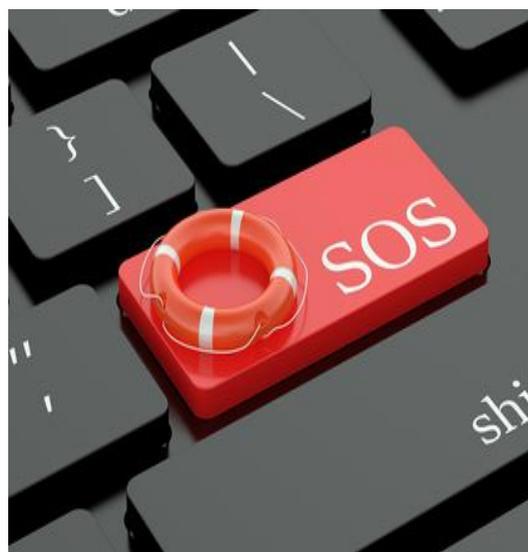


Think Before You Send

Happy Ed Balls Day!

On this day in 2011, former British MP Ed Balls accidentally tweeted his own name while shopping for the ingredients for his famous 12 hour pulled pork recipe. Twitter exploded, with hundreds of people re-tweeting his mistake, making Ed Balls an instant viral sensation. To add insult to injury, Ed did not delete the tweet once he realized his mistake, as he “did not know you could”. Today marks the 6th anniversary of Ed Balls Day, with festivities including countless memes from our friends across the pond as well as a commemorative “Ed Balls” tweet from the man himself at 4:20 BST.

While Ed Balls’ misfire ultimately ended on a high note, Canadian businesses who fail to think before they hit send may not find their resulting situation too funny. With the private right of action for CASL violations coming into force on July 1st, a solid CASL Compliance Program is more important than ever, We will explore this and much more in this month’s AUM Law Bulletin.



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1. The CASL Clock is Ticking

As mentioned in our [October 2016 Bulletin](#), a private right of action for persons Alleging they have been affected by a CASL contravention comes into effect on July 1, 2017. Though Canadian businesses have been (somewhat perilously) navigating CASL since it first came into force in July of 2014 ([see Kellogg](#)), this private right of action will add a brand new layer of exposure and concern.

Of particular concern is the anticipated groundswell of class actions that are

In Brief

U.S. Regulatory Sanctions Now Consider Victims’ Vulnerability

The U.S. Financial Industry Regulatory Authority (FINRA) has revised the National Adjudicatory Council (NAC) sanction guidelines it utilizes to include “a new principal consideration that contemplates coverage for financial exploitation of vulnerable individuals or individuals with diminished capacity.”

The guidelines have also been updated to include three new sections pertaining to systemic supervisory failures, borrowing and lending arrangements and short interest reporting.

expected to begin shortly after July 1st. As remedies include compensation for losses incurred, and as well as specific amounts for specific CASL violations, a class action could have a devastating impact. Further, as CASL provides for the personal liability of officers and directors of a company, private actions could be brought against officers and directors personally.

Though the private right of action is a development that must be taken very seriously, it is important to note that there is a due diligence defense that can be utilized when caught in CASL's crosshairs. Though CASL does not articulate what constitutes such due diligence, in examining the voluntary undertakings that have been entered into by organizations to date, one can deduce that a strong CASL Compliance Program, consisting of written policies and procedures, training, and audits to ensure internal practices align with those policies key. As well, in light of recent [CRTC Guidance](#), it is critical to maintain proper records or proof of consent.

Please [contact us](#) if you would like to discuss the sufficiency of your CASL Compliance Program in light of this impending private right of action coming into effect on July 1st.

2. The Ontario Budget and Financial Sector Scrutiny - Syndicated Mortgages, Best Interest Standard and Much More...

The Ontario government released its 2017 budget on April 27, and financial sector reform featured prominently.

In particular, the government plans to examine the feasibility of a universal best interest duty in Ontario, and introduce legislation that would enable self-regulatory organizations to enforce disciplinary orders through the courts.

Perhaps the most surprising aspect of the budget is the pledge to transfer the oversight of syndicated mortgages from the Financial Services Commission of Ontario (FSCO) to the OSC. The Ontario government is also in the process of establishing investment limits and expanding risk disclosure requirements, amongst other things, with respect to syndicated mortgages.

The implications of this transfer of regulatory oversight of syndicated mortgages to the OSC are unknown at this time, but we will be following this development closely. Stay tuned.

3. CSA publish proposed business conduct rules for derivatives dealers and advisers

Earlier in April, the Canadian Securities Administrators (CSA) published proposed business conduct rules aimed to protect investors in over-the-counter (OTC) derivatives markets and create a uniform approach to derivatives business conduct regulation in Canada. National Instrument 93-101 Derivatives: Business Conduct (the business conduct rule) outlines a fair dealing model that derivatives advisers and dealers are obligated to follow and which is meant to establish a robust investor protection regime that meets the International Organization of Securities Commissions' (IOSCO) international standards. The CSA is also expected to release derivatives registration rules in early summer for "derivatives dealers", "derivatives advisers" and potentially other derivatives market participants. The derivatives business conduct and registration rules will generally apply to persons or entities that are in the business of trading or advising in OTC derivatives, subject to any exemptions that may be available in the circumstances. The comment period on both the derivatives business conduct rules and the registration rules will be

In Brief cont'd

The guidelines do not impose fixed sanctions for individual violations. Instead, their purpose is to aid hearing panels and the NAC in levying appropriate sanctions consistently and fairly in disciplinary proceedings.

