September 29, 2020

Canadian Securities Administrators
c/o Adam Braun
Legal Counsel, Compliance and Registrant Regulation
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, Ontario
M5H 3S8

abraun@osc.gov.on.ca

RE: Request for Comments – CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers*

The Ontario Securities Commission's Investor Advisory Panel (IAP) welcomes this opportunity to comment on CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers*. The IAP is an initiative of the OSC to ensure investor concerns and voices are represented in the Commission's policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

By virtue of the pivotal role they play in developing, implementing and maintaining systems for appropriate practices, chief compliance officers (CCOs) are investor protection's essential front-line professionals. They are crucial to the success of regulatory measures aimed at elevating advisor proficiency and improving investor outcomes.

But skilled, experienced CCOs are perennially in short supply. This presents a significant challenge for new and small investment firms – especially those also struggling to afford the cost of employing a full-time CCO.

The shared CCO model could provide a useful solution for these firms. Beyond helping them leverage the experience of seasoned compliance professionals to design and launch the firm's supervision systems, shared CCO arrangements also would allow these same professionals to conduct oversight directly themselves. This, in our view, would represent a significant improvement over the current practice in many small firms – where CCO responsibilities are added to the CEO's, COO's or CFO's other duties and he or she carries out those CCO functions, often on a checklist basis, relying on periodic training and guidance from the firm's lawyers or an off-site compliance consultant.

We see the shared CCO model, therefore, as a potential enhancement to investor protection when used appropriately by start-ups, one-person shops and other small firms, or by firms (such as certain exempt market dealers) whose relationships with clients are mostly or entirely transactional.

To optimize availability of the shared CCO model, we believe regulators should permit experienced compliance professionals to offer their services as independent private practitioners. Consequently, we urge CSA Staff to clarify the following paragraph in the proposed guidance note:

> *This model does not contemplate a registered firm outsourcing its CCO's responsibilities to a third-party service provider. An individual acting as CCO of a registered firm must still be an officer, partner or sole proprietor of the registered firm, and a firm may choose to structure its affairs such that the CCO is either an employee or independent contractor of the firm.*

The meaning of this passage is unclear, as the first sentence's renunciation of outsourcing to third-party service providers seems to contradict the paragraph's closing words that allow firms to use independent contractors as CCOs.

If the intent of the first line is to prevent intermediation by large corporate suppliers of remote, off-the-shelf compliance services, we recognize that such a restriction may well be appropriate. However, we encourage regulators to apply the restriction surgically, to avoid unintentionally impeding development of the shared CCO model through an over-broad prohibition of outsourcing.

Investment firms must remain fully accountable for their compliance systems. Equally, CCOs should be held personally responsible for fulfilling their duties as registrants, even if they are acting as independent professionals. But all of this can and should be made abundantly clear by regulation in a manner that does not hinder or discourage the use of shared CCOs.

Furthermore, consistent with allowing the CCO to be an independent contractor instead of an employee, guidance should not hinder or discourage shared CCOs from providing their services through personal professional corporations – again, so long as it is done within a regulatory framework that unequivocally affords no shield from personal accountability through incorporation. Other professions (for example, lawyers) operate under this type of framework quite successfully without jeopardizing client protection.

We also have some concern that use of the shared CCO model may be unnecessarily constrained by the requirement that CCOs must in all cases be officers, partners or sole proprietors of the firm. We realize it is essential for CCOs to be privy generally to all information about the firm's operations and management, and this inevitably will

present a challenge where the CCO is present in the business only on a part-time basis. However, appointing the CCO as an officer of the firm does nothing, in itself, to solve this problem. The answer really lies in management ensuring that the CCO is kept fully informed.

Accordingly, we believe it would make more sense for regulation and guidance to require that shared CCOs be provided, on a "management-equivalent" basis, with all information necessary to carry out their responsibilities and to ensure that the firm's compliance systems operate effectively. We also suggest that shared CCOs should be explicitly required to withdraw from an engagement if management refuses or fails to provide any necessary information; and a withdrawing CCO should be required to inform regulators immediately about their departure and the reason for it. These requirements, in our view, will best ensure the CCO receives the information they need to effectively fulfill their obligations.

We hope these comments will assist CSA Staff. Please let us know if you wish to discuss them further.

Sincerely,

Neil Gross
Chair, Investor Advisory Panel