



CURRENT DEVELOPMENTS

Canadian Securities Matters

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Canadian securities: New guidance

OSC Rule 52-503 Exemption from Disclosure of a Specified Financial Measure

On June 27, 2023, the Ontario Securities Commission (the Commission) made proposed OSC Rule 52-503 Exemption from Disclosure of a Specified Financial Measure (the Rule) as a rule under the Securities Act (Ontario) (the Act).

The purpose of the Rule is to make permanent the exemption set out in a blanket order issued on December 2, 2021, Ontario Instrument 52-502 Exemption from National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure (Interim Class Order) (the Class Order).

The Rule substantially mirrors the current application exception in respect of disclosure of a specified financial measure that is required under law to measure(s) that are disclosed by an eligible issuer in accordance with an Office of the Superintendent of Financial Institutions of the Government of Canada (OSFI) Guideline.

CSA Staff Notice 81-336 Guidance on Crypto Asset Investment Funds That Are Reporting Issuers

On July 6, 2023, Staff of the Canadian Securities Administrators (CSA staff) published this notice concerning investment funds that seek to invest in crypto assets, either directly or indirectly under National Instrument 81-102 Investment Funds (NI 81-102) (Public Crypto Asset Funds). This Notice is intended to provide guidance to stakeholders and to outline CSA staff's views and expectations regarding the operations of Public Crypto Asset Funds within the framework of NI 81-102.

This Notice:

- provides an overview of the Public Crypto Asset Funds market in Canada and clarifies the current securities regulatory requirements applicable to Public Crypto Asset Funds;
- discusses key findings from reviews of Public Crypto Asset Funds conducted by CSA staff, including fund liquidity, exchange-traded mutual fund (ETF) structural matters and custody; and

- outlines CSA staff expectations for stakeholders with respect to matters that could impact existing and future Public Crypto Asset Funds, specifically concerning
- liquidity, valuation and other considerations with respect to potentially investing in crypto assets other than bitcoin and ether, which are currently the only crypto assets accepted as investments for Public Crypto Asset Funds;
- expectations for custodians of crypto assets to meet standard of care obligations ;
- issues relating to staking of crypto assets or other similar yield-generating activities within Public Crypto Asset Funds; and
- know-your-product (KYP), know-your-client (KYC) and suitability obligation issues with respect to Public Crypto Asset Funds.

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

On August 3, 2023, the CSA staff and staff of the Canadian Investment Regulatory Organization (CIRO) jointly published this notice to summarize the findings of their 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.

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.

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	34%
Inadequate controls to address certain material conflicts in the best interest of clients	28%
Missing or incomplete disclosure related to material conflicts of interest	53%
Inadequate policies and procedures related to conflicts of interest	66%
Lack of or inadequate training on conflicts of interest	17%
Inadequate conflicts of interest record keeping	<10%

Staff observed that some firms were not familiar with the guidance published in Nation Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations Companion Policy 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.

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

On July 27, 2023, the Compliance and Registrant Regulation Branch of the Ontario Securities Commission shared this year's Summary Report for Dealers, Advisers and Investment Fund Managers (Summary Report), which provides an overview of our work during the 2022- 2023 fiscal year.

This Summary Report is designed to assist registrants by providing information about:

- Part 1 - Education and outreach - provides links and information to the registration and ongoing educational resources and outreach opportunities available to current and prospective registrants.
- Part 2 - Regulatory oversight activities and guidance - can be used by registrants as a self-assessment tool to strengthen compliance with Ontario securities law and, as appropriate, to make changes to enhance their systems of compliance, internal controls and supervision.
- Part 3 - Impact of upcoming initiatives- provides insights into some of the new and proposed rules and other regulatory initiatives that may impact a registrant's operations.

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

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

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

Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO trailer ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers

On July 18, 2023, OSC made as a rule under the Securities Act (Ontario) local OSC Rule 81-509 Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers (the Rule).

Under the OEO trailer ban, which came into effect on June 1, 2022 (the Effective Date),

- investment fund managers (IFMs) are prohibited from paying trailing commissions where the dealer is not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities, and
- dealers are prohibited from soliciting or accepting trailing commissions from an investment fund manager, in connection with securities of the mutual fund held in an account of a client of the dealer if the dealer is not required to make a suitability determination, including, among others, order-execution only (OEO) dealers.

The Rule extends the blanket relief issued on March 18, 2022 by Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers (the OSC Blanket Order) by 18 months. The OSC Blanket Order provides temporary exemptions from the OEO trailer ban for OEO dealers and IFMs to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers. The OSC Blanket Order ceases to be effective on November 30, 2023. The Rule extends the relief provided in the OSC Blanket Order for an additional 18-month to May 31, 2025.

OSC Staff Notice 81-734 - Summary Report for Investment Fund and Structured Product Issuers

On September 13, 2023, Investment Funds and Structured Products Branch (IFSP) of the OSC released a summary report that provides an overview of IFSP's activities for the fiscal year ended March 31, 2023 (Fiscal 2023). The report has 4 parts:

- Part A - Operational highlights - Summarizes our key activities, including prospectus reviews, applications for exemptive relief and continuous disclosure reviews
- Part B - Regulatory Policy Initiatives - Identifies policy initiatives that are ongoing with detail on their status
- Part C - Emerging Issues and Initiatives Impacting Investment Funds - Summarizes changes that affect the investment funds industry
- Part D - Stakeholder outreach - Describes some of the outreach undertaken by the IFSP branch

During Fiscal 2023, IFSP performed several issue-oriented reviews of funds that primarily hold crypto-assets. In addition, ESG funds remained a focus of the IFSP branch's operational activities.

Most of the issues raised by staff during the prospectus reviews of ESG-related funds have been in relation to investment strategies disclosure. In particular, most comments have sought to clarify:

- which types of ESG strategies are being used;
- which specific ESG factors are relevant to the portfolio manager's analysis; and
- how such factors are being evaluated and monitored by the portfolio manager.

Staff indicated they will continue to review the prospectus disclosure of ESG-Related Funds in accordance with the guidance in the ESG Staff Notice.

Designation of Term CORRA as a Designated Interest Rate Benchmark and CanDeal Benchmark Administration Services Inc. (CBAS) as its Designated Benchmark Administrator

On September 15, 2023, the OSC and AMF have each issued decisions under applicable securities legislation designating:

- Term CORRA as a designated interest rate benchmark, and
- CanDeal Benchmark Administration Services Inc. (CBAS) as a designated benchmark administrator of Term CORRA.

Canadian securities: Proposed guidance

CSA Staff Notice 24-319 Regarding National Instrument 24-101 Institutional Trade Matching and Settlement - Update and Staff Recommendation

On December 15, 2022 the CSA staff published for comment proposed amendments to National Instrument 24-101 Institutional Trade Matching and Settlement (NI 24-101) to shorten the settlement date from two days after the the date of trade (T+2) to one (T+1).The staff requested feedback that participants favored a trade matching deadline of 3:59 a.m. .

This Notice, released August 10, 2023, confirmed that the staff are supportive of that deadline. .

The industry move to a T+1 settlement cycle is currently expected to be May 27, 2024.

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