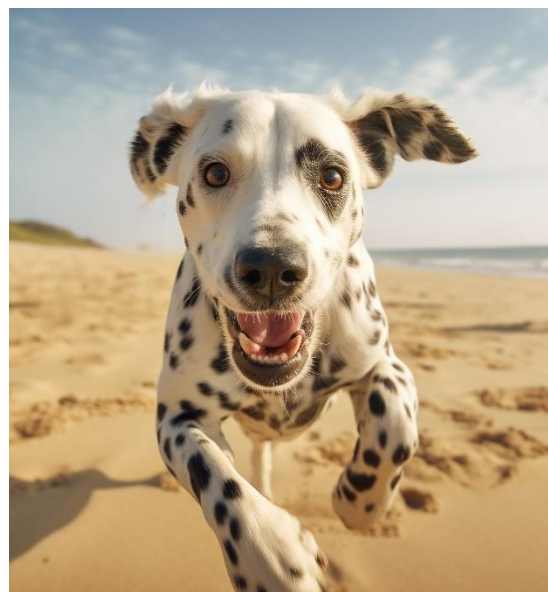


## Paws & Reflection Edition

We are, we believe, collectively in denial that summer is coming to a close. Although the days are becoming shorter, and the nights slightly cooler (sigh), it does not mean that we can't make the most of what is left of the dog-days of summer, including new trivia opportunities.

Did you know for example, that the Dog Star, aka Sirius, is the brightest star in the night sky, and has importance in various cultures and mythologies throughout history? Ancient Egyptians believed that the star caused annual floods, because it rose just before sunrise around the time floods began in the Nile River delta. The star's name has Greek origins, meaning "sparkling" or "scorching" and was associated with the hottest part of the year (i.e. "dog days"). Whether you are enjoying the last days of the summer heat or cooling off under the night sky, we hope you enjoy this abbreviated summer bulletin edition.



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### News

#### BLG's Resource Corner

#### 1. In the Dog House - Misleading Communications and Advisor Ranking Contests

Staff from the Canadian Securities Administrators (the **CSA**) and the Canadian Investment Regulatory Organization (**CIRO**) recently issued a reminder to CCOs and UDPs of the prohibition against misleading communications resulting from advisor ranking contests.

#### Reminder of the rules (in case you don't remember)

The Client Focused Reforms (**CFRs**), which came into effect on Dec 31, 2021, prohibit an advisor from using an award or recognition based (even partially) on that person's sales activity or

revenue generation in client communications if it could reasonably be expected to deceive or mislead a client about their proficiency, experience or qualifications. Seems reasonable. Right?

### **Fast forward two and a half years**

Apparently, wealth advisors still participate in ranking contests that are based on sales activity, revenue generation or assets under management. Moreover, their firms either permit this activity or do not recognize that it may be misleading.

Consequently, CSA staff members have issued a reminder of the rules and a call to action: firms and individuals should immediately take steps to get into compliance or they may receive a compliance deficiency on their next audit.

The CSA state that it may even be misleading if advisors are listed by the ranking/rating agency (that uses criteria that is deemed problematic), even where the advisors themselves do not advertise the award.

### **What should you do to avoid a compliance deficiency on your next review?**

If you haven't already done so, you should:

- Review your policy on misleading communications and update it if necessary;
- Clarify when an advisor ranking would be a misleading communication (for example, pay to play contests);
- Prohibit your advisors from participating in contests that would result in the publication of misleading communications;
- Remove, or require your advisors to remove, all rankings that would be considered misleading communications from all sites that are accessible to the public;
- Require advisors to request approval prior to participating in any business related awards program, so that your firm can conduct a review of the award program methodology in advance; and
- Develop guidance on qualitative and quantitative criteria that would lead to advisor rankings that are not misleading and could be published by the ranking agency or included in external communications by the firm or advisor (for example, best practices, compliance records, client retention and industry expertise).

