

Industry Trend in Risk Management Policies and Procedures



Bulletin

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AUM Law primarily serves the asset management sector, with specific expertise in the regulatory space. We focus on providing truly practical, forward-thinking advice and services.

We have recently assisted a number of clients in successfully addressing concerns raised by OSC staff. This bulletin is an overview only and it does not constitute legal advice. It is not intended to be a complete statement of the law or an opinion on any matter. No one should act upon the information in this document without a thorough examination of the law as applied to the facts of a specific situation.

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In recent weeks, we have noticed a new trend in field review reports (also referred to as “deficiency letters”) from the Ontario Securities Commission (the **OSC**). In the deficiency letters, the OSC has increasingly noted that not adequately addressing the area of risk management in a firm’s written policies and procedures (**P&P**) is a deficiency.

Under section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, firms are required to maintain a written P&P to manage the risks associated with their business in accordance with prudent business practices. Specifically, there is an expectation from the OSC that a firm’s P&P will contain the following information:

- identification of who is responsible for risk management, including their roles and responsibilities
- identification of what the key business risks are and how they are managed
- a description of how these key business risks are measured and monitored
- a description of the risks within client and/or fund accounts, and how these are to be measured and monitored

In addition to risks that may be prevalent throughout the industry, every firm will have a unique set of risks associated with its business and operations. Examples of the types of risks to consider include the following:

- If there is one key person managing the business (or there is a single individual registrant), what happens if they become ill or are otherwise unavailable for an extended period of time? What happens if they resign?
- If you only make investments in a specific industry, what happens if the industry collapses or is otherwise affected on a mass scale?
- If you rely heavily on technology and service providers, what happens if they become unavailable inexplicably for an extended period of time, or if your relationship fails such that they refuse to cooperate with you in your efforts to migrate your services?
- Are there any reputational risks associated with your business?
- If you are introducing a new product, program, or employee, what are the risks that may flow from such introduction?

The OSC expects these risks to be identified, considered, and addressed through documentation which demonstrates that the firm underwent a process of risk identification and risk management. While your firm’s business continuity plan (**BCP**) may identify and address some of these risks, the BCP may not be adequate on its own if it does not contain a fulsome description of identified risks and mitigation strategies.

If you have any questions or would like to discuss this with us further, please contact any member of our [Regulatory Compliance Group](#).