



British Columbia
Securities Commission

Registrant Outreach Workshop

Thursday, October 14, 2021

1:30 – 3:00 p.m.

Webex virtual room

Welcome to Registrant Outreach



- **Mark Wang**, Director,
Capital Markets Regulation

Issues from the Field

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

Marketing

Local Findings from the CSA Marketing Sweep

- Testimonials
- Unsubstantiated claims
- Disclaimers
- Hypothetical performance

Marketing

- **Misleading information on website**
- **Examples:**
 - “reliable and secure” investment
 - Provide a “safe and steady return”
 - Provide an objective of “capital preservation”

Compensation Practices

A registered firm's compensation practices need to be consistent with the registration framework in Canada

Canada's registration framework

- only registered individuals can trade securities or advise clients
- only registered firms can sponsor individuals for registration

Compensation Practices cont'd

Example:

- Sole EMD, captive business model
- The EMD sponsors a DR that also work at the related issuer
- The DR's time is split between trading securities for the EMD and administrative functions for the issuer
- The DR receive one pay cheque for both EMD and issuer work
- That pay cheque comes from the issuer, not from the EMD

Registered firms should compensate their registered staff directly for dealing and advising activity.

Compensation Practices cont'd

Example:

- A registered firm sponsors a Chief Compliance Officer
- The CCO has a consulting company, non-registrant
- The registered firm pays consulting fees to the CCO's consulting company for the CCO's work
- The CCO does not receive any wages directly from the registered firm

A CCO's duties at registered firms is registerable activity that firms should compensate directly.

KYC and Suitability

- **KYC (know-your-client) collection**
 - Missing information
 - Breakdown of net financial asset
- **Suitability analysis**
 - Missing analysis
 - Missing product information
 - Missing concentration analysis

KYC and Suitability

- Outdated KYC information
- Changes in life and financial circumstances
- Suitability assessment is based on current KYC
- Client Focused Reforms – December 31, 2021!

POLL QUESTION #1



KYC and Suitability – Polling Question

A firm is registered as a PM, IFM, and EMD. Its business is managing discretionary accounts using its own proprietary funds. Clients with a low risk tolerance were placed in a fund that the firm initially deemed as low risk. Certain market events change the risk profile of the fund and the firm re-evaluated the fund to high risk. What is the appropriate action for the firm to take?

Client Statements and Reporting

- **Missing statements**
- **Missing information**
- **Inappropriate disclaimer**
 - *“it is your responsibility to review your confirmations and statements...transactions shall be conclusive and binding upon you if no written objection is made within 10 days...”*

Managed account exemption

- **Section 8.6, *Investment fund trades by adviser to managed account*, of NI 31-103**
- **Some find it easier and more efficient to use proprietary pooled funds for managed accounts**
- **The PM is the principal and the accredited investor**

POLL QUESTION #2



Managed account exemption

- *A PM/IFM manages an investment fund. The fund has an alternative investment strategy. The firm does not have other funds or investment options to offer. The firm's clients are only interested in the alternative investment strategy used by the investment fund.*
- *Now, the firm wants to rely on section 8.6, managed account exemption, to distribute the fund units because the firm believes that:*
 - *their clients then do not have to be qualified as accredited investors*
 - *it does not need to ask their clients to sign subscription forms every time they invest*

Managed account exemption

- **Correct poll answer: No**
- **s8.6(2) of NI 31-103:** *The exemption in subsection (1) is not available if the managed account or investment fund was created or is used primarily for the purpose of qualifying for the exemption*
- **In addition to clients' IMAs, we review clients' KYC, IPS, asset allocation, and fund's documents, and fund holdings**

KYP Books and Records

- **Insufficient KYP (know-your-product) analysis**
 - **Ongoing assessment**
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Accounting & financial filings

