



British Columbia
Securities Commission

Registrant Outreach Workshop

Thursday, October 27, 2022

1:30 – 3:00 p.m.

Agenda

TIME	TOPIC
1:35 to 2:00	Client focused reforms: findings from conflicts of interest sweep
2:00 to 2:20	Highlights from recent settlements and compliance actions
2:20 to 2:30	Break
2:30 to 2:45	Issues from the field
2:45 to 2:55	Recent amendments to NI 33-109
2:55 to 3:00	Closing remarks

Client focused reforms: findings from conflict of interest sweep

- **Edwin Leong**, Lead Compliance Analyst, Adviser/IFM Compliance
- **Colleen Ng**, Senior Compliance Analyst, Adviser/IFM Compliance
- **Crystal He**, Senior Compliance Analyst, Dealer Compliance

Findings from CFR conflicts of interest sweep

- Failure to identify material conflicts of interest (COIs)
- Policies and procedures did not document the COIs
- Gifting policies need more controls
- Disclosures to clients
 - Negotiation of management fees
 - Proprietary products
 - Bonuses, variable compensation, and awards
- Referral arrangements

Findings from CFR conflicts of interest sweep

- Multiple proprietary model portfolios exclusive to referred clients

Brand A	Brand B	Brand C
<ul style="list-style-type: none">• Safety	<ul style="list-style-type: none">• Safety	<ul style="list-style-type: none">• Safety
<ul style="list-style-type: none">• Balanced	<ul style="list-style-type: none">• Balanced	<ul style="list-style-type: none">• Balanced
<ul style="list-style-type: none">• Growth	<ul style="list-style-type: none">• Growth	<ul style="list-style-type: none">• Growth

Findings from CFR conflicts of interest sweep

1. Material conflict of interest between the firm and its clients – interests are not aligned
2. Suitability and fiduciary duty issues

Brand A	Brand B	Brand C
<ul style="list-style-type: none">• Safety	<ul style="list-style-type: none">• Safety	<ul style="list-style-type: none">• Safety
<ul style="list-style-type: none">• Balanced	<ul style="list-style-type: none">• Balanced	<ul style="list-style-type: none">• Balanced
<ul style="list-style-type: none">• Growth	<ul style="list-style-type: none">• Growth	<ul style="list-style-type: none">• Growth

Findings from CFR conflicts of interest sweep

- Inadequate policies and procedures (**82%**)
 - Missing detailed procedures
 - Missing
 - i. definition of conflict of interest
 - ii. criteria used to determine materiality
 - iii. how the firm addresses the material conflicts of interest in the best interest of their clients
 - Missing procedures to keep track of all material conflicts of interest along with the firm's assessment

Findings from CFR conflicts of interest sweep

- Inadequate disclosure (**45%**)
 - must disclose in writing all material conflicts of interest identified s.13.4 (4)
 - must include a description of each of the following: s.13.4 (5)
 - (a) the nature and extent of the conflict of interest
 - (b) The potential impact on and risk that the conflict of interest could pose to the client
 - (c) How the conflict of interest has been, or will be, addressed
 - must be prominent, specific, and written in plain language s.13.4 (6)

Findings from CFR conflicts of interest sweep

- Failure to identify and assess conflicts of interest arising from outside activities
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Highlights from recent settlements and compliance actions

- **Jason Chan**, Senior Compliance Analyst, Adviser/IFM Compliance
- **Crystal He**, Senior Compliance Analyst, Dealer Compliance
- **Lucy Chen**, Compliance Analyst, Dealer Compliance

Highlights from recent settlements and compliance actions

- The firm failed to deliver its annual financial statements and form 31-103F1 within 90 days after the end of its financial year (section 12.12 of NI 31-103).
- The firm's excess working capital was less than zero for more than two consecutive days and it did not notify us (section 12.1 of NI 31-103).

