) Alpha must provide the OSC with periodic analysis of the TMX QDS; and

(iv) The TMX QDS system is designed such that the effect will be that the data will not be made available to the Signal Generator (an application utilized by the TMX QDS) before it is made available to the Information Processor.

On March 2, 2023, Alpha published a Notice of Proposed Amendments and Request for Comments (the "**Request for Comment**"). Capitalized terms used and not otherwise defined in the Notice of Approval shall have the meaning ascribed to them in the Request for Comment.

Summary of the Amendments

A copy of the Amendments can be found at www.osc.ca.

Comments Received

The Amendments were published for comment on March 2, 2023 for a 30-day period, and six comment letters were received. A summary of the comments submitted, together with Alpha's responses, is attached at **Appendix A**. Alpha thanks all commenters for their feedback and suggestions.

Summary of the Final Amendments

Alpha has adopted the Amendments with the following changes:

1. Based on feedback received, Alpha has withdrawn its proposed amendment regarding Smart Limit orders retaining their time priority when they are repriced as originally set out in the Request for Comment. As such, the note included in Section 5.1.2(3) of the Alpha Rules regarding Smart Limit orders retaining their time priority

when they are repriced has been deleted. Alpha may, in the future, make a formal application to the regulators regarding this withdrawn proposal regarding the allocation priority regarding Smart Limit orders.

2. Based on feedback received, Alpha has withdrawn its proposed amendment regarding allocation priority due to broker preferencing being given to a Smart Peg order at its discretionary price over orders from other dealers resting at a better booked price if the Smart Peg order matches with the same broker as the incoming active order. As such, Section 5.2.3(2) of the Alpha Rules has been amended to exclude orders marked as anonymous and smart peg orders trading at discretionary prices from broker preference. Alpha may, in the future, make a formal application to the regulators regarding this withdrawn proposal regarding the allocation priority regarding Smart Peg orders.

3. Based on quantitative feedback received and additional internal analysis, the duration of the order processing delay on Alpha-X and Alpha DRK will be reduced from the originally proposed 10 ms to 3 ms.

A blackline of the Amendments showing changes made since they were published in the Request for Comments (change #1 and 2 above) is attached as Appendix B. No amendments to the Alpha Rules are required to reflect the change from the randomized order processing delay on Alpha to the proposed Static Order Processing Delay.

A clean version of the final Amendments is attached as Appendix C.

Alpha is also providing clarification on the following:

- With respect to the allocation priority for trades on Alpha-X and DRK, “price” refers to trade price.
- The Smart Peg and Smart Limit order types are intended to improve execution quality on Alpha DRK and Alpha-X, respectively. **The Smart Peg and Smart Limit order types do not alleviate, and market participants continue to be responsible for, best execution requirements under National Instrument 23-101 - *Trading Rules* and the Universal Market Integrity Rules**.

Effective Date

The Amendments will be implemented on October 23, 2023.

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

BMO Nesbitt Burns Inc. ("**BMO**")

Canadian Security Traders' Association, Inc. ("**CSTA**")

FIA Principal Traders Group ("**FIA PTG**")

Nasdaq CXC Limited ("**Nasdaq Canada**")

RBC Dominion Securities Inc. & RBC Wealth Management (collectively, "**RBC**")

Scotiabank ("**Scotia**")

