

September 28, 2020

VIA EMAIL

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Dear Sirs/Mesdames:

**Re: CSA Staff Notice 31-358 Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments (the “Proposed Guidance”)**

The Canadian Advocacy Council of CFA Societies Canada<sup>1</sup> (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Guidance.

The Proposed Guidance considers three different Chief Compliance Office (“CCO”) models for registered firms, including the shared CCO model where an individual applies to be the CCO for more than one registrant firm. We agree that a shared CCO model is workable, particularly for smaller registrants in the categories of Investment Fund Manager, Exempt Market Dealer and/or Portfolio Manager. We believe the model would also be helpful for certain larger firms, such as private equity firms, that may require securities registration for dealing activities but whose registrable activities are limited. We believe the model can replicate the current situation where a firm hires a CFO that also performs that function for one or more other firms and can hence result in additional professional CCOs being available to more firms.

Many compliance costs are fixed, and thus are disproportionately borne by smaller firms. The shared CCO model will add needed flexibility and help level the playing field with larger firms. As an effective CCO is generally someone that can supervise the

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<sup>1</sup> The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit [www.cfacanada.org](http://www.cfacanada.org) to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 165 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

functions of the firm in person and have a presence, it is important in the shared CCO model that a given firm's CCO not be viewed as an outsider or consultant and, instead, a member of the firm by other employees. In order to attract professional CCOs to participate in a shared model, it may be prudent to revisit the restrictions on conducting activities through a professional holding corporation, particularly for individuals who are not registered in any other category.

We agree that the questions set out in Appendices A and B will assist regulators with understanding a firm's business model and the appropriateness of application for the CCO models under consideration. We acknowledge that the regulators may be asking firms and applicants more questions about their business model and related policies and procedures manual during the application process, thus requiring written responses and/or holding more in-person interviews to determine the suitability of these models to the firm. However, this also increases the costs of registration. Additional guidance and explicit rules (resulting from additional feedback received from this consultation and/or early consideration of registrant proposals for these CCO models) or an FAQ document from regulators would assist with reducing this impact to firms.

While the two appendices to the Staff Notice outline expectations of the process and provide firms with an overview of the areas they need to consider and manage, additional information with respect to the specific risks identified by the regulators in each of these models would be very beneficial. Often, registrants are only first made aware of such concerns during or following a compliance audit (e.g. if regulators are concerned about a CCO's lack of understanding of the firm's operations, compliance processes or applicable securities law). It would also be helpful to know if the regulators have a position on whether the CCO must be a resident of the province where the firm is located.

The Proposed Guidance indicates that registrants should also consider s. 5.2 of 31-103CP, which provides more information on the shared CCO model and the multiple CCO model. The guidance found in the Companion Policy may require further modification to support firms utilizing the shared CCO model. Depending on the nature and complexity of the firm's activities, guidance to the effect that the model may only be appropriate if another individual is available to assist with time sensitive compliance matters and/or escalation of compliance issues to the UDP may be warranted.

Consideration could also be given as to whether enhancements to s. 5.1. of 31-103CP regarding the obligations of the UDP under any or all these models is warranted. For example, responsibilities or added guidance for the UDP could include some additional compliance related course proficiency requirements, meeting with the CCO on a regular basis, involvement in key issues and ensuring enough resources are provided for the compliance functions. While the UDP is responsible for overseeing the effectiveness of a firm's compliance system, when a firm utilizes a shared CCO, additional prescriptive UDP functions might include regular testing for compliance, documents, results and actions to ensure the model remains appropriate, or periodic firm

self-assessments of securities law compliance and testing of internal controls as it relates to the effectiveness of the model.

As CCOs are approved and the models evolve, it would be helpful for future registrants to have additional insight into the reasons for and attributes of specific approvals, or as applicable, denied applications. While we understand that each applicant is assessed on a case-by-case basis, applicants need to have as much information as possible about regulatory expectations in advance to keep costs and delay to a minimum. For example, explicit rules relating to the maximum number of firms that a professional CCO can oversee (or other relevant statistics such as number of registrants, clients, types of clients, or AUM) that could utilize the services of one individual CCO as well as rules respecting whether those firms must specialize in the same area or have the same registration categories (or have completely separate specialties to minimize conflicts) would be useful. Similarly, guidance could set out the circumstances where a model would no longer be appropriate. For example, if regulators view a certain size firm (either by number of registrants, clients, types of clients, or AUM) as requiring a full time CCO, this would be important information for registrants.

Although we expect a greater understanding of the alternative CCO models over time, consideration should be given to steps applicants can take in the short term to determine whether an application for registration will be successful even in the current model. The registration process is both time consuming and expensive for firms. A dedicated webpage or other resource provided to applicants may be helpful, including a plain language explanation of the types of exemptive relief relating to proficiency that may be required, and the process for such applications. Any specific advice that can be provided by staff early in the registration process within set timeframes as to whether the application will likely be successful (with or without exemptive relief) would improve the process and help ensure that firms recruit efficiently. As part of the registration process, all regulators could conduct pre-registration exit interviews (as currently conducted by the OSC), to help ensure the applicant has a strong compliance basis and institutional support for the firm to remain compliant going forward.

Ultimately, the goal of added guidance or additional FAQs would be to further assist firms to better understand their regulatory obligations prior to registration and assist regulators with establishing positive communications with registrants and deliver positive regulatory outcomes.

To the extent possible, it would be helpful for registrants to be able to expect similar processes and timelines for registration regardless of the sponsoring firm's principal regulator. We would also suggest education for and outreach to firms to manage expectations relating to the Proposed Guidance.

**Concluding Remarks**

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at [cac@cfacanada.org](mailto:cac@cfacanada.org) on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of  
CFA Societies Canada*

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