

April 2024 | Bulletin

Poetic Perspectives Edition

For the creative amongst our readers, you already know that April is National Poetry Month and the theme for 2024 is the weather. National Poetry Month occurs every April, and in Canada it was established in 1998 by the League of Canadian Poets to celebrate poetry's place in Canadian culture and encourage the reading and writing of poetry. Between compliance reports and reviewing financial filings, you are encouraged to take some time out of your day to discover a new poetry collection or rediscover old favorites. Our first (and likely only) attempt at poetry:

Papers blown about!
New guidance can be cloudy....
Need sunny updates.

Like this haiku, regulatory compliance involves simplifying lengthy, complex regulatory developments into bite sized pieces.

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1. Verse and Versatility - CIRO's Ambitious Three-Year Strategic Plan

Introduction

On April 11, 2024, the Canadian Investment Regulatory Organization (**CIRO**) released its three-year [Strategic Plan](#). The Strategic Plan covers the period of April 1, 2024, to March 31, 2027. CIRO's CEO [Andrew Kriegl](#) states, "*The Strategic Plan acknowledges the industry's significant transformation,*



influenced by the evolving needs of Canadians and technological innovation... It also highlights the importance of delivering on our day-to-day regulatory mandate and prioritizes the completion of the integration in its first year.” The plan outlines “Transformational Initiatives” and stresses the need for CIRO to stay ahead of industry developments and investor needs, while accomplishing the integration of its two predecessor organizations and effectively managing the ongoing operations of the regulator.

The plan is grounded on CIRO’s newly developed [Vision, Mission and Values](#):

Vision: *Be an agile and trusted regulator. Who helps the investment industry deliver the right financial outcomes for investors.*

Mission: *Promote healthy capital markets by regulating fairly and effectively so investors feel protected and confident investing for their futures.*

Values: *We do what is right. We are effective. We foster inclusion. We are forward-thinking.*

The plan comprises six strategic objectives related to the integration of the legacy organizations, regulatory evolution, access to advice, investors, registration and proficiency, and market regulation.

There are four transformational initiatives related to KYC standardization, registration systems and categories, and expanded surveillance of listed derivatives.

Strategic Objectives

- 1. Integration** - Integration of the two legacy regulators is underway. The key integration initiatives relate to the Dealer Fee Model, Member Compliance, Enforcement, Complaints and Inquiries, Continuing Education, the Proficiency Model, Harmonized Directed Commissions, Rule Book Consolidation, a cultural integration framework and Québec mutual fund dealer examinations.
- 2. Regulatory Evolution** - CIRO will establish service standards for the application and exemption approval process. It will also try to ensure that policy interpretation is consistent. CIRO proposes the creation of a Dealer Member Dashboard, as a central repository of dealer information, and to provide member dealers with reporting, trend information, and peer comparison. CIRO also proposes an enhanced centralized secure portal, where dealers can obtain their information from CIRO and where each dealer can upload information to meet reporting requirements.
- 3. Access to Advice** - CIRO wishes to support the expansion of advice options for investors and determine how rules can be amended to provide investors with an expanded list of advice offerings. They want to “right-size” regulatory obligations to the nature of advice provided in each advice offering. Interestingly, CIRO also intends to pursue the standardization of KYC information collected by firms to promote greater consistency in suitability determinations across firms and help facilitate portability of client data between dealers. CIRO also wants to lead the creation of streamlined and standardized client disclosure, which would then be consistent for all dealer members.
- 4. Investor Research, Education and Protection** - CIRO wants to profile Canadian investors. To do this, it proposes to perform both qualitative research through investor surveys and quantitative research by obtaining data on all member dealer clients. CIRO will conduct an awareness campaign and publish

education and resources for investors to help inform them on what is available to “support their financial outcomes”. In addition, CIRO plans to review the complaint handling framework and investor redress mechanisms, including the complaint handling rules, arbitration program and disgorgement proposals. CIRO intends to engage in outreach and consultations in various areas, including account transfers, AI and Machine Learning, cybersecurity, crypto and decentralized finance, with a view to providing guidance and support to dealer members.

- 5. Registration and Proficiency** - CIRO wishes to enhance the investment dealer “Proficiency Regime” and will complete the RFP process to select a new education services provider(s) who will offer licensing examination services. The regime is intended to be “cost-effective”, “current and relevant”, and result in suitable and competent Approved Persons. CIRO also intends to develop a proficiency pathway for both mutual fund dealer and investment dealer Approved Persons that is “consistent and fit for purpose” and a “simple and cost-effective” means by which mutual fund dealer individuals can transition to investment dealer individual categories. CIRO also wants to collaborate with the Canadian Securities Administrators (CSA) to enhance mutual fund dealer proficiency.

CIRO will proceed to conduct registration for mutual fund dealer individuals in Québec. It will also pursue registration delegation from other CSA members for all mutual fund dealer Approved Persons.

