

OSC Message to all Chief Compliance Officers and Ultimate Designated Persons of Registered Firms Re: Concerns about inadequate compliance systems and Chief Compliance Officers not adequately performing responsibilities

Staff of the OSC's Compliance and Registrant Regulation Branch have recently found a number of registered firms that do not have an adequate compliance system in place and Chief Compliance Officers (CCOs) who are not adequately performing their responsibilities. Where we find deficiencies of this nature, we will take appropriate regulatory action.

Where we have found these deficiencies to date, a number of registered firms have been able to rectify these issues internally, through a concerted effort to review and apply all applicable securities laws to their operations. Other registered firms have required the assistance of external compliance resources to fix the deficiencies. In some cases, where we noted significant deficiencies that included an inadequate compliance system, registered firms have been subjected to strict regulatory action, including suspension of their registration where warranted.

Common signs of concern

The following are common indicators that registered firms do not have an adequate compliance system and CCOs are not performing their responsibilities:

- CCOs and compliance staff lack knowledge of applicable securities legislation. For example, CCOs are not aware of applicable capital and insurance requirements in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).
- CCOs have limited involvement in the compliance function, give it inadequate attention or do not focus on important regulatory obligations. This may be due to, for example, inadequate resources for oversight, supervision and monitoring of the firm's operations or the CCO inappropriately balances competing job responsibilities.
- There are no internal controls for significant areas of operations. For example, we have noted missing controls in the following areas- personal trading, expenses charged to investment funds, and the collection of know-your-client information for determining the suitability of investments.
- Policies or procedures are absent or not being enforced.

Our Approach

Maintaining an effective compliance system is a 'cornerstone' obligation, the monitoring of which is critical to our investor protection mandate for all registered firms. In upcoming compliance reviews, where we identify inadequate compliance systems and/or CCOs not adequately performing their duties, we will:

- Notify CCOs of this deficiency early during the compliance review.
- Prior to issuing our formal deficiency report, direct registered firms to assess their policies, procedures, internal controls and monitoring systems, and to prepare an action plan to improve their compliance systems immediately,
- Take further regulatory action against the firm, the CCO and the Ultimate Designated Person (UDP) when appropriate.

Applicable guidance

Registered firms and CCOs should perform periodic self-assessments of their compliance with Ontario securities laws and take action to improve internal controls, monitoring, supervision and policies and procedures when necessary. The following guidance is available:

- The elements of an effective compliance system are detailed in Part 11.1 of the Companion Policy to NI 31-103. We expect registrant compliance systems to be tailored to their size and scope of operations, including products, types of clients or counterparties, risk and compensating controls and any other relevant factors.
- Section 5.2 of NI 31-103 outlines the responsibilities of CCOs, which include establishing and maintaining policies and procedures for assessing compliance by the firm and individuals acting on its behalf with securities legislation.
- The responsibilities of UDPs are outlined in section 5.1 of NI 31-103. UDPs must supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and individuals acting on its behalf. UDPs are also responsible for promoting compliance by the firm, and individuals acting on its behalf.

Guidance has also been issued by the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) regarding the compliance function at IIROC and MFDA member firms. Although this guidance may not all be directly applicable to OSC registered firms, it may be relevant to improving compliance systems. Specifically expectations for the role, responsibility and accountability of member firms, their board of directors, management, compliance department and compliance officers are outlined in "The Role of Compliance and Supervision", published in IIROC's draft Guidance Note 11-0361 on December 15, 2011 and the MFDA's Member Regulation Notice 00-57 on February 24, 2012.

For more information, contact:

Susan Pawelek
Accountant, Compliance and Registrant Regulation Branch
Ontario Securities Commission
(416) 593-3680
spawelek@osc.gov.on.ca