



September 30, 2020

Canadian Securities Administrator
31-358@acvm-csa.ca

Dear Sirs/Mesdames:

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

The Private Capital Markets Association of Canada (**PCMA**) is pleased to provide our suggestions relating to the Canadian Securities Administrators' (**CSA**) Staff Notice 31-358 – *Guidance on Registration Requirements for Chief Compliance Officers* (the **Staff Notice**), as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

The Unique Business Model of EMDs

The private capital markets are unique and distinct in many ways from the public capital markets but they are just as vital and important. PCMA members vary in size, industry specialization and geographic scope. Some are issuers. Some may represent a significant number of issuers at a time. EMDs are transaction based. Clients typically seek to access private capital market investments through an EMD. A ‘one-size fits’ all approach taken in many rules fails to recognize these differences resulting in excess regulatory burden on EMDs and their clients.

General Comments

The PCMA supports the CSA’s continuing efforts to reduce regulatory burden. Unnecessary regulatory burden has a cost that is ultimately paid by investors and so any effort to reduce regulatory burden ultimately benefits investors.

The Chief Compliance Officer (the **CCO**) role is a key component of the compliance infrastructure of any registered firm in Canada. As noted above, many of our members are EMDs and sometimes distribute securities of related and/or connected issuers. EMDs tend to be small-to-medium sized organizations and, as a result, the role of some CCOs extends beyond compliance and into business operations and sales.

Shortage of Chief Compliance Officers

There is a shortage of individuals who could be registered as a CCO of a registered firm. However, there are a large number of individuals with compliance experience in the financial services industry. The PCMA supports the concept that certain business models require a different type of CCO oversight structure and notes that certain business models do not require daily supervision. For example, an issuer that is also registered as an EMD but raises capital infrequently throughout the year.

The PCMA offers its comments on the three models in the Staff Notice. We provide additional suggestions for sharing CCOs involving certain business models and for increasing the universe of compliance specialists who could be registered as a CCO in Canada.

Compliance Models

Shared CCO Model

The shared CCO model has been approved by CSA members and is used in the case of affiliated firms. The PCMA supports a shared CCO model for unaffiliated firms since it allows an individual to provide a focussed compliance function to two or more EMDs, especially smaller EMDs who may not be able to afford the cost of hiring a CCO who has the requisite knowledge and experience in compliance at an EMD firm.

The cost of a CCO for one EMD, spread across two or more EMDs, will likely attract a better CCO candidate who may not work for one small EMD, but would if they could work for two or

more EMDs, since the aggregate compensation would satisfy their compensation needs/expectations based on their knowledge and experience.

The PCMA agrees with the CSA that a shared CCO model would allow small firms to separate the role and function of UDP and CCO. The PCMA also believes a shared CCO model would allow a smaller EMD to work with arguably a better quality/calibre of CCO that supports an improved compliance oversight function to protect investors and increase compliance with applicable securities law.

The PCMA believes that a shared CCO model works best for an individual that principally provides, and is responsible for, the compliance functions of an EMD. For example, it would be problematic if a person holding the role of both CCO and UDP of one EMD wanted to also act as the CCO of an unaffiliated firm. Though primarily a commercial concern, it raises issues relating to conflicts of interests and divided loyalties since if issues arose that demanded immediate attention at both firms, there is a risk that the individual would likely favor the firm where they were the UDP, Chief Executive Officer) and CCO. The PCMA assumes the CSA would also have similar concerns when it considered such factor in the individual's application.

The PCMA understands and agrees that the responsibility and liability of a shared CCO model remains with the EMD registrant and the CCO of such firms, along with the firms UDP and board of directors, regardless if a CCO is shared. The PCMA supports EMDs having the flexibility of being either an employee or independent contractor of the firm.

The Staff Notice raises some of the issues in complying with securities legislation posed by the Shared CCO Model. On an operational basis, there a number of issues to be considered. Would a firm not provide information to a CCO due to potential competitive concerns? Some operational questions may be addressed through the consideration of the outsourced CCO model as discussed below.

Multiple CCO Model

The PCMA supports the multiple CCO model. As is the case with sharing CCOs, the multiple CCO model has been approved by securities regulators and is in use with large firms. This model is really only necessary with larger firms with multiple registration categories and will have little impact on the shortage of CCOs for small-to-medium firms.

The PCMA notes this model allows a single firm with multiple registrations to have different CCOs based on line function. For example, it could have a CCO for its EMD registration and a CCO for its portfolio manager registration. A multiple CCO model eliminates the need for a single firm that has grown and needs/wants to support multiple CCOs for multiple lines businesses to set up multiple companies (i.e., one for each registration category). This provides cost savings and reduces the regulatory burden to registrants.