	Summarized Comments Received	***Alpha Response***
	1. ***Introduction of New Order Books - Alpha-X and Alpha DRK***	
1.	Two commenters were generally supportive of the proposed new order book. **(BMO, CSTA)** and one commenter was of the view that taken together, the Smart Limit order type, order processing delay and TMX QDS create a very favourable environment for providers of passive liquidity and is beneficial to institutional traders who are concerned about adverse selection. **(CSTA)**	Alpha thanks the commenters for their feedback.
2.	One commenter was supportive of the two new order books being explicitly separate books that do not interact with one another. **(Nasdaq)**	Alpha thanks the commenter for its feedback.
3.	Two commenters were unsupportive of the proposed order books **(Scotia, FIA PTG)** and one was of the view that novel order types (including the Smart Limit and Smart Peg order types, especially if the randomized order processing delay is preserved and potentially lengthened) can be implemented on the existing Alpha Exchange. **(Scotia)**	While there are similarities between the order types and trading functionalities on Alpha Exchange and the New Order Books, Alpha is of the view that there are differences that require the new order books to be implemented on a separate marketplace. For example, Alpha currently uses an inverted fee model whereby rebates are offered to liquidity demanders and fees are charged to liquidity providers. The new Smart Peg and Smart Limit order types, which are intended to attract natural, liquidity-posting investors, require a make-take fee model whereby transaction rebates are offered to those who provide liquidity while charging customers who take that liquidity, and therefore presents a change to the inverted fee model currently on Alpha Exchange. In addition, the proposed duration of the order processing delay on Alpha Exchange will be shorter than the order processing delay on the New Order Books, thus requiring a separate marketplace. Lastly, Alpha is of the view that introducing a separate market for the new books provides a venue to provide novel and strategic solutions to improve execution quality for retail investors and other participants with slower execution speeds without negatively impacting Alpha Exchange.
4.	One commenter was of the view that the introduction of the new order books comes with certain considerations for the investment community:	As participants formulate ways in which to maximize their economic benefits when executing trades, while the new order books are available to all market

	Summarized Comments Received	*Alpha Response*
	● additional overhead costs; ● further liquidity fragmentation; and ● added complexity to the Canadian market structure landscape. The commenter was of the view that the proliferation of new trading books in Canada continues to add to infrastructure, support and maintenance burdens for broker dealers that ultimately result in an increase in costs to the investment community. Further, creating new books may in fact hinder the adoption of new features because novel features on new marketplaces may require their own bootstrapping, instead of receiving the benefit of established order flow patterns and order handling practices that already touch existing marketplaces. **(Scotia)**	participants, some market participants may choose not to execute trades on the New Order Books based on their trading strategies. While the new order books constitute an addition to the multi-market Canadian equity trading ecosystem, given that the connection, order entry and market data workflows are the same for the existing Alpha market, Alpha is of the view that the effort required for existing Alpha participants choosing to execute trades on the New Order Books is an incremental one. Alpha believes that these factors may help simplify the incorporation of the new order books into clients' trading environments.
5.	One commenter was of the view that, although the new order books are on an unprotected marketplace, a broker must consider all venues as potential sources of liquidity in an effort to provide clients with the very best possible prices available. As such, unprotected markets require consideration and therefore add development work and complexity to routing decisions. **(RBC)**	While there are additional considerations, complexity and development work that may arise as a result of the New Order Books, Alpha is of the view that the overall benefits to the broader trading ecosystem as a whole outweigh these concerns and that the New Order Books do not pose any harm to traders. Please also see our response to comment #5 above.
6.	One commenter questioned why Alpha is proposing to introduce two order books, independent of one another, that will result in connectivity costs incurred by Members. **(Nasdaq)**	Alpha points out that the two order books are accessible via a single new set of order entry sessions incorporated into existing session bundles at no extra cost.
7.	One commenter was of the view that the new order books favour the resting/liquidity provision side of trade, and in particular, that the new order types, as proposed, would benefit liquidity providers at a significant expense to liquidity takers, including retail investors. **(RBC)**	While the New Order Books, and more specifically Alpha DRK and the Smart Peg order type, may benefit liquidity providers, liquidity providers, as slower market participants are typically disadvantaged in other conventional marketplace structures which generally benefit liquidity takers. The New Order Books aim to provide a venue which democratizes the trading experience among faster and slower participants, and offer a platform where the natural investor can post liquidity with protections against adverse selection and more favourable markouts as a result. We strive to create marketplaces that benefit and improve the Canadian capital markets as a whole, and ultimately democratize trading to ensure optimal results for the end investor. The advantages that some market participants have over others (including technological advantages) as well as their respective trading strategies are developed over time. Market participants will always formulate ways in which to maximize their economic benefits when executing trades, and will always gravitate towards strategies that meet that end goal. These strategies continuously change as new order types or marketplaces are introduced. In that context, while the new order books are available to all market participants, market participants may or may not choose to trade on the new order books as a result of decisions based on their trading strategies.
8.	Several commenters were supportive or appreciative of the new order books being on an unprotected marketplace (**Nasdaq, FIA PTG, CSTA**), and one	Alpha thanks the commenters for their feedback.

