

CSA provide further flexibility for securities registrants - CRM Specialists and CCOs

July 20, 2020

The Canadian Securities Administrators (CSA) have recently announced two initiatives in their continued efforts to reduce regulatory burden for securities registrants:

- On June 10, 2020, the CSA announced that they are updating their practice of requiring all potential advising representatives to have individual stock-picking experience. Effective June 10, 2020, when a portfolio manager sponsors an individual for registration as an advising representative, the individual may now be identified as a client relationship management specialist (a CRM Specialist) whose advice to clients does not, and may not, include the selection of individual securities for clients.
- On July 2, 2020, the CSA published CSA Notice and Request for Comment *Guidance on Registration Requirements for Chief Compliance Officers* (the CCO Notice), which provides registered firms with guidance on three flexible chief compliance officer (CCO) arrangements or “models” in an effort to provide firms of different sizes or business models with flexibility to implement their CCO requirements in a manner that aligns with their operational needs.

Both of these initiatives were referred to in the Ontario Securities Commission’s November 2019 paper *Reducing Regulatory Burden in Ontario’s Capital Markets*, and if implemented smoothly, may indeed assist in reducing regulatory burdens for specific registrants. Please see our previous bulletin covering [Reducing Regulatory Burden in Ontario’s Capital Markets](#).

Client relationship management specialists for portfolio managers

The CSA announced that, effective June 10, 2020, when a portfolio manager sponsors an individual for registration as an advising representative, the portfolio manager may identify the individual as a CRM Specialist whose advice to clients does not, and may not, include stock-picking. Once registered, that individual will be subject to specific terms and conditions on their registration limiting their advising activity. These terms and conditions were sent to all Ontario registered firms as part of the OSC’s outreach via email of June 10, 2020 and [are available here](#).

We hope that the CSA will enshrine the terms and conditions in a form of policy or guidance note to ensure future ease of access and understanding of these terms and conditions, when a firm wishes to register appropriate individuals as CRM Specialists. The OSC has stated that the terms and conditions are standard and non-negotiable.

1. No client advice on selection of individual securities

- The CRM Specialist may *not* provide advice to clients relating to securities of a specific issuer or make recommendations to clients to buy, hold or sell the securities of any specific issuer.
- The CRM Specialist *may*:
 - Recommend model portfolios and pooled funds constructed by an “unrestricted” advising representative of the firm;
 - Determine asset allocations for client accounts; and
 - Formulate and draft investment policy statements.

2. Certain activities of a CRM Specialist will require approval of an “unrestricted” advising representative

- The CRM Specialist *may* do any of the following, provided the activity is consistent with advice previously given or approved by an “unrestricted” advising representative of the firm:
 - Communicate with clients regarding investments in individual securities;
 - Direct trades in individual securities to implement asset allocation decisions; and
 - Direct trades in individual securities to implement account re-balancing.

3. Ability to supervise activities of associate advising representatives are limited

- The CRM Specialist may *not* review or approve advice provided by an associate advising representative of the firm concerning securities of any specific issuer.
- The CRM Specialist *may* review or approve the advice provided by an associate advising representative in respect of the associate advising representative’s:
 - Recommendation of model portfolios and pooled funds constructed by an “unrestricted” advising representative of the firm;
 - Determinations of asset allocations for client accounts; and
 - Investment policy statements formulated and drafted by the associate advising representative.
- Associate advising representatives were not previously expected to have stock-picking experience and this will continue to be the case. Further, the CSA does not expect associate advising representatives to accumulate stock-picking experience if they plan to apply to become CRM Specialists.

4. No misleading use of titles

- The CRM Specialist must refer to themselves as a “client relationship manager” and may not use any title that could imply that their permitted activities are materially the same as those of an “unrestricted” advising representative not subject to the terms and conditions.

5. Disclosure to clients

- The CRM Specialist must disclose the limited advising activities that they are permitted to perform to a client or potential client.