- **CEBA loan**
- **Common mistakes in Form 31-103 F1, *Calculation of Excess Working Capital***
 - Row 2 “*Less current assets not readily convertible to cash*”
 - Row 9 “*Less market risks*”
 - Comparative periods

Common mistakes in Form 31-103 F1, *Calculation of Excess Working Capital*

	Component	Current period	Prior period
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		

9.	Less market risk		
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Schedule 1 of Form 31-103F1 Calculation of Excess Working Capital

(calculating line 9 [market risk])

For purposes of completing this form:

- (1) "Fair value" means the value of a security determined in accordance with Canadian GAAP applicable to publicly accountable enterprises.
- (2) For each security whose value is included in line 1, Current Assets, multiply the fair value of the security by the margin rate for that security set out below. Add up the resulting amounts for all of the securities you hold. The total is the "market risk" to be entered on line 9.

(a) Bonds, Debentures, Treasury Bills and Notes

- (i) Bonds, debentures, treasury bills and other securities of or guaranteed by the Government of Canada, of the United Kingdom, of the United States of America or of any other national foreign government (provided those foreign government securities have a current credit rating described in subparagraph (i.1)) maturing (or called for redemption):

within 1 year:	1% of fair value multiplied by the fraction determined by dividing the number of days to maturing by 365
over 1 year to 3 years:	1% of fair value
over 3 years to 7 years:	2% of fair value
over 7 years to 11 years:	4% of fair value
over 11 years	4% of fair value

- (i.1) A credit rating from a designated rating organization listed below, from a DRO affiliate of an organization listed below, from a designated rating organization that is a successor credit rating organization of an organization listed below or from a DRO affiliate of such successor credit rating organization, that is the same as one of the following corresponding rating categories or that is the same as a category that replaces one of the following corresponding rating categories:

Common mistakes in Form 31-103 F1, *Calculation of Excess Working Capital*

	Component	Current period Sep 30, 2021	Prior period June 30, 2021
1.	Current assets		
2.	Less current assets not readily convertible into cash (e.g., prepaid expenses)		
9.	Less market risk		

Changing Business Lines/F5 Filing

- **Firms adding new business lines and changing existing business models**
- **Notification required within 10 days of change**
- **Form 33-109F5 - Changes in Registration Information**

Changing Business Lines/F5 Filing cont'd

Example 1:

- Sole EMD,
 - 3rd party product shelf
 - commissioned DRs that see clients in person
 - multiple branch locations
 - Head office compliance function
- EMD decides to start an online investment portal to complement its existing business

Form 33-109F5 - Change in Registration Information within 10 days

Changing Business Lines/F5 Filing cont'd

Example 2:

- Sole EMD,
 - Finder business, private placements
 - High net worth clients, in person service
 - Firm's principals are its DRs
- EMD decides to expand their offerings to include OM issuers, sponsoring commissioned DRs that see clients at branch locations.

Form 33-109F5 - Change in Registration Information within 10 days

General Compliance

- **Numerous, repeat, significant deficiencies**
- **Compliance action**
- **Conditions on registration**
 - Replace the CCO
 - Hire a compliance monitor

Vulnerable Investors – National Instrument 31-103 Amendments

- **Colleen Ng**, Senior Compliance Analyst,
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- **Jason Chan**, Senior Compliance
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- **Grace Yu**, Senior Compliance Analyst,
Dealer Compliance
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Vulnerable Investors – National Instrument 31-103 Amendments cont'd

- **In 2019 CSA began developing a regulatory framework to enhance protection of older and vulnerable adults from financial exploitation**
- **NI 33-103 amendments published July 15, 2021 and will come into effect December 31, 2021**
- **CSA recognizes that registrants are in a unique position to notice warning signs in their clients**

Vulnerable Investors – National Instrument 31-103 Amendments cont'd

- **The amendments provide definition and guidance about when a registrant might be concerned about their older or vulnerable clients**
 - **“vulnerable clients” defined**
 - “a client who might have an illness, impairment, disability, or aging-process limitation that places the client at risk of financial exploitation”
 - the definition does not include an age-marker
 - **“mental capacity” not defined**
 - guidance provided in the companion policy
 - including examples of warning signs