	Summarized Comments Received	*Alpha Response*
	commenter was of the view that as traders are free to choose their interactions with the new order books (or avoid them entirely), any potential harms of the proposed functionality are minimal. **(CSTA)**	
9.	One commenter was unsupportive of the use of anonymous broker preferencing on Alpha-X, being a lit order book. **(CSTA)**	The Request for Comment contained an error with respect to the allocation of trades for Alpha-X. The correct allocation priority is as follows: 1. Price 2. Broker (excluding orders marked as anonymous) 3. Time This has been corrected and reflected in a correction to the Request for Comment which was published in the OSC Bulletin and on the Alpha website on March 13, 2023.
10.	One commenter was supportive of the allocation priority on Alpha DRK. **(CSTA)**	Alpha thanks the commenter for its feedback.
	*2. **Introduction of New Order Types - Smart Limit and Smart Peg Orders***	
11.	One commenter was unsupportive of the introduction of the two new order types and expressed concern about the negative impact of these order types on overall market quality. The commenter generally opposes exchange provided discretionary order pricing functionality. The commenter stated that in this case, the exchange assumes some of the order-handling, including price movement and best execution responsibilities historically left to the broker-dealer. **(FIA PTG)**	Alpha is of the view that the introduction of the new order types will have a positive impact on the markets and improve execution quality. We expect that new order types will offer protection from latency arbitrage, and may result in some participants receiving better pricing on their orders. It is expected that by using Smart Limit or Smart Peg orders, participants will gain confidence in their execution quality and be able to post larger sized orders. This may improve the depth of liquidity in the markets, have a positive impact on price discovery, and benefit the market as a whole. The Smart Peg and Smart Limit order types do not alleviate, and market participants continue to be responsible for, best execution requirements under National Instrument 23-101 - Trading Rules ("**NI 23-101**") and the Universal Market Integrity Rules ("**UMIR**").
	Smart Limit Order Types	
12.	Three commenters expressed concerns with, and were not supportive of, the priority that is maintained by the Smart Limit order as described in the Request for Comment (**CSTA, Nasdaq, Scotia**) and one commenter stated that this proposed feature is at odds with the principle that in order to encourage healthy liquidity provision that participants that are willing to take on the economic risk of exposing a quote to the market at a new price level should be rewarded with execution priority. **(Nasdaq)** One commenter was of the view that the priority allocation proposed was unfair and that time priority should be reset at all times when the Smart Limit order type improves the tradeable limit price of an order. **(Scotia)**	Based on feedback received, Alpha has withdrawn its proposed amendment regarding Smart Limit orders retaining their time priority when they are repriced as originally set out in the Request for Comment. Please see "Summary of the Final Amendments" above.
13.	One commenter was of the view that, while the Smart Limit order type may provide benefits to liquidity providing orders, liquidity takers, including retail clients,	Please see our response to comment #8 above.

