Preparing for the new CFR titles and misleading communication requirements

May 06, 2021

This is the second installment in BLG's CFR Communication Series—Surging through 2021 to 2022. This article explains how best to prepare for the CSA's new rules on titles and misleading communications, which come into force on December 31, 2021.

O; be some other name!
What's in a name? that which we call a rose
By any other name would smell as sweet
William Shakespeare - Romeo and Juliet – Act II, Scene II

The Canadian Securities Administrators (CSA) likely did not have Juliet's famous words in mind when they enacted section 13.18 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and more recently explained what they intended with this section. The CSA expect registrants to take steps to ensure clients understand the nature of their relationship with the registered firm and its representatives. Titles for registered individuals are important and matter – not only within the firm, but also to clients and to regulators. Bottom line: clients shouldn't be confused about what the firm provides or what its people do.

The new rules and CSA expectations regarding misleading titles and communications will be effective on December 31, 2021. This aspect of the Client Focused Reforms (CFRs) introduce a new standard for interfacing with clients: do not mislead a client about the products and services a firm offers or the qualifications of its registered individuals.

Registrants must not hold themselves or their registered individuals out in a manner that could reasonably be expected to deceive or mislead a client or prospective client as to:

- The proficiency, experience, qualifications or category of registration of the firm or its individuals;
- The nature of the client's relationship, or potential relationship, with the firm or its individuals; or
- The products or services provided, or to be provided, by the firm or its individuals.

This includes prohibiting client-facing representatives from using titles or designations that are:

- Based partly or entirely on that representative's sales activity or revenue generation (*i.e*. "President's Club"); or
- A corporate officer title, unless they have been legally appointed to that role (*i.e.* "Vice President").

Although most titles in use in the industry today are likely not intended to "deceive" or "mislead", as with Juliet and her Romeo, the CSA has the last word and they are clear with their intentions, particularly for retail client facing representatives. All titles must be approved in advance by the firm, which means firms will have to not only set criteria for the use of titles and designations within the organization, but also monitor their use going forward.

The CSA intends for the "corporate officer title" requirement to be read broadly, which means that this prohibition also extends to the use of the word "Director" in any client-facing representative's title. The days of "Managing Director", "Director of Sales", "Regional Director" or "Wealth Management Director" are likely numbered, although there may be an ability to use these titles for representatives who only deal with institutional clients.

The new requirements will also mean firms must examine their marketing materials, onboarding documents and websites to ensure they paint an accurate picture of the products and services available to the investing public, and make it clear whether any of its products or services are restricted or limited to certain groups.

What your firm should be doing to prepare… it is never too early

- Leverage what you already have.
  - Your firm may have existing policies and procedures on assigning and use of titles. These should be reviewed and amended with the new requirements in mind.
  - Similarly, your firm's website, marketing materials and client disclosure documents likely outline your products and service offerings and how you position yourselves to the investing public. Work with what you have and update as needed.
- Identify your issues.
  - Do your client-facing representatives use titles that may be offside? For example, Vice President; Managing Director; President's Club; Diamond Club; Chair's Circle?
  - Are the designations and post-nominals used by your client-facing representatives (CFP, CFA, CIM, and PFP) understood and understandable by clients? Have they been granted by a reputable organization or are they subject to a rigorous curriculum and examination process? Do your people have the right to use these designations?
  - Do your website, marketing materials and client disclosure documents present an inaccurate picture of your product and service availability? Are

there minimum account size or net worth requirements? Are these clearly noted?
    - Do you deal with a lot of older or vulnerable investors? The CSA note that these investors may be particularly susceptible to misleading communications and titles – titles such as “Senior’s Specialist” or “Certified Senior’s Advisor” and the like are particularly objectionable in the view of the CSA.
- Develop a process to approve the use of titles and designations.
    - Outline and adopt well-defined criteria for accepting or rejecting titles and designations.
    - These criteria should list the factors to be assessed when deciding to permit the use of a title and designation. The Companion Policy to NI 31-103 has some helpful guidance.
    - Identify any titles used that are or could be misleading given your client base meaning that they may make sense to you as an industry person, but clients may not be as familiar with them.
    - This may involve working with your HR department to change titles in job descriptions. You may wish to speak to an employment lawyer to ensure there are no issues with changing a representative’s title, particularly if you are not changing titles across your organization (that is, non-client-facing individuals may retain titles that the CSA deem objectionable for client-facing representatives)
    - Extra care should be taken in relation to titles and designations that are specific or unique to your firm or not commonly used in the industry.
- Formalize any officer- or director-sounding titles with appropriate corporate resolutions if these titles are to be kept, and make the applicable government filings.
- Add the approval and use of titles to your training programs for all client-facing representatives so that everyone knows the rules and the process.
    - Be sure to train your marketing and/or compliance staff on the new requirements, so that public and client-facing documents are not misleading.
- Ensure that the firm’s written compliance policies and procedures reflect the mechanisms for assigning, using and prohibiting titles and designations. Link this policy to the other policies and procedures that are intended to address misleading communications or dealing with clients.
- Develop a plan for communicating any changes in titles or their use to clients by December 31, 2021.
- Make sure business cards, social media sites (LinkedIn) etc. are updated with new titles.
- Be aware that if the proposed amendments to the various registration forms published in February 2021 come to pass as written, the CSA will ask individual representatives to indicate their titles – in this way, the CSA will have a better window into “what’s in a name”. The comments period ended for these proposals on May 5, 2021.

How can BLG help?

With December 31, 2021 fast approaching, we would be pleased to help your firm with enhancing your compliance framework for identifying and addressing misleading titles and communications, including managing the rollout of internal training, policy

development, client documentation and employment law advice. Unlike Juliet, we understand that there is a lot in a name – and a lot to do to change them.

BLG's CFR Communications Series – Surging through 2021 to 2022

Please watch for the next in our series of topical articles relating to issues that have arisen for firms seeking to implement the CFRs. We will be hosting a series of webinars and podcasts to cover specific topics in accessible ways. We hope you were able to attend our CFR focused webinar on April 28. The recording of this webinar is now available here.

Our next article will focus on referral arrangements, given the enhancements to the existing rules coming into force on June 30, 2021.

You can access our other articles in our CFR Communications Series below:

- BLG's Vision of the Client Focused Reforms brochure.
- Episode 1: Conflicted over how to identify and address conflicts?

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