## **2. Summer Supervision: FSRA's Plan for Credentialing Bodies**

In 2019, the Ontario government introduced the *Financial Professionals Title Protection Act (FPTPA)* which established minimum standards for the use of Financial Planner (FP) and Financial Advisor (FA) titles in the province. The legislation came into force in March of 2022, with transition periods set to expire in March 2024 for FA title users and March 2026 for those using the FP title.

The Financial Services Regulatory Authority of Ontario (FSRA) has enforcement authority under the FPTPA, which extends to approved credentialing bodies, individuals who use the FP/FA title without a credential (and who are not covered by the transition periods), and any person or organization holding themselves out as an approved credentialing body or purporting to grant an FP/FA credential without FSRA's approval. As part of ensuring compliance with the FPTPA and associated guidance/terms and conditions, FSRA recently released its '2023-2024 Financial

Planners and Financial Advisors Supervision Plan' which outlines the ways in which FSRA will examine how approved credentialing bodies are meeting their obligations.

FSRA applies a risk-based approach to its supervision of credentialing bodies. How a credentialing body's risk is assessed will depend on a number of factors including the number of complaints FSRA receives against the body, instances of non-compliance with the FPTPA, rule or associated guidance/terms and conditions, any inaccurate Annual Information Returns, the financial position of the body, and the number of credential holders in their program. As part of its supervision plan for 2023-2024, FSRA identified four "key areas" which will draw heightened focus over the next two years:

**Putting Client's Interests First:** One of the central principles which FSRA requires credentialing bodies to integrate into their credentialing program is the requirement to put the interests of the client first. To satisfy this requirement, FSRA requires all credentialing bodies to ensure credential holders adhere to a code of conduct/professional standards which expressly incorporates the principle of putting a client's interests above that of the credential holder.

**Resource Stress Testing:** FSRA expects each credentialing body to commit adequate resources to ensure they are able to effectively administer and maintain their credentialing program. As part of meeting this standard, credentialing bodies are expected to have appropriate policies to manage conflicts of interest, an adequate number of qualified, competent subject matter experts to deliver curriculum content and conduct oversight and supervision of credential holders, a resource requirement projection to determine current and future staffing needs, and sufficient resources to handle the operations of the credentialing body and to investigate and resolve complaints or conduct disciplinary proceedings where necessary.

**Complaint Handling:** The FPTP Rule requires credentialing bodies to maintain an effective complaint handling process which is both transparent and impartial. As part of this requirement, FSRA has clarified its expectations for credentialing bodies to meet this standard by having:

- a fair, easily accessible, and efficient complaint handling process;
- robust processes to oversee credential holder conduct, adjudicate complaints, and impose discipline;
- reasonable service standards including standardized processes to investigate complaints including publishing of the facts and associated disciplinary action;
- unbiased and impartial processes to enforce the code of conduct/professional standards; and
- a robust and effective complaints management program.

**Disciplinary Process:** The FPTP Rule requires credentialing bodies to maintain transparent and impartial processes to enforce discipline where there is evidence of misconduct by credential holders. In order to meet this standard, credentialing bodies must have standardized criteria and processes in place to implement appropriate disciplinary action relative to the type of misconduct, to reach consistent and reasonable disciplinary outcomes sufficient to deter further misconduct, and to have a reasonable publication policy for disciplinary actions.

Individuals who wish to use either the FP or FA title in Ontario and who are not covered by a relevant transition period will need to obtain a credential from one of the [four credentialing bodies](#) already approved by FSRA. Failure to do so may result in an examination and the issuance of a compliance order, the details of which will be published on FSRA's website. In addition, firms would

be well-advised to ensure that their advisors have the appropriate credential from an approved body and to maintain documentation evidencing that fact.

### **3. Like a Cloudless August Sky, Ministry of Finance Quietly Proposes New Authorized Purposes for Enforcement Money**

Earlier this month, the Ontario Ministry of Finance released a proposed [new regulation](#) under the *Securities Commission Act, 2021* which would expand the purposes for which the Ontario Securities Commission (OSC) can utilize enforcement money collected as a result of enforcement orders or settlements.