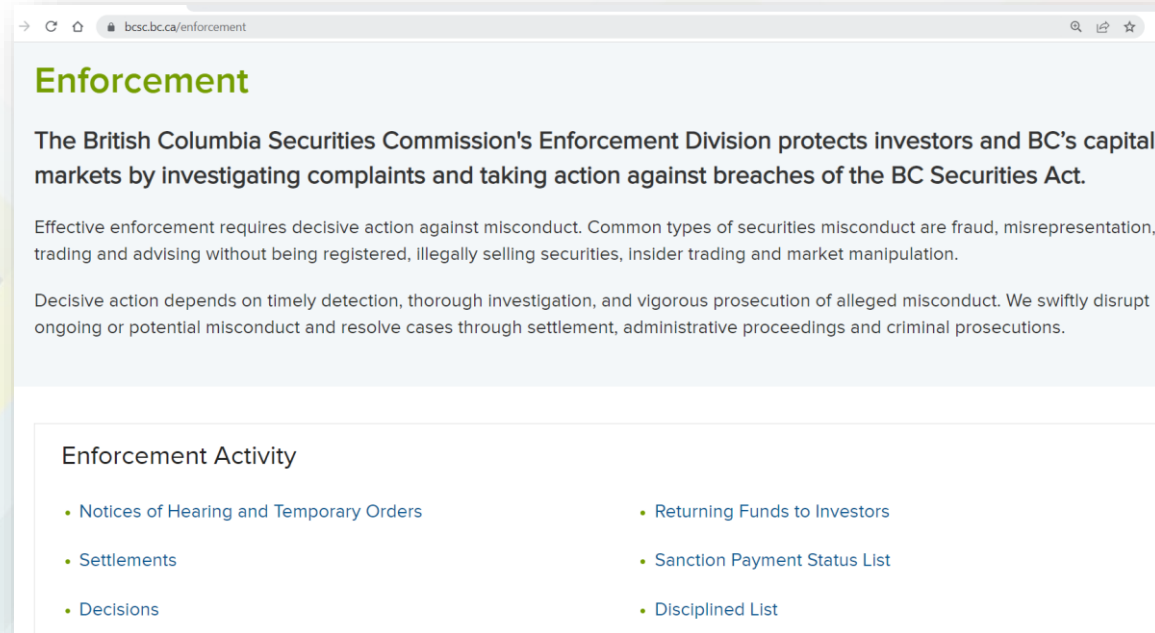
Highlights from recent settlements and compliance actions

- Key compliance findings
 - Failure to discharge know-your-client (KYC) obligation
 - Over-concentration in exempt market products
 - Holding-out issues
- Compliance action – impose strict supervision terms and conditions on the registration of the dealing rep

Highlights from recent settlements and compliance actions

Settlements and decisions can be found on BCSC's website:

<https://www.bcsc.bc.ca/enforcement>



Highlights from recent settlements and compliance actions

Enforcement settlement #1 : 2022 BCSECCOM 260

- Conducting registerable activities? Get registered!
- Section 34 *Persons who must be registered* of the *BC Securities Act*
- Consider examples of activities that may trigger registration in NI 31-103CP

Highlights from recent settlements and compliance actions

Enforcement settlement #2 -2021 BCSECCOM 457

- NI 81-105 *Mutual Fund Sales Practices* – applies to prospectus funds only
- For non-reporting issuers/non prospectus funds – consider your obligations to address conflicts, such as sales incentives and compensation conflicts

Highlights from recent settlements and compliance actions

Some examples of registration terms and conditions imposed:

- Review and update the KYC information
- Review its suitability assessments and asset allocations
- No trade for a managed account with few exceptions
- Hire a compliance monitor
- No new clients
- No new investment funds
- No new representatives without pre-approval
- Hire a new CCO

Questions

Type into the chat to ask a question.



Break - 2:20 pm to 2:30 pm

Please be back in 10 minutes.

Issues from the field

- **Colleen Ng**, Senior Compliance Analyst, Adviser/IFM Compliance
- **Jason Chan**, Senior Compliance Analyst, Adviser/IFM Compliance
- **Crystal He**, Senior Compliance Analyst, Dealer Compliance
- **Kai Shi**, Compliance Analyst, Dealer Compliance

Training requirement

- Section 3.4 of NI 31-103: an individual must not perform an activity that requires registration unless the individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.
- Section 11.1(2) of NI 31-103: A registered firm must provide training to its registered individuals on compliance with securities legislation.
- Section 13.2.1 (2) of NI 31-103: registered individual must not purchase or sell securities for, or recommend securities to, a client unless the registered individual takes steps to understand the securities, including the securities' structure, features, risks, initial and ongoing costs and the impact of those costs.

Issues from the field – UDP/CCO function

NI 31-103:

5.1 Responsibilities of the ultimate designated person

5.2 Responsibilities of the chief compliance officer

Issues from the field – Regulatory filings

- Submission of annual financial information
 - no later than the 90th day after the end of the firm's financial year
 - includes audited financial statements and 31-103F1 *Calculations of excess working capital*
 - Late filing fee - \$100 per day
 - Email – examiners@bcsc.bc.ca

Issues from the field – Regulatory filings

- 31-103F1 information
 - Numbers should agree to audited financial statements
 - Non-current related party debt needs to be added back unless they are subordinated

5.	<p>Add 100% of non-current related party debt unless the firm and the lender have executed a subordination agreement in the form set out in Appendix B of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> and the firm has delivered a copy of the agreement to the regulator or, in Québec, the securities regulatory authority. See section 12.2 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>.</p>		
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Issues from the field – Regulatory filings

