New CIRO guidance on “fit and proper”: Checkpoints ahead

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On June 24, the Canadian Investment Regulatory Organization (CIRO) published new Guidance on the Fit and Proper Test for Approved Persons (GN-9200-26-001) (the Guidance), replacing the Oct. 14, 2021, IIROC Guidance Note on this issue.

The Guidance reiterates that CIRO will evaluate individual Approved Persons applications to determine whether an individual is suitable, or “fit and proper,” on the basis of three fundamental criteria: integrity, financial solvency and competence, while also considering whether registration is in the public interest or is otherwise objectionable.

Factors registration staff (Staff) will consider when evaluating an individual’s integrity include whether the individual was convicted of any offence, with particular weight given to offences of dishonesty, fraud, financial crime or other offences under legislation relating to securities, financial services, insolvency, insurance, consumer protection, money laundering, market manipulation or insider trading, and whether the individual was the subject of any complaints relating to regulated activities. Factors Staff will consider when evaluating financial solvency include whether the individual has been the subject of any judgment debt or award that remains outstanding, if the applicant has filed for bankruptcy, or if the applicant failed to meet a material financial obligation as it came due. When considering competence, Staff will assess whether the individual satisfies the applicable minimum CIRO proficiency requirements and whether they have demonstrated by education, experience and training that they would be able to perform the regulated activity. The full list of factors on how Staff evaluates the three fundamental criteria, and whether approval is contrary to the public interest or objectionable, is set out in the Guidance.

The Guidance also notes that, where Staff has concerns about an individual, they may recommend refusal, revocation, suspension or imposing terms and conditions on their approval/registration, along with indicating that imposition of terms and conditions may be recommended where enhanced supervision or other protective/corrective measures are appropriate. A more extensive review may occur if an approval or registration application contains disclosure on Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* under item 12 (Resignations and Terminations); item 13 (Regulatory Disclosures); item 14 (Criminal Disclosures); item 15 (Civil Disclosure) or item 16 (Financial Disclosure). CIRO expects that certain supporting documents will

accompany the application for registration, with the specific document required depending on which of the items listed above are disclosed – for example, an unsatisfied debt obligation may require the applicant to produce evidence of the debt amount and repayment plan.

Finally, the Guidance provides best practices to assist Dealers in conducting due diligence on prospective Approved Persons, which includes obtaining explanations from the applicant regarding any client complaints and ensuring applicants understand the questions in Form 33-109F4. Dealers are cautioned that failure to take reasonable steps to conduct due diligence may put into question the Dealer's **own** ongoing fitness for registration.

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