The ETF next door? CIRO and CSA set expectations for foreign ETFs

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On July 29, 2026, the Canadian Investment Regulatory Organization (CIRO) and the Canadian Securities Administrators (CSA) published joint *Staff Notice 81-339 – Industry Practices Relating to Foreign-Listed Exchange-Traded Funds* (the Foreign ETF Notice).

The Foreign ETF Notice addresses three key areas:

1. the circumstances in which marketing activity for a foreign ETF may trigger Canadian prospectus and investment fund manager (IFM) registration requirements;
2. the application of the Know Your Product (KYP), Know Your Client (KYC) and suitability obligations to dealers and dealing representatives when recommending the purchase of foreign ETFs to a client or purchasing foreign ETFs on behalf of a client; and
3. a recommendation for order-execution-only (OEO) dealers to provide certain enhanced pre-sale disclosure to investors considering the purchase of a foreign ETF.

The regulators expressly acknowledge that the guidance provided in the Foreign ETF Notice is based on existing securities law requirements; it does not modify existing regulatory obligations or create new ones. However, the guidance sets expectations for how existing requirements apply in respect of foreign ETFs and encourages certain new practices.

In some cases, it also raises novel questions about how to interpret CIRO and CSA staff expectations, particularly where those expectations seem to differ from current market practice.

Prospectus requirement & IFM registration assessment

The Foreign ETF Notice is a reminder that a foreign ETF does not require a receipted prospectus in Canada merely because Canadian investors purchase its securities on a foreign exchange. Rather, the prospectus requirement is engaged where the relevant activity amounts to a “distribution” of securities in Canada. The guidance warns that “active steps” to market or promote the sale of a foreign ETF to retail investors in Canada may be an act in furtherance of a sale and, therefore, a distribution that requires a prospectus, absent an exemption.

The Foreign ETF Notice provides examples of activities that constitute “active steps” to market or promote and specifically calls out wholesaling, described as actively soliciting dealers to offer or recommend a particular foreign ETF to their clients. The Foreign ETF Notice also mentions advertisements on social media or digital channels that are targeted at Canadian investors, which raises the question of how the regulators will assess whether a social media campaign is “targeting” Canadians.

Managers of foreign ETFs that have enjoyed a healthy flow of Canadian investors should consider how to document that their marketing campaigns do not intend to target Canadians. These managers should also consider other actions taken by any person or entity on behalf of the foreign ETF to encourage purchases by Canadian investors, such as proactive, targeted actions or communications that are initiated for the purpose of soliciting investment.

Foreign ETF managers are also reminded of the requirement to register as an IFM in Ontario, Québec and Newfoundland and Labrador if they direct or manage the business, operations or affairs of an investment fund in those jurisdictions, and distribute securities to residents in those jurisdictions. The marketing of a foreign ETF in those jurisdictions could trigger the requirement to register as an IFM.

The Foreign ETF Notice states that, absent an exemption in such jurisdictions, unregistered foreign ETF managers would generally not be permitted to market their foreign ETFs in those jurisdictions. Left unanswered is the question of the circumstances in which a foreign ETF manager with securityholders resident in Ontario, Québec and Newfoundland and Labrador can rely on an IFM registration exemption in such jurisdictions.

The guidance is of particular note for organizations offering both Canadian and foreign ETFs. In particular, these organizations will need to be careful about how internal wholesalers respond to dealer inquiries relating to foreign ETFs, and should continue to consider whether additional guardrails are needed to avoid crossing into “active” marketing of foreign ETFs in Canada.

Distribution considerations

Know Your Product (KYP)

The Foreign ETF Notice introduces additional layers of compliance scrutiny in the distribution of a foreign ETF that may increase the compliance burden on dealers that offer foreign ETFs.

In what the regulators characterize as “product due diligence obligations,” dealers must not make a foreign ETF available to clients unless the firm has taken reasonable steps to assess the relevant aspects of the foreign ETF, including assessing a foreign ETF’s structure, features, risks and initial and ongoing costs, as well as the impact of those costs; approving the distribution of the foreign ETF on its “shelf”; and monitoring for significant changes in the foreign ETF.

