

1.1.2 CSA Staff Notice 31-326 – Outside Business Activities

CSA STAFF NOTICE 31-326
OUTSIDE BUSINESS ACTIVITIES

July 15, 2011

This notice reminds registrants of their obligation to ensure outside business activities do not impair or impede the performance of their regulatory obligations, including compliance with the conflicts of interest provisions under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Registrants that are members of the Investment Industry Regulatory Organization of Canada (IIROC) or the Mutual Fund Dealers Association of Canada (MFDA) are reminded that the firm and the individuals they employ are also subject to IIROC and MFDA requirements that relate to outside business activities.

National Instrument 33-109 *Registration Information* requires disclosure of all outside business activities. Staff of the Canadian Securities Administrators (CSA) will take into account issues that may arise in relation to an individual registrant's outside business activities when assessing their initial application for registration, when there is a change in their registration and in considering continuing fitness for registration. In this evaluation, CSA staff consider a number of matters, including:

- whether the individual will have sufficient time to properly carry out their registerable activities, including remaining current on securities law and product knowledge
- whether the individual will be able to properly service clients
- what is the risk of client confusion and are there effective controls and supervision in place to manage the risk
- whether the outside business activity presents a conflict of interest for the individual, and whether that conflict of interest should be avoided or can be appropriately managed
- whether the outside business activity places the individual in a position of power or influence over clients or potential clients, in particular clients or potential clients that may be vulnerable
- whether the outside business activity provides the individual with access to privileged, confidential or insider information relevant to their registerable activities

A registered firm is responsible for monitoring and supervising the individuals whose registration it sponsors. In relation to outside business activities, this includes:

- having appropriate policies and procedures to deal with outside business activities, including ensuring outside business activities do not:
 - involve activities that are inconsistent with securities legislation and IIROC and MFDA requirements; and
 - interfere with the individual's ability to remain current on securities law and product knowledge
- requiring individual registrants to disclose to their firm, and requiring the firm to review and approve, all outside business activities prior to the activities commencing
- ensuring the firm's chief compliance officer is able to properly supervise and monitor the outside business activities
- maintaining records documenting its supervision of outside business activities and ensuring these records are available for review by regulators
- ensuring that potential conflicts of interest are identified and appropriate steps are taken to manage such conflicts (See section 13.4 of Companion Policy 31-103CP for further guidance.)
- ensuring outside business activities do not impair the ability to provide adequate client service, including, where necessary, having an alternate representative available for the client

- ensuring the outside business activity is consistent with the registrant's duty to deal fairly, honestly and in good faith with its clients
- implementing risk management, including proper separation of the outside business activity and registerable activity
- preventing exposure of the firm to complaints and litigation
- assessing whether the individual's lifestyle is commensurate with the firm's knowledge of the individual's business activities and staying alert to other indicators of possible fraudulent activity

Failure to discharge these responsibilities may be relevant to the firm's continued fitness for registration.

Questions

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