



# OSC Staff Notice 11-784 Burden Reduction

The OSC is seeking suggestions on ways to further reduce unnecessary regulatory burden, as provided in OSC Staff Notice 11-784.

We invite your comments on the Staff Notice through the survey below. Please note that each question has a 4000 character response limit.

Closing date: March 1, 2019

Thank you for sharing your thoughts with the OSC Burden Reduction Task Force.

**\* Required**

1. Please provide your name. \*

Margaret Gunawan

2. What is the name of your firm or company, if applicable?

BlackRock Asset Management Canada Limited (BlackRock Canada)

3. What is your role in the capital markets? \*

Registrant and also issuer, on behalf of the iShares ETFs and BlackRock Strategic Portfolio family of mutual funds

4. Do you have any general comments on the topic of regulatory burden reduction related to securities regulation? If so, please enter only the legislative reference for your suggestions in the box below (for example 31-103 1.1)

5. Please use the space below to provide your general comments.

BlackRock Canada welcomes the opportunity to engage in ongoing discussions with the OSC on ways to reduce unnecessary regulatory burden. We have the same end goal as the OSC: to protect the interests of investors while ensuring the fair and efficient operation of the capital markets, flexible enough to accommodate varying business models and client types and ultimately, preserving investor choice.

6. Are there operational or procedural changes that would make market participants' day-to-day interaction with the OSC easier or less costly? If so, please enter only the legislative reference for your suggestions in the box below.

OSC Service Commitment: Our Service Standards & Timelines

7. Please use the space below to provide your suggestions for operational or procedural changes.

Related to the OSC Service Commitment, we would suggest updating this publication based on the outcome of the Task Force's work on burden reduction. In particular, we recommend that the prospectus review process for investment funds could be improved in a number of ways to reduce regulatory burden. Staff should receive initial and ongoing training with respect to the comment process to ensure a consistent experience and that advice from the initial reviewer and then counsel or accountants who may become involved later on does not conflict. In our experience, comments received are frequently more focused on "form over substance" (i.e. receiving comments on the ETF Facts regarding font size, moving a sentence from one paragraph to another immediately below, differing views on the use of footnotes and text box presentation and the amount of white space in the document). Staff seem unaware of the exponential impact of these types of comments in terms of additional work and cost, including external legal advice/support, typesetting, translation and delay (particularly when it is necessary to comply with data currency requirements which can be impacted by protracted review periods). A change that is viewed as small by OSC staff or inconsistency of comments among reviewers impacting the ETF Fact template may result in numerous additional hours of work and attendant costs for issuers.

In addition to staff training, we would also suggest better coordination amongst branch staff, particularly when communicating with issuers and their advisers. There have been frustrating examples where we have sought and received guidance, proceeded on the basis of that guidance only to have a more senior staff member disagree, requiring us to completely "start from scratch" with something different. We have also encountered difficulties explaining our position on the use of certain language in the prospectus which we felt would better protect investors (i.e. related to the use of the "up to" management fee language).

We are also supportive of the suggestions provided by the Portfolio Management Association of Canada (PMAC) in its submission with respect to operational or procedural changes.

8. Are there ways in which we can provide greater certainty regarding regulatory requirements or outcomes to market participants? If so, please enter only the legislative reference for your suggestions in the box below.

NI 31-103; NI 81-105

9. Please use the space below to provide your suggestions regarding how the OSC could provide greater certainty regarding regulatory requirements or outcomes.

Overall, OSC staff try to be helpful and responsive. In particular, we appreciate the interest that senior members of the branches, including Directors, have, and the time spent with, industry stakeholders. The collaboration efforts and industry outreach, such as with the Burden Reduction initiative, should continue.

Our suggestions stem from some instances where registrant oversight activities have deviated from the OSC's original principles-based regulatory approach. Registrant guidance (such as OSC staff notices and CRR Annual Reports) has become too granular and prescriptive (i.e. sales practices) and has moved towards a one-size-fits-all approach, often without fulsome public consultation. The catalyst for these heightened oversight activities is typically the actions of a few "bad actors" but the result is to add unnecessary burden on all registrants to adhere to all guidance published, particularly when words such as "must" or "shall" are used. In addition, questions raised during OSC oversight activities should be focused on those that are relevant to assess compliance against rules (not guidance) in order to reduce the frequency of responding to non-substantive questions or issues.

We appreciate the OSC's ongoing registrant outreach initiatives and regularly participate in these events. We encourage the OSC to continue with these types of outreach activities as an accessible way to provide greater clarity about regulatory requirements or outcomes. However, we note that some outreach sessions are presentations of the rules which we can easily read and what would be most useful is substantive content such as insights to address current industry concerns and "best practices". For example, speakers should be aligned on talking points so there is no additional confusion and should be senior enough to have familiarity with current practices in the industry.

We would also encourage the OSC to be more consistent in consulting with the industry professionals who are members of its various advisory committees. Having various subject matter experts weigh in on regulatory changes that the OSC or CSA are considering BEFORE seeking public comment would help identify potential areas of unnecessary regulatory burden. The members of the advisory committees could also suggest alternatives which would still meet the OSC/CSA's policy objectives while mitigating against unintended regulatory burden.

10. Are there forms and filings that issuers, registrants or other market participants are required to submit that should be streamlined or required less frequently? If so, please enter only the legislative reference for your suggestions in the box below.