Current rules allow the OSC to allocate enforcement monies: (i) to or for the benefit of third parties; (ii) for use by the OSC or third parties to educate investors or promote or enhance knowledge and information of persons regarding the operation of the securities and financial markets; or (iii) for any other specified purposes in the regulations.

The two new proposed purposes for enforcement monies are: (i) to enhance the OSC's capabilities in information technology, data acquisition and data analytics to address matters relating to investor protection, the reduction of systemic risk or the integrity of the capital markets; and (ii) to fund activities of the OSC's Office of Economic Growth and Innovation that are intended to foster innovation, capital formation and competition in Ontario's capital markets.

The Ministry provides one example of an enhancement under the first new proposed purpose; that is, the development of software or hardware or the implementation of special projects for data integration or risk modelling. The Ministry further explains that this does not include ongoing operating costs.

The current practice of prioritizing the allocation of enforcement monies to investors who incurred financial losses as a direct result of misconduct would not change, in that funds will continue to be allocated to other purposes only if distribution to a harmed investor cannot be reasonably carried out.

It is proposed that internal controls would be established to ensure that enforcement monies are used appropriately and not for ongoing expenditures, which controls would include documentation, review and an approval process for eligible expenditures. As with other expenses, the OSC will be required to include information respecting the allocation and expenditure of money under these new purposes in its annual financial statements.

A number of potential benefits are set out in the notice accompanying the proposed regulation, including new technology and data abilities to strengthen the OSC's oversight and early detection of securities violations, and avoiding fee increases on market participants that would otherwise have been necessary to achieve the desired outcomes.

Comments on the proposal will be accepted by the Ministry until September 18, 2023.

#### **In Brief**

#### **Is it Hot in Here? CSA to Review Exchange-Traded Funds**

On August 10, the Canadian Securities Administrators (CSA) announced that it will be reviewing exchange-traded funds (ETFs) in Canada, noting that ETFs make up almost 15% of the assets

invested in publicly offered investment funds nationwide. The CSA will examine if current rules are still appropriate given the unique features of ETFs, including the availability of secondary market trading and mechanisms used to maintain market prices close to the underlying portfolio values.

In its assessment, the CSA will consider in particular whether practices published by the International Organization of Securities Commissions (**IOSCO**) relating to ETFs earlier in the year are appropriate for the Canadian market. Future consultations or regulatory changes may thus be on the horizon, which we and our colleagues at BLG will follow closely.

### **Trade Matching Guidelines Date Extended – Making Every Minute Count**

Earlier this month, the Canadian Securities Administrators (**CSA**) released [Staff Notice 24-319](#) that outlines their position and recommendations for the T+1 trade matching deadline to be included in National Instrument 24-101 *Institutional Trade Matching and Settlement*. The CSA will recommend a trade-matching deadline of 3:59 a.m. Eastern Time on the day after the trade (**T+1**) rather than a trade-matching deadline of 9 p.m. Eastern Time on the date a trade is made as was previously proposed. As a reminder, the move to T+1 is expected to be here before next summer on May 27, 2024.

### **FSRA's Keeping the Pressure on Unlicensed Persons**

The Financial Services Regulatory Authority of Ontario (**FSRA**) opened a short consultation late last month on proposed guidance respecting [Public Warning Notices](#) relating to unlicensed activity and other improper activity relating to FSRA regulated products and services. These notices are intended to be released publicly in order to curb consumer harm and act as a deterrent for future infractions.

It is contemplated that these public notices would be posted on FSRA's website, published in news releases, and contain information such as:

- the name of the individual or entity engaged in unlicensed activity;
- a warning to exercise caution or not to engage with the subject of the notice;
- details on the type of harm to consumers (e.g. the release of personal information);
- a statement that FSRA has determined there has been improper dealing of a regulated product or service or that the identified individual or entity is, or may be, providing regulated services without a license; and
- a caution to the public about dealing with the named individual or entity as they will not be afforded the same protections as when working with people who are regulated.