Proposal to allow flexible CCO models for registered firms

The CSA discuss three CCO models in the CCO Notice and request feedback on the utility of these models, including how these models could best be implemented. Feedback is requested by September 30, 2020. We note that the CCO Notice simply discusses the models, but there are no specific rule or policy changes accompanying it.

- *Shared CCO model:* Under this model, an individual would apply to be the CCO for more than one firm. The CSA indicate that they expect this model may assist smaller firms.
- *Multiple CCO model:* Under this model, a firm could apply to have multiple CCOs, each responsible for one or more business lines and/or different registration categories within the firm. The CSA expect that larger firms with distinct business lines or registration categories may benefit from implementing a multiple CCO model.
- *Specialized CCO model:* Under this model, an individual could apply to be the CCO of a non-traditional or specialized firm, such as a fintech firm, and request that industry-specific experience be considered as relevant experience for the purposes of assessing the individual's proficiency to be a CCO.

A firm seeking to use one of these models would apply for registration of the individual as CCO and apply for an exemption from applicable restrictions in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), as required. Each application for registration and, where required, for an exemption will be reviewed by staff on a case-by-case basis to ensure requirements, including investor protection measures, are met. The CCO Notice sets out some issues that the staff would expect an application to address for each of the models.

Although it is somewhat unclear from the CCO Notice, we consider that CSA staff intends to allow a firm to implement one of these models at this time, provided the firm follows the guidance provided in the CCO Notice. It is also unclear what format the final decision on CCO models, if there is one to be made by the CSA, will be disseminated by the CSA. We intend to provide feedback on this issue to the CSA during the comment period.

Shared CCO model

In reviewing an application by a firm to designate an individual who holds that position with another firm as CCO, staff will require the shared CCO and the sponsoring firms to demonstrate the following:

- *Proficiency.* The shared CCO must have the proficiency to act as CCO for each firm's business.

- *Conflicts of interest.* The shared CCO must be able to identify and respond to existing or potential conflicts of interest resulting from the shared CCO model.
- *Confidentiality.* The shared CCO must be able to meet their obligations with respect to protecting confidential information of clients.
- *Capacity.* The shared CCO must have the capacity to act as a CCO for more than one registered firm. Staff will consider the individual’s commitments at all registered firms and other commitments (such as outside business activities) in this analysis.
- *Effective compliance system.* Firms must continue to comply with their NI 31-103 obligations to maintain an effective compliance system.

The CSA explain that the shared CCO model is not intended to allow CCO duties to be “outsourced” to compliance consultants. An individual acting as a shared CCO must still be an officer, partner or sole proprietor of each applicable registered firm.

Multiple CCO model

A firm which intends to designate multiple CCOs will be required to obtain an exemption from the requirement that each firm have a single CCO. The CSA explain that in such an application for exemption, the firm must demonstrate the following:

- The multiple CCO model is appropriate for their compliance system;
- Each CCO has their own separate responsibilities; and
- No CCO delegates or transfers to another CCO their responsibilities.

Specialized CCO model

The CSA suggest that a prospective CCO of a non-traditional or specialized firm, may still apply for registration as a CCO even where that individual does not have the requisite experience set out in NI 31-103. Instead, staff may consider the individual’s relevant business experience when assessing proficiency and experience to be registered as a CCO of the firm. Exemptive relief may still be required if the prospective CCO does not meet the experience requirements as set out in Part 3 of NI 31-103.

We also note that an individual may be considered proficient to be the CCO under the specialized CCO model but may not be considered proficient to be the CCO of a registered firm with a different business model. In these cases, CSA staff may recommend terms and conditions on the CCO’s registration to this effect. As a result, caution will have to be exercised when a firm hires a specialized CCO, as that specialized CCO may not have the experience necessary to qualify as CCO for that firm’s business.

Please contact your BLG lawyer or the authors of this Bulletin if you have any questions about the CSA’s latest initiatives related to registration of client relationship management specialists or flexible CCO arrangements for registered firms, or the implications of these initiatives for your firm and its operations.

By

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