- 6. Market Regulation** - CIRO will seek to enhance regulatory oversight by leading a joint project with the CSA to improve the short selling rule framework, review current market trading policy as it applies to ETFs, and expand cross surveillance to include all listed derivatives on all cash products in CIRO’s portfolio. CIRO also wants to create a forward-looking plan for surveillance operations.

Transformational Initiatives

Four of the individual strategic objectives were identified as “transformational”.

- 1. KYC Data Warehouse** - The goal is to standardize dealer member KYC and other client data collection, and subsequently, for CIRO to take custody of client KYC information using a secure and encrypted system with CIRO as curator. CIRO’s objective is to “significantly enhance flexibility for clients”.
- 2. Registration Categories** - CIRO wants to pursue delegation of registration responsibility in all CSA jurisdictions for mutual fund dealer individuals.
- 3. Registration Systems** - CIRO wishes to develop systems capability to support the delegation of mutual fund dealer individual registrations in Québec and other CSA jurisdictions and create a registration system for CIRO Member Firms and Approved Persons which will “complement and support” the CSA National Registration Database.
- 4. Market Regulation** - The goal is to expand cross surveillance to include listed derivatives on all cash products in CIRO’s portfolio.

Conclusion

CIRO’s Three-Year Strategic Plan is indeed ambitious and will require focus and coordination. To accomplish the plan there will need to be many activities involving both CIRO and stakeholders occurring at

the same time. Initiatives such as the standardization of KYC will require industry input and will be challenging for dealer members.

This is a bold vision. CIRO dealer members and stakeholders will need to be highly engaged during the next three years of rapid and significant change.

2. Compliance in Stanzas: Breaking Down FSRA's 2024-27 Annual Business Plan

The Financial Services Regulatory Authority of Ontario (**FSRA**) recently released its [2024-27 Annual Business Plan \(Plan\)](#) setting out its core strategy for the next three fiscal years. The Plan incorporates FSRA's priorities and objectives, risk identification, assessment and mitigation strategies, plans for information technology and approved budget. The Plan incorporates feedback received from the public consultation on FSRA's 2024-25 Statement of Priorities. It also represents FSRA's response to the expectations outlined in the Minister of Finance's mandate letter regarding FSRA's 2024-25 priorities. These expectations and priorities include, but are not limited to:

- Supporting long-term burden reduction efforts, data filing requirements and continued engagement and collaboration with stakeholders based on FSRA's guidance framework.
- Improving regulatory efficiency and effectiveness across FSRA's regulated sectors, to protect consumers and improve value for money, enable innovation, and support harmonization with other regulators.
- Ensuring effective administration of the *Financial Professionals Title Protection Act, 2019*.
- Supporting the statutory review of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

The Plan includes an overview of FSRA's governance and organization structure as well as its strategic framework. The Plan notes the impact on FSRA's regulated sectors of inflationary pressures, interest rate hikes and technological advancement and innovation and highlights that FSRA is currently monitoring trends such as environmental, social and governance, vulnerable persons and alternative and private lending.

The Plan outlines FSRA's statement of priorities which includes modernizing systems and processes. FSRA is following a multi-year roadmap for its technology and information systems to support its core regulatory activities and procedures. Among the outcomes it is seeking is improved and, where possible, customized user experience with the FSRA online portal and improved turnaround time for licensing, filing and registration processes.

For the mortgage broker sector, FSRA's priorities include promoting a strong conduct culture by:

- developing rules and accompanying guidance to enhance principal broker effectiveness;
- commencing supervision against regulatory requirements outlined in the mortgage suitability guidance;
- implementing a risk-based conduct intervention approach to address deficiencies in a licensed firm's operations or misconduct; and

- analyzing and publishing private lending data to monitor trends and to identify potential consumer protection risks in support of risk-based supervision.

FSRA also intends to focus on enhancing professional competence of licensed individuals by publishing final guidance on mortgage product suitability to codify industry best practices and implement enhanced competency and continuing education frameworks for brokers and agents.

FSRA's priorities include ensuring the effectiveness of the title protection framework for financial planners and financial advisors by implementing a supervision plan for approved credentialing bodies and individuals who use the financial advisor title without an approved credential.

3. Crafting Connections: Phase 3 of CIRO's Rule Consolidation Project

On April 18, 2024, the Canadian Investment Regulatory Organization (**CIRO**) published for comment [Phase 3 of its Rule Consolidation Project](#) proposals. The objective of Phase 3 is to adopt rules that are common to the IDPC and MFD Rules and have been assessed as not having a material impact on stakeholders.

The Phase 3 Proposed DC Rules involve the adoption of rules relating to membership and member business activity approval matters, clearing and settlement of trades and trade delivery standards, and examination, investigation, and enforcement rules.

Membership and member business activity approval matters

CIRO proposes amendments relating to:

- **Ownership of a Dealer Member's securities** - The current investment dealer requirements will be extended to apply to mutual fund dealers. Specifically, CIRO approval will be required for the acquisition of more than 10% ownership of a dealer member and notice to CIRO will not be required for transactions resulting in the acquisition of less than 10% of a dealer member.
- **Dealer Member business activities** - The current investment dealer requirements will be extended to apply to mutual fund dealers. CIRO approval will be required before creating a wholly owned subsidiary whose principal business is a securities or derivatives broker, dealer or adviser. Provision is also made for the extension of the present investment dealer cross-guarantee requirement to mutual fund dealers, with allowance for CIRO to consider exemptions.