	Summarized Comments Received	*Alpha Response*
	may not be able to receive such benefits and that the Smart Limit feature may have negative impacts on active/liquidity taking orders by facilitating quote fading. The commenter stated that adding more facilities to enable quote fade can cause negative outcome and confusion, resulting in a lack of investor confidence. The commenter stated that managing different latency between lit venues would require sophisticated technology that may not be available to all firms. **(RBC)**	In addition, Alpha is of the view the introduction of the Smart Limit and Smart Peg order types will have a positive impact on markets. We expect that these order types will offer protection from latency arbitrage, and may result in some members receiving better pricing on their orders. It is expected that by using Smart Limit or Smart Peg orders, participants will gain confidence in their execution quality and be able to post larger sized orders. Lastly, given the static nature of the order processing delay between Alpha Exchange and Alpha-X, we believe that natural participants will be able, using existing technology already at play in our markets, to time orders in such a way so as to capture liquidity on all venues.
14.	One commenter expressed concerns over the potential for information leakage. The commenter was of the view that the most likely users of the Smart Limit order type are institutional traders who frequently trade large parent orders. Disproportionately high volume on Alpha-X or concentrated activity by a single participant on Alpha-X could signal other traders that a large institutional order is present and may lead to suboptimal prices. The commenter suggested that a potential remedy to help mitigate information leakage is to create a market-by-price display rather than a market-by-order display. **(CSTA)**	A participant using any order type is able to discern, or make an educated guess, regarding certain information about the contra side of the trade. Note that in any transaction between an active and a passive order, information is revealed in the form of the trade price. For example, in the case of a Smart Peg order trading at a discretionary price above its booked price, the trade price is the limit price of the active order. In conventional circumstances, the trade price is the price of the resting order where the active order is discerning the price of the resting passive order. In either case, the price of a previously undisclosed order is now known to the participant interacting with that order and happens in the normal course of trading as part of the price discovery process.
15.	One commenter was of the view that Alpha is blurring the line between marketplace and dealer by with discretionary re-pricing of Smart Peg orders to achieve best execution by Alpha Exchange rather than by a router or algo strategy being used to trade an order. The commenter was of the view that Alpha Exchange would take order execution discretion, without any requirement to adhere to best execution policies & procedures – or accountability for failing to comply with a best execution standard, and that the dealer entering orders on Alpha-X would be subject to a best execution standard involving an order type they do not have a complete understanding of (i.e. the TMX QDS). The commenter stated that in the traditional algorithmic trading context, dealers directly address issues surrounding algorithmic malfunctions or best executions concerns, and was of the view that this is not possible when the malfunction is at a marketplace, given the proprietary nature of TMX QDS and because Alpha Exchange is not required to be capitalized adequately to account for the possibility of malfunction. The commenter acknowledges that there are times when a trading venue has some discretion to reprice a limit order, typically related to an auction, risk protection mechanism or other participant controlled order type, but was of the view that the Proposed Amendments	The Smart Peg and Smart Limit order types are intended to improve execution quality on Alpha DRK and Alpha-X, respectively. The Smart Peg and Smart Limit order types do not alleviate, and market participants continue to be responsible for, best execution requirements under NI 23-101 and UMIR. Dealers routinely use third party routers and algorithms that do not have best execution obligations. These routers and algorithms execute discretion in handling orders. The introduction of smart order types in no way introduces new best execution risks to the dealer community. As noted above, our experience with Alpha Exchange suggests that agency dealers are less well suited to take advantage of order processing delays on their own. As such, many global marketplaces have introduced similar features to help facilitate order management for natural investors.

