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ARTICLE

Disclosing "Outside Business Activities" - OSC Amnesty Deadline Ends March 27, 2015

Registered representatives and "permitted individuals" (representatives) must disclose any outside employment and business activities to their sponsoring firms and to the securities regulatory authorities where they are registered. "Outside business activities" (OBAs) have long included "business related" officer or director positions and any other equivalent positions held". In recent years, staff of the Canadian Securities Administrators (the CSA) have been increasingly seeking disclosure of other activities, such as volunteer or paid social, sports and charitable roles. On January 11, 2015, amendments to National Instrument 33-109 *Registration Information*, together with amendments to the Companion Policy of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* came into force, which solidified the CSA's position on OBAs.¹ Both sets of amendments clearly set out the expectations of the CSA for OBA disclosure and management of any conflicts of interest that may arise from those OBAs.

OBAs include any and all directorships (whether public, private, paid or non-paid) and any activity that puts a representative in contact with, or places them in a position of influence or power over, clients or potential clients. This includes coaching of sports teams and leadership roles with religious, social or charitable organizations. "Owning" a holding company is specifically called out as an OBA. A representative must disclose an OBA to his or her sponsoring firm and the sponsoring firm, including their CCO, must, among other things, consider whether the OBA will raise conflict of interest issues for the firm and its clients and whether the OBA will interfere with the representative's duties to the firm and its clients. Firms are expected to have policies and procedures in place to ensure that their representatives disclose OBAs to them, and also to manage any potential for conflicts of interest.

Representatives have 10 days to file changes to their Form 33-109F4 to disclose any new OBA or any change to an OBA. Any filing made outside of the 10 day window generally attracts late filing fees, which, in Ontario, could be as high as \$5,000 per each calendar year per sponsoring firm. Outside Ontario, the approach to late filing fees varies.

In recognition that the CSA's position on what is considered to be an OBA has been clarified with the coming into force of the above-noted regulatory amendments, staff of the Ontario Securities Commission published OSC Staff Notice 13-705 *Reduced Late Fee for Certain Outside Business Activities Filings*. This is a very welcome development, which essentially will permit firms and representatives to bring the required Form 33-109F4 disclosure into conformity with the OBA disclosure requirements with a minimal regulatory burden, including a significantly reduced late filing fee (\$100 per late OBA filing). There is a process to be followed, including a new form to be completed to request the reduced late filing fee, and importantly there is a deadline of March 27, 2015 for all OBA disclosure to be updated. After this date, more significant consequences for a late OBA filing will result.

We recommend that firms and representatives review the information about OBAs on file with the regulators via the National Registration Database (NRD) as soon as possible, and consider whether there are any additional OBAs to be disclosed. In order to be considered for the OSC's regulatory leniency, representatives must submit a completed Form 33-109F5 *Change of Registration Information* (Form 33-109F5) via NRD to report previously undisclosed OBAs as soon as possible, but no later than the deadline of March 27, 2015. A completed OSC Form 13-705F1 *Application for Reduced Late Fee Relief – Outside Business Activities* (Form 13-705F1) must also be filed, along with the late filing fees of \$100 per late disclosure.

We continue to recommend that firms establish a practice to have each representative review the information on file with NRD on a periodic basis, at the very least annually. A firm should also have policies and procedures in place that emphasize the importance of representatives disclosing any changes to OBAs to the applicable compliance individual within the firm so that regulatory disclosures can be made in a timely fashion and conflicts of interest considered.

We would be pleased to assist you with your review of OBAs on file for representatives, including advising you on whether or not an activity falls within the enhanced scope of OBAs, and hence must be disclosed. We can assist you on a cost effective basis to make sure your representatives' filings are up to date, including ensuring that you benefit from the regulatory amnesty established by OSC Staff Notice 13-705. It will be very important not to miss the March 27, 2015 deadline if additional OBA disclosure is necessary for Ontario registrants.

¹ See *Significant Amendment to National Instrument 31-103 Finalized – Impact on Canadian Registered and International Exempt Firms Effective January 11, 2015* Investment Management Bulletin October 2014 Borden Ladner Gervais LLP.

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