Best practices from the Ontario Securities Commission: Crypto asset trading platforms

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This article summarizes the Ontario Security Commission's guidance on best practices for crypto asset trading platforms to ensure compliance with know-your-client, account appropriateness assessment, and client limit requirements.

On December 10, 2024, the Ontario Securities Commission (OSC) released OSC Staff Notice 33-757, arising from a review of six registered crypto asset trading platforms (CTPs) based in Ontario and registered as restricted dealers. The review was designed to assess compliance with the terms of their exemptive relief decisions. The Staff Notice provides guidance and best practices for CTPs to assist them in meeting know-your-client (KYC), account appropriateness assessment, and client limit obligations.

The bottom line

The Staff Notice emphasized that CTPs must comply with both the letter and the spirit of compliance requirements. Therefore, certain CTP practices, such as a mechanical 'tick-box' approach to collecting information without addressing inconsistencies in that information on an ongoing basis, fail to meet the account appropriateness assessment requirement.

The OSC also strongly discourages CTP practices that fail to:

- Consider all account appropriateness factors in determining client limits;
- Tailor client limits to individual circumstances;
- Effectively monitor client limits; and
- Perform meaningful actions once a client limit is met or exceeded.

While the OSC did not find instances of non-compliance with investment limits, the Staff Notice reiterates that CTPs must still ensure adherence to these requirements.

The rest of this article explores the best practices from the Ontario Securities Commission crypto asset trading platform Staff Notice in greater detail.

Best practices for account appropriateness assessments

The Staff Notice highlights that the account appropriateness assessment requirement is intended to help CTPs determine whether it is appropriate to open an account for a prospective client and whether CTPs should enter into a crypto contract with the client. The OSC lists the following best practices in this respect:

1. To avoid a mechanical 'tick-box' approach in conducting the account appropriateness assessment, CTPs should develop an onboarding questionnaire designed to meaningfully capture the following account appropriateness factors:
    - The client's experience and knowledge in investing in crypto assets;
    - The client's financial circumstances;
    - The client's risk tolerance;
    - The crypto assets approved to be made available to a client on the platform.
2. CTPs should follow up with the client if they identify any inconsistencies in the collected information. They should update the client account appropriateness assessment annually, or more frequently if there are significant changes in the client's circumstances or market conditions.
3. CTPs should establish policies and procedures for collecting, documenting, and reviewing information, and maintain books and records to prove any changes in a client's information or confirm that there are no changes.
4. If a CTP deems it inappropriate to enter into a crypto contract or open an account with a prospective client, the CTP should clearly communicate this decision and take steps to prevent the account from being opened.

Best practices for client limits

The client limit requirement is designed to be tailored to a client's circumstance to mitigate the risk of that client incurring significant realized and unrealized losses while trading crypto contracts. The Staff Notice outlines the following best practices:

1. CTPs should create an onboarding process to collect sufficient information to allow them to develop an appropriate client limit for each client.
2. During the onboarding process and on an ongoing basis, CTPs should consider all account appropriateness factors (see a full list in the previous section under point 1) to assess the client's situation and assign an appropriate limit. A client limit should not be based on a few factors or on arbitrary factors that do not appropriately reflect the client's ability to tolerate loss.
3. CTPs should develop a client limit that is based on a dollar value that can be used to monitor the client's ongoing trading activity against the client limit. Where a client has reached their limit, the CTP should inform the client and provide appropriate tools to mitigate further risks.
4. If a client approaches their limit, CTPs should promptly notify the client of their incurred losses relative to the limit and direct them to educational materials on the risks of excessive trading. The Staff Notice emphasizes that notifications should be timely, appropriate for the circumstances, and structured in a way that will not be interpreted as a recommendation or advice.

Best practices for investment limits

CTPs should ensure that the total amount of crypto assets (excluding specified crypto assets that are, as of the date of the Staff Notice: Bitcoin, Ether, Bitcoin Cash, Litecoin, and compliant value-referenced crypto assets) a client may have purchased and sold in the preceding 12 months, calculated on a net basis and being not less than $0, does not exceed the investment limit. This applies to all clients except those residing in Alberta, British Columbia, Manitoba and Québec.

For CTPs that have been granted relief from the trade-by-trade suitability requirement in section 13.3 of NI 31-103 and are conducting account appropriateness assessments, a client's investment must not exceed a net acquisition cost of $30,000.

For CTPs that have not been granted relief from suitability determination requirements and are subject to trade-by-trade suitability assessments, including enhanced suitability requirements, the following investment limits apply:

- Non-eligible crypto investors: $30,000
- Eligible crypto investors: $100,000
- Accredited crypto investors: no limit.

Conclusion

Under OSC Staff Notice 33-757, CTPs bear a significant responsibility to implement robust policies and procedures to ensure compliance with account appropriateness and client limit requirements. BLG has extensive experience in developing policies and procedures to support compliance with securities laws and broader crypto asset matters. For more information on any of the topics covered in this article, including understanding and implementing the Ontario Securities Commission crypto best practices, please feel free to reach out to the authors listed below.

By

Carol Derk, Iñaki Gomez, Julie Mansi, Kelechi Adanyi

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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