

**Did you know...** on this day in 1919, the New York Stock Exchange closed its doors for the day, to allow frenzied clerks to clear paperwork from a tumultuous month during which trading volumes regularly exceeded an astonishing 1.5 million shares a day. Nobody loves paperwork, but at least back then they didn't have to worry about cybersecurity!



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### 1. [Broad Jurisdiction of BCSC Affirmed by Court of Appeal](#)

A recent Court of Appeal decision affirmed the broad reach of the British Columbia Securities Commission (BCSC) to sanction the conduct of BC residents in actions targeted at investors located in foreign jurisdictions. In *McCabe v. British Columbia (Securities Commission)*, the court affirmed the jurisdiction of the BCSC to sanction a BC resident for making misrepresentations in documents about an American company distributed to residents in the United States. The Court of Appeal affirmed that Mr. McCabe's actions had a real and substantial connection with BC and therefore were found to be within the jurisdiction of the BCSC.

### 2. [MFDA Offers Guidance on Cybersecurity](#)

The financial services industry continues to be among the top sectors targeted by cyber-crime. In an effort to help its members navigate increasing risk, the Mutual Fund Dealers Association of Canada (MFDA) recently released a [bulletin](#) providing guidance on appropriate policies and controls. The MFDA underlines the importance of creating a cybersecurity "framework" in order to protect a firm's confidential information, its reputation, and its ability to operate, guidance that is in line with the risk-based approach that is seeing [global uptake](#).

The bulletin identifies key areas to keep in mind when developing a framework, including:

- Ongoing training of staff to raise awareness of cybersecurity issues (of particular importance given that a high percentage of breaches are initiated internally)
- Establishing regular testing and updating of systems
- Protection of networks utilizing tools such as encryption, next-generation firewalls, and anti-malware solutions

- Obtaining cybersecurity insurance coverage
- Account management and access control using measures such as password protocols and levels of access

Please speak to a member of our [Regulatory Compliance Group](#) about how we can help you stay ahead of cybersecurity risks.

### 3. Have You Set-Up Your SEDAR Profile?

As we have [previously discussed](#), the filing of certain exempt market offering and disclosure documents through the System for Electronic Document Analysis and Retrieval (SEDAR) became mandatory on May 24, 2016. As a result of these changes, every issuer is now required to create a SEDAR profile. Dependent on the type of issuer, either an “Investment Fund Issuer” profile or an “Other Issuer” profile must be created.

For further information on how to complete a SEDAR filing, which profile to create and the access level of the filings, please refer to [Multilateral CSA Staff Notice 13-323 Frequently Asked Questions About Making Exempt Market Offering and Disclosure Filings on SEDAR](#).

You are encouraged to [contact us](#) well in advance of your filing deadline in order to create SEDAR profile(s) for each issuer.

### 4. Amendments to Derivatives Data Reporting

The Ontario Securities Commission (OSC) recently announced amendments to OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and the related Companion Policy (the TR Rule). The TR Rule requires that all over-the-counter (OTC) derivative transactions involving a local counterparty be reported to a designated trade repository in Ontario.

Most notably, the amendments to the TR Rule require that all eligible local counterparties to reportable transactions acquire, maintain and renew a legal entity identifier (LEI). An LEI is a 20-character alphanumeric code that is available in Canada [through DTCC](#).

Prior to the amendments, reporting counterparties were responsible for ensuring that eligible counterparties to a transaction were identified using an LEI, but lacked an effective means to enforce this and could use a substitute LEI in the interim. Under the amendments, individuals and those not eligible to receive an LEI will be identified by the reporting counterparty with an alternate identifier.

The amendments to the TR Rule also provide an exception from the requirement to report derivatives data for transactions between local counterparties and their affiliates, and extended the deadline for public dissemination of transaction level reports by designated trade repositories to January 2017.

The amendments to the TR Rule are anticipated to come into force on July 29, 2016.

For more information on the TR Rule, please see [our nutshell](#) on this topic, or [contact us](#).

### 5. OSC Whistleblower Program Set to Launch

The OSC’s controversial whistleblowing policy, the first of its kind amongst Canadian regulators, is scheduled to receive final approval and launch early this summer. The program, adopted following considerable stakeholder consultation in 2015, aims to encourage employees to report, and aid in the investigation of, potential violations of securities law.

In the event that monetary sanctions of over \$1million are imposed, whistleblowers can expect an award of between 5% and 15% of total penalties, up to \$5million. This incentive structure was set following mixed reviews of the original \$1million cap, which participants of the Whistleblower Roundtable commented was too low to provide sufficient incentive to report. The program will also feature the ability to report fully anonymously, through a whistleblower’s lawyer.

The Securities Exchange Commission's (SEC) whistleblower program (the basis for the OSC model) has, since its inception in 2011, paid awards totaling \$57million for information that has led to a number of enforcement actions with penalties exceeding \$1million. Although the success of the OSC's program is difficult to predict, OSC Chair Maureen Jensen has reportedly stated that the commission has already received considerable interest from would-be whistleblowers.

Please [contact us](#) if you would like to further discuss this topic.

## Frequently Asked Questions

- > What is the difference between IRCs for prospectus funds and IRCs for private pooled funds?

If you have both a prospectus fund and a pooled fund, each should have a separate IRC charter. The mandate of the IRC for the pooled fund should be restricted relative to the mandate for the prospectus fund, since the mandate for the prospectus fund is based on, and enjoys limitation of liability provided by, National Instrument 81-107 – *Independent Review Committee for Investment Funds* (NI 81-107). The pooled fund mandate is purely contractual. For the pooled fund, the appointment and mandate should clearly set out that the IRC is being appointed only with respect to regulatory relief that was obtained (e.g., inter fund trading), and that it is not subject to NI 81-107 except as otherwise set out in its mandate.

Please contact a member of our [Investment Funds Group](#) for more information.

## AUM Law News

- > **Susan Han**, Senior Legal Counsel in our Investment Funds Group, has been appointed to the Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF) for a three-year term, starting June 2016. The Advisory Committee is convened by the Canadian Department of Finance to seek consultations and collaboration on strategic issues relating to Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime.
- > We are excited to announce that **Jeff Scanlon** will be joining AUM Law in early July as Deputy Chief Regulatory Counsel. Jeff brings a wealth of experience to the role, having most recently served as Senior Legal Counsel to the OSC's Compliance and Registrant Regulation Branch.

AUM Law primarily serves the asset management sector, with specific expertise in the regulatory and investment fund space. We strive to provide the most practical, forward-thinking advice and services, using a business model geared to efficiency, responsiveness and client service excellence. We are pleased to send you this summary of recent developments that may affect your business.



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 bulletin without a thorough examination of the law as applied to the facts of a specific situation.