Specialized CCO Model

The PCMA supports the expansion of relevant experience. This is particularly important in the area of mortgage-related investment products where some firms applying for registration are mortgage brokers. In some jurisdictions mortgage brokers must have an individual that carries out a similar role to a CCO. It also supports EMDs where a CCO requires increased knowledge/experience with private placements and investment banking relative to one who has only acted as a CCO for a portfolio manager that focuses on trading for prospectus offered mutual funds.

Additional Comments

Outsourced CCO Model

The PCMA is disappointed that the CSA has not considered or fully discussed the concept of an outsourced CCO model as exists in the United States. The PCMA is not clear on the harm or policy concerns the CSA would have with such a model. The findings from examinations of advisers and funds with outsourced CCOs by the U.S. Securities Exchange Commission reported in the November 9, 2015 Risk Alert (Volume V, Issue 1), were no different than the issues found in CSA compliance examinations.

Is the CSA concerned that outsourcing would be to a third party, such as a compliance consulting firm, and in effect relieve a firm, its UDP and board from its liability under NI 31-103? This is not clear in terms of the CSA's contemplated model or related issues or concerns.

In an outsourced CCO model, a qualified individual would be engaged by firms to conduct CCO services. The outsourced CCO will be independent and will not have the inherent conflicts of interests based on normal competitive behaviour. In this model, the UDP is registered and remains responsible for the tone at the top and fostering a culture of compliance. The independent CCO would also be registered and subject to oversight by the securities regulators. This model would be subject to the same types of conditions in the Shared CCO Model: proficiency, conflicts of interest, confidentiality, capacity and effective compliance system.

The PCMA recommends the CSA examine the Outsourced CCO Model. This model would lessen the burden on small exempt market dealers with the opportunity to improve the overall compliance of these dealers. It is a model that has been used by the SEC and used by IIROC in relation to Chief Financial Officers.

Therefore, the PCMA respectfully submits that in the absence of a discussion about an outsourced CCO Model, including the pros and cons of IIROC's existing outsourcing of CFOs, we can only provide our 'qualified' support for the shared CCO model.

Expanding Relevant Experience

The Specialized CCO Model notes that different experience may be more appropriate for a given CCO based on the business model. For example, a CCO for a Portfolio Manager who largely

deals with prospectus offered mutual funds may not have the corporate finance or private placement experience that may be required for the CCO of an EMD.

The experience to understand and monitor compliance with rules and regulations is not the same as experience needed to make trades or to provide investment advice. The PCMA believes that compliance experience related to the financial industry and not specifically in the securities industry should be considered as a factor when determining the relevant experience to be a CCO. This has been recognized by the OSC which in the past has imposed terms and conditions on the registration of CCOs to take *The Osgoode Certificate in Regulatory Compliance and Legal Risk Management for Financial Institutions*. We understand this program is largely centered on compliance in the banking and insurance industry.

This is a change in interpretation, not a change in law. Expanding the types of experience relevant for a CCO could increase the universe of CCOs. This would reduce the burden on registrants and likely improve the compliance infrastructure of future and current registrants.

Chief Compliance Officer's Course for EMDs

The PCMA supports the creation of a specialized CCO course tailored to EMDs. The existing Chief Compliance Officer's Course provides limited information that is required for a CCO of an EMD. The PCMA has previously advocated for the creation of such a course that should be co-developed with the PCMA to ensure CCOs of EMDs have education and training geared towards EMDs and would help increase the pool of available candidates.

Similar to the current CCO course, the CCO course for EMDs should be an option and not a requirement to become a CCO of an EMD. This way a CCO of multiple registration categories of the same firm, (e.g., a CCO for a portfolio manager and EMD) is not required to take an additional course to qualify as a CCO of an EMD in addition to their other CCO proficiency requirements.

Exemptive Relief

The CSA has noted that if the Shared CCO Model or Multiple CCO Model are to be implemented by a firm, that exemptive relief will be required. Since CCOs must be approved to be registered with a firm, the PCMA doesn't believe it is necessary to have a firm apply for exemptive relief and feels this would be contrary to the goal of reducing regulatory burden.

Specifically, the Registration Team should be able to have the discretion to make such determinations, as they do with a CCO's relevant securities experience. Involving a Commissioner to review and sign off on an exemptive relief application for matters that are best left at the Staff level will only delay such matters and again, should be done at the Registration Branch level.

Closing Remarks

The PCMA would like to thank to the CSA for their efforts in putting forward alternative CCO models and for soliciting feedback from various stakeholders.

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We thank you for considering our submissions.

Yours truly,

PCMA Comment Letter Committee

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cc: PCMA Board