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

Registration Category	Number of Firms Reviewed
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%

Deficiency Noted	% of Firms
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. <u>Conflicts arising from fees charged to clients</u>

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. Conflicts arising from trades alongside clients (exempt market dealer relationships)

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

Please refer your questions to any of the following Staff:

Isaac Filate
Senior Legal Counsel
British Columbia Securities Commission
604-899-6573
ifilate@bcsc.bc.ca

Crystal He
Senior Compliance Analyst, Capital Markets Regulation
British Columbia Securities Commission
604-899-6795
che@bcsc.bc.ca

Edwin Leong
Lead Compliance Analyst, Capital Markets Regulation
British Columbia Securities Commission
604-899-6682
eleong@bcsc.bc.ca

Colleen Ng
Senior Compliance Analyst, Capital Markets Regulation
British Columbia Securities Commission
604-899-6651
cng@bcsc.bc.ca

Adam Hillier
Team Lead, Registrant Oversight
Alberta Securities Commission
403-297-2990
Adam.Hillier@asc.ca

Matias Pendola
Manager, Registrant Regulation
Alberta Securities Commission
403-355-3892
Matias.Pendola@asc.ca

Curtis Brezinski
Compliance Auditor, Securities Division
Financial and Consumer Affairs Authority
of Saskatchewan
306-787-5876
curtis.brezinski@gov.sk.ca

Angela Duong
Compliance Auditor
Manitoba Securities Commission
204-945-8973
angela.duong@gov.mb.ca

Alizeh Khorasanee
Manager, Compliance and Registrant
Regulation
Ontario Securities Commission
416-593-8129
akhorasanee@osc.gov.on.ca

Stratis Kourous
Senior Accountant, Compliance and
Registrant Regulation
Ontario Securities Commission
416-593-2340
skourous@osc.gov.on.ca

Erin Seed
Senior Legal Counsel, Compliance and
Registrant Regulation
Ontario Securities Commission
416-596-4264
eseed@osc.gov.on.ca

Kat Szybiak
Senior Legal Counsel, Compliance and
Registrant Regulation
Ontario Securities Commission
416-593-3686
kszybiak@osc.gov.on.ca

Elizabeth Topp
Manager, Compliance and Registrant
Regulation
Ontario Securities Commission
416-593-2377
etopp@osc.gov.on.ca

Gabriel Chénard
Senior Policy Analyst
Oversight of Intermediaries
Autorité des marchés financiers
514-395-0337, ext. 4482
Toll-free: 1-800-525-0337, ext. 4482
gabriel.chenard@lautorite.qc.ca

Sylvie Lacroix
Inspecteur coordonnateur – valeurs
mobilières
Direction du service de l'inspection –
Valeurs mobilières
Autorité des marchés financiers
514-395-0337 poste 4755
Sylvie.Lacroix@lautorite.qc.ca

Brian Murphy
Manager, Registrant Regulation
Nova Scotia Securities Commission
902-424-4592
Brian.murphy@novascotia.ca

Nick Doyle
Compliance Officer
Financial and Consumer Services
Commission (New Brunswick)
506-635-2450
nick.doyle@fcnb.ca

Lisa Caputo
Manager, Compliance, Mutual Fund Dealer
Division
Canadian Investment Regulatory
Organization
416-943-7417
lcaputo@mfda.ca

Louise Hamel
Vice-President, Member Compliance
Canadian Investment Regulatory
Organization
416-943-6911
lhamel@iiroc.ca