	Summarized Comments Received	*Alpha Response*
	would be the first time that a trading venue would be responsible for repricing to improve execution quality based on a prediction being made by the trading venue's controlled signal, without transparency into the logic involved. **(Scotia)**	
	Smart Peg Order Types	
16.	One commenter expressed concern regarding the Smart Peg order feature that permits such order to provide price improvement inside the NBBO (up to the midpoint) only where a contraside order does not cross the spread. The commenter was of the view that this feature would allow a passive order the advantage of maximizing its execution price without taking the same risk as firm midpoint orders and in doing so, would disadvantage orders that are willing to cross the spread. Active orders would interact with any price improvement opportunities in between the spread on other dark books in the market. The commenter stated that this feature would result in inferior executions for institutional investors, who are expected to use these order types. **(Nasdaq)**	Please see our response to comment #14 above. We also note that the priority of Smart Peg orders trading at discretionary prices falls behind that of orders trading at their booked prices. Therefore, orders with urgency will continue to be posted at the midpoint in Alpha DRK.
17.	One commenter was of the view that active retail traders and passive liquidity providers would be the biggest beneficiaries of Alpha DRK. **(CSTA)**	Alpha thanks the commenter for its feedback. This is consistent with our approach on helping natural participants.
18.	One commenter was of the view that the Smart Peg order type features (i.e. offers the minimum amount of price improvement required to achieve a trade) is a departure from acceptable norms where limit prices contribute to price discovery by establishing the most aggressive price the investor is willing to pay, thus providing public signaling of the value of the securities being traded. The commenter stated that being able to peg to the near side while allowing the order type to at its discretion match at the midpoint will encourage participants to walk up (or down) the book to ultimately seek out limit order pricing, and is inefficient. Participants will also have to justify executions which are made at the discretionary price from a best execution perspective, adding to the burden of accessing the Alpha DRK market. The commenter was of the view that these elements, when combined, create for a more complex and potentially unfair marketplace. **(Scotia)**	With respect to walking up or down the book, Alpha notes that this is the case for any Dark market. Alpha is of the view that this does not impose an additional burden on dealers attempting to capture dark liquidity in a multiple market environment.
	TMX Quote Decay Signal ("TMX QDS")	
19.	One commenter was supportive of using public market data in the construction of the TMX QDS, however suggested that all lit books are used and not only data from TMX marketplaces. The commenter expressed concerns over fair access relating to the potential for bespoke versions of the TMX QDS. While the commenter did not object to marketplaces creating tools to help clients better manage order flow, it was of the view that these tools should be accessible to all and on fair terms. **(CSTA)**	The TMX QDS will consume only public market data. Our research indicates that good predictive results are obtained using data from TSX alone, thanks to TSX's large market share, and TSX's pricing structure leading to TSX being at or near the bottom of a typical liquidity-taking market sweep. Please also see our response to Comment #5 above.
20.	Three commenters suggested that Alpha provide further public disclosure on the TMX QDS, including information on:	Alpha intends to publicly disclose a general overview of the model, and disclose the following information on the TMX QDS on a periodic basis:

	Summarized Comments Received	***Alpha Response***
	● the model design, accuracy and updates of the TMX QDS. **(CSTA)** ● the signal's construction **(Scotia, BMO)**, such as if, and how it will change over time (and provide the market with 30 days prior notice), or details on its efficacy. **(BMO)** ● the machine learning model around suitability, model risk, and maintenance schedules. **(Scotia)**	● statistics on efficacy of the signal; and ● revisions and upgrades to the signal (in advance of the release). We believe that this level of disclosure will provide market participants with the level of information needed to determine whether the Smart Limit order type is appropriate, and aiding, in their trading strategies. Because of the proprietary nature of the TMX QDS signal, and concerns with intellectual property infringement and gaming of the TMX QDS, Alpha does not intend to publicly disclose specific details regarding the TMX QDS, including its input parameters.
	3. ***Order Processing Delay - Alpha-X and Alpha DRK***	
21.	Three commenters were unsupportive or questioned the duration of the 10ms order processing delay on the new order books and suggested that Alpha reconsider introducing an extended delay on these two new order books or consider further analysis. **(FIA PTG, BMO, CSTA)**	Based on the feedback received, as well as on further analysis conducted by Alpha, we are reducing the duration of the order processing delay on Alpha-X and Alpha DRK from 10 ms to 3 ms. After careful analysis, we believe that 3 ms will provide participants adequate time to manage their orders throughout the post-trade market movement, and minimize adverse selection by delaying incoming liquidity-seeking orders for that duration. We believe that the 3ms would not be controversial for market participants as 3 milliseconds is currently at the top end of our current randomized order processing delay on Alpha. We will continue to analyze and monitor the duration of the order processing delay in order to determine whether we are still achieving our goal of execution quality. We may determine, from time to time, to amend the duration of the order processing delay on Alpha-X and/or Alpha DRK in future releases as provided for in the Alpha Rule Book.
	4. ***Other Comments Received***	
22.	Several commenters were generally supportive of innovative market models and new marketplace features that provide participants with greater options for making trading decisions, **(Nasdaq, RBC, CSTA, Scotia, BMO)**, and one commenter stated that while the Proposed Amendments may be complex in nature, that the cost of this additional complexity is worth the benefit and that there is not any significant harm to traders or to the broader trading ecosystem. **(CSTA)**	Alpha thanks the commenters for their feedback.
23.	One commenter requested that the proposed trading fee structure for Alpha-X and Alpha DRK be made public before regulatory approval is obtained **(CSTA)**, and one commenter noted that the fee schedule, a critical element, has not yet been made public. **(Scotia)**	The amended Alpha Trading Fee Schedule reflecting the New Order Books will be published prior to the production launch date, and will be subject to regulatory approval. The Alpha-X and Alpha DRK fee structures will be make-take and take-take, respectively, with a premium charged for Smart Limit and Smart Peg orders.
24.	One commenter was supportive of Alpha not charging for market data at launch. **(CSTA)**	Alpha thanks the commenter for its feedback.