When determining whether to issue a public notice, FSRA will consider factors such as whether there is a clear indication of unlicensed activity (e.g. online presence, marketing materials), the risk of continuing consumer harm, and continued unresponsiveness to FSRA's written attempts to request that the unlicensed activity cease. Depending on the seriousness of the impugned activity, formal enforcement action may be pursued. The consultation also referenced the possibility of sharing information with other regulators, if need be, and indicated that the public warning notices would remain on FSRA's website permanently.

## Pawsitive Updates to CIRO's AML Guidance

On August 16, the Canadian Investment Regulatory Organization (CIRO) released updated guidance relating to anti-money laundering in [GN-3200-23-001 \(Guidance Note\)](#). The updates to the previous guidance reflect changes in Canada's anti-money laundering and anti-terrorist financing laws since the guidance was last updated in 2019, as well as additional guidance available from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Updates in the Guidance Note also reflect the interim rules, CIRO's name and to clarify that the guidance applies to investment dealers (and not mutual fund dealers) only at this time. The Guidance Note specifically indicates however that CIRO is working on consolidating the IDPC's and Mutual Fund Dealer Rule's client due diligence, KYC and surveillance requirements, and developing consistent AML examinations for all CIRO Dealer Members, such that the Guidance Note will be revisited and likely amended again in future.

## News

### IFIC Annual Leadership Conference – October 5

AUM Law's [William \(Bill\) Donegan](#) will be participating as a moderator on the Advice Panel at the Investment Funds Institute of Canada (IFIC) Annual Leadership Conference on October 5. The Advice Panel "will consider the factors reshaping advice and wealth management today, including the influence of regulation and the new SRO, new technologies, the rise of ESG investing and the challenges and opportunities posed by demographic changes." To register for the event, please click [here](#), or [contact us](#) with any questions or for more details.

### BLG Fall Webinar: Focus on CIRO – September 20

On September 20, [William \(Bill\) Donegan](#) will also be speaking alongside Borden Ladner Gervais LLP (BLG) lawyers at a BLG's Investment Management webinar. The webinar will provide an update on what we see as the more significant developments brought on by the creation of the Canadian Investment Regulatory Organization (CIRO), as well as our views on what CIRO will mean for the wealth management industry – in the short, medium and long-term. If you would like to RSVP to the webinar, please contact our communications team [here](#), by September 19. We hope to see you virtually there!

### More Important News – We're Moving This Fall!

AUM Law is pleased to announce that we are moving to the BLG Offices at Bay Adelaide Centre, East Tower, 22 Adelaide St. West, Suite 3400 on **Friday October 27**. Please update your contacts accordingly. If you have any questions regarding the move, please contact our communications team [here](#).

## BLG's Resource Corner

Like the warmth of an August sun bringing people together, we would like to take this opportunity to remind you of the relationship between AUM Law and BLG. AUM Law is a wholly-owned subsidiary of BLG and is integrated with BLG's suite of managed and advisory services known as BLG Beyond. Each of AUM Law and BLG operate and carry on business as separate law firms, and are not one partnership or corporation.

Our colleagues at BLG have provided the following insights we thought might interest our readers:

- [Six ways technology can enhance legal services in the leasing industry](#)
- [CSA publishes guidance on Public Crypto Funds – What fund managers need to know](#)
- [British Columbia financial institutions legislative and regulatory reporter](#)

For more information, please visit the [BLG website](#).

### **Practical Advice • Efficient Service • Fixed-Fee Plans**

AUM Law focuses on serving the investment management sector with legal and consultancy services related to regulatory compliance. AUM Law provides its registrant clients with annual fixed-fee regulatory compliance support plans and related offerings. It provides registrants with an efficient, innovative approach to help manage their legal and regulatory compliance obligations.

#### **BLG + AUM Law**

AUM Law has been part of BLG since May 2021 and is integrated with BLG's suite of alternative legal services known as BLG Beyond.

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.