- Notice filing under s.11.9/11.10
 - S.11.9 – registrant acquiring a registered firm's securities or assets
 - S.11.10 – registered firm whose securities are acquired
 - Template – BCSC website > Industry > Registrant Regulation > Compliance Toolkit > Acquisition notice NI 31-103 s11.9/11.10

<https://www.bcsc.bc.ca/industry/registrant-regulation/compliance-toolkit/acquisition-notification>

Issues from the field – Financial Filings

- Audit report that references two years
- Related party note disclosures
- IFRS adoptions
- Interim financial information that are compliant with IFRS


Issues from the field – Financial Filings

FORM 31-103F1 CALCULATION OF EXCESS WORKING CAPITAL



Firm Name

Capital Calculation

(as at _____ with comparative figures as at _____)



	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		
3.	Adjusted current assets Line 1 minus line 2 =		
4.	Current liabilities		



Issues from the field – Financial Filings



8.	Less minimum capital		
9.	Less market risk		
10.	Less any deductible under the bonding or insurance policy required under Part 12 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> or, in Québec, for a firm registered only in that jurisdiction and solely in the category of mutual fund dealer, less the deductible under the liability insurance required under section 193 of the Québec Securities Regulation		
11.	Less Guarantees		
12.	Less unresolved differences		
13.	Excess working capital		

See Schedule 1 for guidance

Recent amendments to NI 33-109

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

- **Anne Hamilton**, Senior Legal Counsel, Legal services

Recent amendments to NI 33-109

- Effective June 6, 2022, the CSA amended National Instrument 33-109 and 31-103
- These amendments implement targeted changes to registration information requirements
 - Provide greater clarity on the information to be submitted
 - Help individuals and firms provide complete and accurate registration information, and reduce the regulatory burden of doing so
 - At the same time, the registration information received will still allow the CSA to carry out its regulatory roles

Outside Activity Reporting

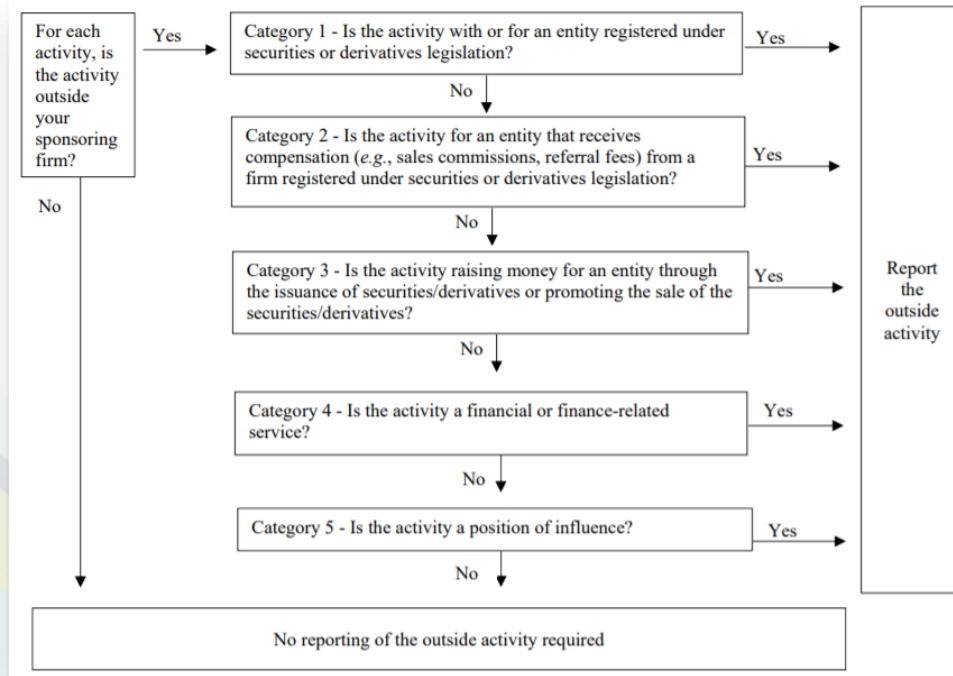
- Registered firms must identify and address material conflicts of interest and risks arising from all outside activities of their registered individuals.
- Assessment is not limited to activities reportable to regulators.
- Expectations:
 - Mechanism for registered individuals to report their outside activities to the registered firm.
 - Before approving outside activity, consider existing or potential material conflicts of interest.
 - Not permit the outside activity if conflicts cannot be addressed in best interest of client or if risks cannot be managed.