APPENDIX B

BLACKLINE OF AMENDMENTS

PART V.1. Trading on Alpha-X

[...]

DIVISION 2 — CONTINUOUS TRADING SESSION

5.1.2 ALLOCATION OF TRADES – ESTABLISHING PRICE AND TIME PRIORITY

(1) An order entered in the visible CLOB at a particular price will be executed in priority to all orders at inferior prices.

(2) Broker preference whereby incoming orders will match with other orders from the same dealer (excluding orders marked as anonymous) ahead of similarly priced orders from other dealers, before time priority is considered.

(3) An order at a particular price will be executed prior to any orders at the same price entered subsequently in time, and after all orders at the same price entered previously ('time priority').

~~Note: Smart Limit orders retain their time priority when they are repriced per the design of the Smart Limit order type.~~

(4) An undisclosed portion of an order does not have broker preference priority or time priority until it is disclosed.

(5) An order loses its time priority if its disclosed volume is increased.

Note: Crosses may be entered without interference from resting orders at the cross price.

PART V.2. Trading on Alpha DRK

[...]

DIVISION 2 — CONTINUOUS TRADING SESSION

5.2.3 ALLOCATION OF TRADES – ESTABLISHING PRICE AND TIME PRIORITY

(1) An order entered at a particular price will be executed in priority to all orders at inferior prices.

(2) Broker preference (excluding orders marked as anonymous and smart peg orders trading at discretionary prices~~including Smart Peg orders and orders marked as anonymous~~) in time priority at a particular price level, subject to any minimum quantity and minimum interaction size or other conditions.

(3) At a particular price level, an order trading at its booked price will be executed in priority over all Smart Peg orders trading at discretionary prices.

(4) An order at a particular price will be executed prior to any orders at the same price entered subsequently in time, and after all orders at the same price entered previously ('time priority').

APPENDIX C

CLEAN VERSION OF FINAL AMENDMENTS

Change History

[...]

V.1.10 Addition of Alpha-X and Alpha DRK ●, 2023

[...]

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[...]

PART V.1. Trading on Alpha-X

5.1.1 Order Types

5.1.3 Allocation of Trades – Establishing Price and Time Priority

PART V.2. Trading on Alpha DRK

5.2.1 Order Types

5.2.2 Self-Trade Prevention

5.2.3 Allocation of Trades – Establishing Price and Time Priority

[...]

PART I. Definitions and Interpretations

1.1 Definitions

[..]

Alpha TSX Alpha Exchange marketplace, including Alpha-X and Alpha DRK unless otherwise specified herein.

[...]

1.2 INTERPRETATION

[...]

(13) All references to Alpha in Alpha Requirements also apply to Alpha-X and Alpha DRK, unless otherwise stated herein.

[...]

PART V. Governance of Trading Sessions

[...]

DIVISION 2 - ORDER ENTRY

[...]