This growing focus on elderly and vulnerable individuals is reflected in the CSA's recent attention to same, and is something to be attuned to on this side of the border.

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Greater Cybersecurity Co-operation Recommended by the CSA

In a report recently issued by the Canadian Securities Administrators (CSA), the CSA suggests that Canada's securities industry needs to develop more formal mechanisms for sharing information in the event of a disruptive attack. The report outlines the results of a cybersecurity roundtable where participants indicated that the industry's individual response plans (IRPs) "are generally quite detailed and complete" but that the plans need to "address co-ordination and information sharing with other stakeholders, particularly in the context of a potentially market-wide cybersecurity incident."

The CSA's report stresses that firms ought to have internal controls and processes for reporting security breaches, and that the regulators also expect that registrants continue to remain vigilant in their approach to cybersecurity management.

open for 150 days until September 1, 2017.

Under the business conduct rules, various minimum standards, such as fair dealing, conflicts of interest identification and management, know-your-client and suitability, record-keeping and disclosure requirements will apply to the conduct of derivatives dealers and derivatives advisers. The proposed rule also notably includes the imposition of a senior derivatives manager role, whose responsibilities will include the requirement to certify that the firm's derivatives business unit is in material compliance with the law. We recommend that you review the proposed rule in order to consider how it might impact your business and the policies and procedures that you may have to develop to address these new business conduct requirements.

Additional disclosure requirements, restrictions and standards of care will also apply but only to activities involving less sophisticated derivatives parties that do not qualify as "eligible derivatives parties" (i.e., retail market participants). Criteria of sophistication and financial thresholds will be used to distinguish between "eligible derivatives parties" and the retail market. While the definition of "eligible derivatives parties" will be generally consistent with the definition of "permitted client" under National Instrument 31-103 with respect to trading and advising in relation to securities, there will be a few modifications to reflect the different nature of derivatives markets and participants. The proposed business conduct rule also contains a range of exemptions from its application, including for IIROC-member investment dealers, Canadian financial institutions that meet equivalent regulatory requirements and for certain derivatives end-users (e.g., entities that trade derivatives for their own account for commercial purposes providing they comply with certain conditions). Exemptions will also be provided to foreign derivatives dealers and advisers subject to and in compliance with specified laws of certain foreign jurisdiction as will further be detailed in appendices that will be circulated by the CSA at a later date.

Please [contact us](#) if you have any questions regarding the proposed derivatives conduct rules or registration rules or would like assistance with providing input to the CSA.

4. CSA Proposes Binary Options Trading Ban

The majority of Canadian securities regulators recently published for comment proposed rules making it clear that offerings of binary options in Canada may not be advertised, offered, sold or otherwise traded to an individual in Canada. The CSA emphasized in its notice that currently no offering of these products, including by a broker, dealer or platform, has been authorized in Canada. Further, all offerings of these products in Canada are illegal, with only a limited and narrow exception for transactions with highly sophisticated investors.

The CSA notes that many binary options offerings in Canada, as well as the platforms selling them, have been identified as vehicles to commit fraud. In many cases, no trading takes place on these online platforms at all and the operation is purely a fraudulent scheme to take money from individuals, including through cash advances processed on the target's credit card.

One of the central questions the CSA seeks comment on is whether the proposed definition of "binary option" captures contracts or instruments that should not be captured. "Binary option" is defined in the proposed instrument as a contract or instrument that provides for only:

- (i) a fixed amount if the underlying interest referenced in the contract or instrument meets one or more predetermined conditions, and
- (ii) a lesser amount or zero if the underlying interest referenced in the contract or instrument does not meet one or more predetermined conditions.

In Brief cont'd

New Procedural Rules and Guidelines Proposed by the OSC

The Ontario Securities Commission (OSC) has proposed a new set of procedural rules and guidelines that aim to aid unrepresented respondents in an OSC hearing participate in the proceedings. The proposals have been simplified to include fairness and accessibility for a broad range of respondents and also incorporate recent guidelines on electronic submissions, the use and disclosure of personal information, and case-management timelines for enforcement proceedings.

The proposals are being published with a 60-day comment period ending June 19.

In Ontario, the comment period for the proposed rules is open until July 28, 2017. If you would like assistance in drafting your comment letter or would like to discuss further, please contact our Regulatory Compliance Group.

Frequently Asked Questions

> Question: What are some considerations for a fund manager if it has made a fraudulent redemption payment?

In a situation where a fund manager has made a fraudulent redemption payment, the following questions should immediately be considered:

- Is there a need to inform FINTRAC?
- Is there a need to inform the OSC?
- Is there a need to inform the applicable insurance company?
- Is there anyone else that should to be informed?

The fund manager should also consult with their audit partner regarding the accounting treatment of any fee reduction and consider any HST implications. Discussions should also be held with the custodian regarding possible client compensation as well as the client's execution of an accompanying release.

News & Events

Registrant Regulation Summit

As [announced last month](#), we are proudly sponsoring this year's **Annual Focus Event on Registrant Regulation Conduct & Compliance**, taking place May 2-3.

Visit the [conference page](#) for more details, or to register.

10th Annual Focus Event on
**REGISTRANT
REGULATION**
Conduct & Compliance

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.