References:

Sections 13.4 and 13.4.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103)

Section 13.4.1 of Companion Policy to NI 31-103 under the subheading “Individuals who have activities outside of the sponsoring firm”

Outside Activity Reporting



References:

Appendix C of the Companion Policy to National Instrument 33-109 Registration Information (NI 33-109) Section 2.2 of the Companion Policy to NI 33-109 under the subheading "Uncompensated activities and personal holding companies"

Outside Activity Reporting

Category 1 – Activities with another registered firm

- All activities with registered firms, other than with the sponsoring firm, whether or not compensation is received.

References:

Item 10 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (Form 33-109F4)

Item 7 of Form 33-109F7 *Reinstatement of Registered Individuals and Permitted Individuals* (Form 33-109F7)

Section 2.2 of the Companion Policy to NI 33-109 under the subheading “Reportable activities (Form 33-109F4 – Item 10 and Schedule G; Form 33-109F7 – Item 7 and Schedule D)”

Outside Reporting Activity

Category 2 – Activities with an entity that receives compensation from a registered firm

- Any entity that receives payment or compensation from a registered firm for the activities that you conduct for that registered firm.

References:

Item 10 of Form 33-109F4

Item 7 of Form 33-109F7

Section 2.2 of the Companion Policy to NI 33-109 under the subheading “Reportable activities (Form 33-109F4 – Item 10 and Schedule G; Form 33-109F7 – Item 7 and Schedule D)”

Outside Activity Reporting

Category 3 – Other securities-related activities

- Activities that involve raising money for an entity and was carried out anytime in the last 7 years, whether or not compensation is received.

References:

Item 10 of Form 33-109F4

Item 7 of Form 33-109F7

Section 2.2 of the Companion Policy to NI 33-109 under the subheading “Reportable activities (Form 33-109F4 – Item 10 and Schedule G; Form 33-109F7 – Item 7 and Schedule D)”

Outside Activity Reporting

Category 4 – Provision of financial or finance-related services

- Certain financial and finance-related activities, whether or not compensation is received.
 - Includes shareholder, partner, director, or officer of such an entity.

References:

Item 10 of Form 33-109F4

Item 7 of Form 33-109F7

Section 2.2 of the Companion Policy to NI 33-109 under the subheading “Reportable activities (Form 33-109F4 – Item 10 and Schedule G; Form 33-109F7 – Item 7 and Schedule D)”

Outside Activity Reporting

Category 5 – Positions of influence

- All positions of influence are reportable, whether or not compensation is received.
- A position of influence is a position that:
 - a reasonable person would consider the individual to have influence over another individual *due to the nature of the position or the training or specialized knowledge required for the position.*
 - is not with a sponsoring firm.

References:

Item 10 of Form 33-109F4

Item 7 of Form 33-109F7

Subsection 13.4.3(1) of NI 31-103

Positions of Influence

- Includes the following:
 - (a) a leader in a religious or similar organization
 - (b) a medical doctor
 - (c) a nurse
 - (d) a professor, instructor or teacher at a degree or diploma granting institution
 - (e) a lawyer
 - (f) a notary

Positions of Influence

Factors to consider:

- the degree of influence
- the degree to which a person may be confused
- the degree of susceptibility

Positions of Influence

- Restriction on clients
- Client cannot be a person who
 - (i) has a relationship with the registered individual in the registered individual's position of influence

and

 - (ii) to a reasonable person, would be considered to be susceptible to the registered individual's influence
- Client cannot also be a spouse, parent, sibling, grandparent or child of a client referred to in the above bullet.

Positions of Influence

- Additional regulatory requirements apply where the activity of a registered individual is a position of influence.
- Expectations:
 - Identify all registered individuals who are in a position of influence.
 - Reasonable steps to prevent the registered individual to trade or advise clients who are subject to that influence.
 - Report all positions of influence to regulators.

Updating Outside Activities

- Changes in outside activities are to be reported within 30 days of the change.

Reference:

Subsection 4.1(1) of NI 33-109

Annex C of CSA Notice of Amendments to National Instrument 33-109 *Registration Information* and Changes to the Companion Policy to National Instrument 33-109 *Registration Information* and Consequential Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and Changes to the Companion Policy to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting and Updating Filing Deadlines (the CSA Notice)

Questions

Type into the
chat to ask a
question.



Closing remarks

- **Janice Leung**, Manager, Adviser/IFM Compliance

How to reach us

- We remind you to subscribe to the Weekly Report on the BCSC website, so that you can get early information about legislative changes on the horizon.
- If you have questions or concerns, please contact your relationship manager, the Compliance Managers, or the Director

Key contacts

- **Mark Wang**, Director, Capital Markets Regulation mwang@bcsc.bc.ca 604-899-6658
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