Form 45-106F1

11. Please use the space below to provide your suggestions regarding forms and filings.

The OSC can take a leadership role amongst the CSA members to advocate for one filing system related to Form 45-106F1.

12. Are there particular filings with the OSC that are unnecessary or unduly burdensome? If so, please enter only the legislative reference for your suggestions in the box below.

Form 45-106F1

13. Please use the space below to provide your comments regarding burdensome filings.

The detailed (and often changing) information required under Form 45-106F1 is unduly burdensome as the investor protection concerns the regulators are trying to address by collecting this information have not been clearly articulated. We urge the OSC to work with the CSA to streamline the F1 to include only information that is material to investor protection or to eliminate the filing altogether if the data can be gathered via other means (i.e. using the RAQ).

The filing deadline for Form 45-106F1 for non-investment fund issuers is too short (10 days after a distribution) and hence, onerous on issuers. There may be regulatory reasons to oversee the reliance on new prospectus exemptions (e.g. crowdfunding, OM) using a 10 day deadline, but the deadline for non-investment fund issuers relying on the accredited investor (AI) exemption should be brought in line with the annual deadline for investment fund issuers. There is no clear policy reason articulated for the need to have a different deadline when relying on the AI exemption for a private placement.

In addition, the ability to start accessing Form 45-106F1 should be changed to 60 days before the due date of the filing. We have hundreds of funds to file for after their December 31st fiscal year end. Therefore, having the ability to start populating the information on the form earlier than January 1st would help reduce the "time crunch".

We are also supportive of the suggestions included in the PMAC's submission with respect to this question.

14. Is there information that the OSC provides to market participants that could be provided more efficiently?

The OSC should revisit the use and organization of the Investment Fund Practitioners (IFP). For instance, while the IFP provides a means to

communicate OSC staff views to the market in a timely way, the corollary is that it has, in many instances, been used as a means to regulate via guidance rather than rules and without industry consultation. If the OSC would like to continue issuing IFPs, then their organization and maintenance should be improved. Generally, guidance has become voluminous and adds to legal complexity and attendant burden and costs. The IFPs, in particular, are often very prescriptive and staff frequently do not update or communicate to issuers when its views are superseded or no longer a priority/concern. As there is no ability for industry to comment prior to the issuance of the IFP, there have been instances of errors and/or lack of clarity (i.e. making a confusing issue worse, not better).

15. Are there requirements under the OSC rules that are inconsistent with the rules of other jurisdictions and that could be harmonized? If so, please enter only the legislative reference for your suggestions in the box below.

Form 45-106F1

16. Please use the space below to provide your comments and suggestions around harmonization of rules.

There are differing interpretations related to how issuers should complete Form 45-106F1 depending on whether pooled funds or managed accounts are utilized and which exemption is being relied upon. The OSC should take a lead role in ensuring CSA harmonization in the interpretation Form 45-106F1 and any related filing fees.

17. Are there specific requirements that no longer serve a valid purpose? If so, please enter only the legislative reference for your suggestions in the box below.

18. Please use the space below to provide your comments and suggestions around requirements that may no longer serve a valid purpose.

19. Are there ways to enhance and improve how investors experience disclosure provided: (i) before they invest; (ii) as part of ongoing public disclosure; and (iii) by registrants?

20. Please use the space below to provide your suggestions for modernizing information provided to investors because of regulatory requirements. For example, specific areas where we could promote the use of plain language?

21. Do you have any other comments for the OSC Burden Reduction Task Force?

22. If you don't have enough space for your response to any question above, please use the space below to continue your comments. Please indicate which question these comments relate to.

As part of Project RID, BlackRock Canada met with staff of the Investment Funds and Structured Products branch in September 2017. As a summary, we discussed the following:

- Suggested a number of changes to Form 42-101F2 (including sending an annotated form) in order to streamline the long form prospectus and remove redundant disclosure requirements (i.e. remove prospectus summary, MER, TER, performance, stale trading data).
- Under NI 81-106 requirements, we focused on the need and usefulness of interim MRFPs (particularly for ETFs that provide portfolio transparency) and material change reports. We also suggested reviewing the value of quarterly portfolio disclosure, particularly for ETFs that offer portfolio transparency.
- Under NI 81-107 requirements, we questioned the need and value of the report to unitholders, the report to the manager and the annual self-assessment requirements.
- The duplicative information and different processes required for Personal Information Forms ("PIF") for the regulators and exchanges and whether the information could be gathered from other regulatory documents filed by individuals. This issue is currently being addressed by the Toronto Stock Exchange, the NEO Exchange and the OSC and we look forward to the complete implementation of the PIF overhaul.

In addition, we would urge the CSA to consider why an audit review is required for financial statements that occur in the latter part of the calendar year, even though for prospectuses filed in the early part of the calendar year, the interim financial statements do not need an audit review and are incorporated by reference.

We look forward to engaging with the OSC and CSA on the publication of draft amendments under Phase II of Project RID, expected to be in March 2019 and would be pleased to have a follow up meeting to discuss the above points.

Investing in the necessary resources, including technology and staffing, will also help to relieve regulatory burden. To the extent the OSC can leverage regulatory technology and automate some of its requirements or workflow processes, this will benefit registered firms, issuers and ultimately, investors.