Vulnerable Investors – National Instrument 31-103 Amendments cont'd

- **The amendments explains how registrants can use these tools to protect their clients:**
 - The Trusted Contact Person
 - Temporary Holds

Vulnerable Investors – National Instrument 31-103 Amendments cont'd

- **Temporary holds**
 - New - Section 13.19 Conditions for temporary hold
 - New - Appendix G - Companion Policy 31-103CP

Vulnerable Investors – National Instrument 31-103 Amendments cont'd

- **Temporary Holds on three types of client instructions :**
 - Buy, Sell or Transfer cash or securities
- **Two scenarios**
 - Reasonable belief there is financial exploitation of a vulnerable client
 - Reasonable belief that a client gave instructions while lacking mental capacity to make financial decisions

Vulnerable Investors – National Instrument 31-103 Amendments cont'd

- **TCP and temporary holds are tools that registrants can use when they are concerned about financial exploitation of a vulnerable client**
- **The amendments do not impose an obligation on registrants to temporarily hold on client instructions.**
- **All registrants need to have PPM to address obtaining TCP information and imposing temporary holds.**

3 Myths about Securities Law Enforcement in BC



- **Doug Muir,**
Director, Enforcement

Myth: “The bad guys never go to jail.”

- **Two laws the BCSC uses to keep the investment market fair and honest:**
 - *B.C.’s Securities Act*
 - *Canada’s Criminal Code*
- **Administrative hearings vs. court trials**
- **Offences (misconduct that could lead to prison) in the Securities Act**
- **Securities-related offences in the *Criminal Code***

Myth: “The bad guys never go to jail.”

- **Administrative or criminal? How we decide**
- **The BCSC investigates, but in criminal cases, does not prosecute**
- **Criminal Investigations Branch’s track record**

Myth: “The bad guys never go to jail.”

- **Ayaz Dhanani: 3 years**
- **Won Sang Shen “Craig” Cho: 15 months**
- **James Minnie: 4.5 years**

Myth: “Registrants have no reason to fear BCSC enforcement.”

- **How and why cases get escalated from compliance to enforcement**
- **What happens after a case gets escalated**
 - Investigation
 - Settlement
 - Notice of Hearing
 - Hearing
 - Sanctions

Myth: “Registrants have no reason to fear BCSC enforcement.”

- **Albert Alan Housego – failing to assess suitability of investments**
- **FS Financial – misrepresentation, illegally selling securities, unregistered trading**

Myth: “The BCSC imposes financial sanctions and hopes wrongdoers pay up.”

- **We take action to collect – *on everything***
- **The bitter reality – respondents usually don't have the money**
- **Why such high sanctions?**

Myth: “The BCSC imposes financial sanctions and hopes wrongdoers pay up.”

- **Michael Lathigee: Pursuit of U.S. assets**
- **Thalbinder Singh and Shailu Poonian:**
Blocking exit from bankruptcy

Myth: “The BCSC imposes financial sanctions and hopes wrongdoers pay up.”

- **Enhanced powers to collect**

- Greater ability to obtain assets transferred below market value to family members and other third parties
- Ability to obtain funds from registered accounts (RRSPs and RESPs)
- Financial sanctions will no longer expire
- Greater priority over claims of other creditors
- BCSC can demand that ICBC refuse to issue or renew a driver’s license to someone who hasn’t paid or isn’t paying their monetary penalty

Three Myths of Securities Law Enforcement in BC

Questions?

Report a concern:

- www.bcsc.bc.ca/about/contact-us
- 604-899-6854
- inquiries@bcsc.bc.ca

Closing remarks



- **Mark Wang,**
Director, Capital Markets Regulation

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

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