5.15 UNATTRIBUTED ORDERS

(1) Members and Electronic Access Clients may enter orders on an attributed or unattributed basis.

Commentary: When an order is entered in Alpha, the identity of the Member will be disclosed to the trading community for attributed orders and will not be disclosed for unattributed (anonymous) orders.

[...]

PART V. Governance of Trading Sessions

[...]

DIVISION 4 - CONTINUOUS TRADING SESSION

5.18 ESTABLISHING PRICE AND TIME PRIORITY

(1) An order entered in the CLOB at a particular price will be executed in priority to all orders at inferior prices.

(2) Broker preference whereby incoming orders will match with other orders from the same dealer (excluding orders marked as anonymous) ahead of similarly priced orders from other dealers, before time priority is considered.

(3) An order at a particular price will be executed prior to any orders at the same price entered subsequently in time, and after all orders at the same price entered previously ('time priority').

(4) An undisclosed portion of an order does not have time priority until it is disclosed.

(5) An order loses its time priority if its disclosed volume is increased.

PART V.1. Trading on Alpha-X

In addition to the trading policy features and characteristics detailed herein, which apply to the Alpha system as a whole, the following section applies only to Alpha-X.

DIVISION 1 — ORDER ENTRY

5.1.1 ORDER TYPES

In addition to the order types enumerated above for Alpha, the following order types are also available on Alpha-X:

- Smart Limit

The order types on Alpha-X do not interact with order types on Alpha or Alpha DRK.

DIVISION 2 — CONTINUOUS TRADING SESSION

5.1.2 ALLOCATION OF TRADES – ESTABLISHING PRICE AND TIME PRIORITY

(1) An order entered in the visible CLOB at a particular price will be executed in priority to all orders at inferior prices.

(2) Broker preference whereby incoming orders will match with other orders from the same dealer (excluding orders marked as anonymous) ahead of similarly priced orders from other dealers, before time priority is considered.

(3) An order at a particular price will be executed prior to any orders at the same price entered subsequently in time, and after all orders at the same price entered previously ('time priority').

(4) An undisclosed portion of an order does not have broker preference priority or time priority until it is disclosed.

(5) An order loses its time priority if its disclosed volume is increased.

Note: Crosses may be entered without interference from resting orders at the cross price.

PART V.2. Trading on Alpha DRK

In addition to the trading policy features and characteristics detailed herein, which apply to the Alpha system as a whole, the following section applies only to Alpha DRK.

DIVISION 1 — ORDER ENTRY

5.2.1 ORDER TYPES

In addition to the order types enumerated above for Alpha, the following order types are also available on Alpha DRK:

- Primary Peg
- Market Peg

- Minimum Price Improvement Peg
- Mid-point Peg
- Dark (Limit/Market)
- Smart Peg

These order types have no pre-trade transparency and do not interact with orders on Alpha or Alpha-X.

5.2.2 SELF-TRADE PREVENTION

In addition to the self-trade prevention mechanisms set out herein, the following self-trade prevention mechanism is only available for order types available on Alpha DRK:

(1) No Cancel (XM)

An optional feature that prevents two orders from the same broker from executing against each other based on unique trading keys defined by the broker. An active order is booked instead of trading against a resting order from the same broker with the same unique trading key.

DIVISION 2 — CONTINUOUS TRADING SESSION

5.2.3 ALLOCATION OF TRADES – ESTABLISHING PRICE AND TIME PRIORITY

(1) An order entered at a particular price will be executed in priority to all orders at inferior prices.

(2) Broker preference (excluding orders marked as anonymous and smart peg orders trading at discretionary price) in time priority at a particular price level, subject to any minimum quantity and minimum interaction size or other conditions.

(3) At a particular price level, an order trading at its booked price will be executed in priority over all Smart Peg orders trading at discretionary prices.

(4) An order at a particular price will be executed prior to any orders at the same price entered subsequently in time, and after all orders at the same price entered previously (‘time priority’).

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