CIRO and CSA staff continue to apply the principle of proportionality to the KYP requirements, and acknowledge that the depth of the KYP review may vary based on the complexity and risks of both the securities offered and the dealer’s business model. In the context of foreign ETFs, CIRO and CSA Staff’s view is that a KYP assessment may include consideration of the following:

- disclosure available to investors;
- general tax considerations applicable to such investments;
- key currency exposure, including conversion cost implications;
- whether the foreign ETF manager is registered as an IFM in the applicable jurisdiction of Canada and, if not, the implications to the Canadian investor of not having certain investor protections that apply to registered IFMs; and
- implications to investors of not having certain investor protections that apply when an investment fund is distributed under a prospectus filed in Canada.

Dealers will need to assess how to document their KYP review of foreign ETFs, including the level of diligence applied to foreign ETFs and any limits on the availability or comparability of disclosure. It remains unclear to what extent a dealer is expected to evaluate differences between the disclosure available for, and legal protections applicable to, foreign ETFs versus Canadian ETFs, and what actions, if any, should result from that analysis.

Additionally, the Foreign ETF Notice does not resolve the differences in availability and comparability of certain expense data points between Canadian and foreign ETFs.

Know Your Client (KYC)

Dealers and their representatives are required to obtain sufficient information about a client’s investment knowledge, including the client’s understanding of different types of investments. The Foreign ETF Notice encourages dealing representatives, before recommending or purchasing a foreign ETF for a client, to consider whether the client understands the key differences between Canadian and foreign ETFs, including the relative risks and limitations of foreign ETFs compared to Canadian ETFs.

The Notice does not clarify whether the comparison of key differences between Canadian and foreign ETFs is intended to be conducted at a general level, based on jurisdictional differences, or at a more granular product-by-product level, which may require consideration of the particular features, risks, costs, tax considerations and disclosure of the specific foreign ETF.

Suitability

The Foreign ETF Notice provides that dealers may only recommend foreign ETFs after determining whether the action puts the client’s interest first and is suitable for the client based on:

- the client’s KYC information;

- the dealer's understanding of the foreign ETF;
- the impact on the client's account of investing in a foreign ETF (including concentration and liquidity impacts);
- the potential and actual impact of costs on the client's return on investment; and
- having considered a reasonable range of alternative actions available at the time of assessing suitability, including other products such as Canadian ETFs that offer similar exposure.

The suitability-assessment-related guidance applies to portfolio managers and their advising representatives when purchasing a foreign ETF for a client on a discretionary basis. The expectation to consider a reasonable range of alternatives, including similar Canadian ETFs, again raises questions around the level of comparative analysis required before recommending a foreign ETF.

OEO dealer disclosure

As OEO dealers do not make a suitability determination prior to the sale of a foreign ETF, the Foreign ETF Notice "encourages" OEO dealers to provide an alert or notification at one or more "critical interaction points" prior to an investor's purchase of a foreign ETF to inform investors of the following:

- the ETF they are seeking to purchase is a foreign ETF; and
- the key differences between foreign ETFs and Canadian ETFs, which may include that each are subject to different regulatory requirements (which may result in different investor protections), there could be different tax considerations and, for accounts that do not hold the relevant currency in which the foreign ETF is denominated, there could be currency conversion costs that apply.

Key takeaways

Foreign ETF managers, as well as dealers that offer foreign ETFs, should consider reviewing the following:

1. Manager marketing and wholesaling practices for foreign ETFs to determine whether these activities amount to "active" marketing, and assess the related registration and prospectus implications.
2. The adequacy of dealer KYP processes relating to the approval and ongoing monitoring of foreign ETFs.
3. Dealer suitability and KYC procedures for foreign ETFs, including how representatives determine and evidence a client's understanding of the key differences between Canadian and foreign ETFs.
4. The feasibility of a client alert or notification containing the recommended disclosure for OEO dealers that offer foreign ETFs.

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