CIRO proposes that dealer members obtain approval before carrying on any business other than securities or derivatives activities, except where the dealer member owns an interest in a corporation and is not responsible for that corporation's liabilities.

- **Shared Premises** - CIRO is recommending a modified version of the current investment dealer rule that would be applicable to all dealer members. One exception proposed is that mutual fund dealers will not be required to disclose the full legal name of each regulated Canadian financial service entity sharing an office.

- **Membership disclosure policy** - CIRO wishes to harmonize the disclosure requirements, such that investment dealers would be required to include CIRO's website on client account statements and mutual fund dealers would have to provide clients with the CIRO official brochure at account opening.
- **Principal and agent relationships** - CIRO proposes to adopt the existing investment dealer and mutual fund dealer rule requirements relating to principal and agent relationships with no changes.

Dealer Operations

The current investment dealer requirements will be extended with minor modifications to apply to mutual fund dealers with respect to business continuity, trading and delivery standards for transactions, account transfers, bulk account movements and derivatives risk management.

Examination, Investigation and Enforcement Rules

- **Hearing Office** - CIRO proposes to adopt the new defined term "Hearing Office" to refer to CIRO staff who are authorized to administer enforcement and other proceedings.
- **Examination and Investigation Rules** - CIRO proposes to extend to mutual fund dealers the existing investment dealer rules which distinguish between enforcement investigations and compliance examinations.
- **Limitation period** - CIRO proposes to extend to mutual fund dealers the current investment dealer limitation period which provides that individuals remain subject to CIRO examination, investigation and enforcement rules for six years following the date they ceased to be a registered. The current mutual fund dealer limitation period is five years.
- **Admissibility of witness testimony and other evidence** - CIRO wishes to adopt the existing investment dealer rule provision that allows hearing panels to admit into evidence any oral testimony or other evidence whether it is given or proven under oath or affirmation.
- **Settlement hearings** - CIRO proposes adopting the existing investment dealer provision that all settlement hearings must be closed to the public.
- **Maximum Fines** - CIRO proposes increasing the maximum fine a CIRO hearing panel can impose to \$10 million per offence, from \$5 million.
- **Specific Sanctions** - CIRO wishes to adopt the existing investment dealer rule provisions regarding sanctions that a hearing panel can impose, including disgorgement.
- **Hearing Panel Powers** - CIRO plans to adopt a modified version of existing investment dealer rules allowing hearing panels to prohibit, revoke or bar an individual's approval or authority to conduct securities-related business.
- **Appointing Monitors** - CIRO proposes to implement a modified version of an existing mutual fund dealer rule provision regarding considerations when a hearing panel exercises its discretion to appoint a Monitor.

- **Sanctioned individuals** - CIRO proposes to bar registrants from hiring or engaging in any capacity, or remunerating, any individuals who are subject to a bar or suspension during the period of the bar or suspension.
- **Temporary Orders, Protective Orders and Applications in Exceptional Circumstances** - CIRO will be extending the existing rules concerning investment dealers to mutual fund dealers.
- **Review of Hearing Panel Decisions** - CIRO plans to adopt the investment dealer provisions allowing the parties to a disciplinary hearing to apply to the local securities regulatory authority for a review of a final hearing panel decision.
- **Hearing Committee Composition** - CIRO proposes that only industry committee members be required to reside in the district where the hearing occurs. Public committee members may reside in other districts (to facilitate virtual hearings).
- **Form of Hearings** - CIRO proposes eliminating the distinction between oral in person hearings and electronic hearings. Under this approach, an oral hearing could be conducted either virtually or in person, or in both forms simultaneously. Parties could object to the form of hearing, and the hearing panel would be able to order the hearing proceed in a specific form.
- **Electronic Delivery** - CIRO proposes allowing electronic delivery for all documents required to be served.
- **Other changes to the Rules of Procedure** - CIRO plans to use the investment dealer procedures related to deemed undertakings, orders to attend, the issue of summons, and adjournments.
- **Timelines** - The timelines for similar steps in a proceeding may be different under the two sets of rules. CIRO proposes to adopt whichever timeline would result in a more expeditious proceeding.
- **Terms and Conditions** - Under investment dealer rules, CIRO can impose terms and conditions on a dealer member's membership but must allow the dealer member an opportunity to be heard. This authority is intended to address scenarios where there are outstanding compliance issues that require CIRO to act, but do not justify disciplinary proceedings. CIRO plans to continue this process and expand it to mutual fund dealers.
- **Arbitration** - CIRO proposes to extend the investment dealer arbitration program to mutual fund dealers.
- **Information sharing with OBSI** - CIRO propose to permit the Ombudsman for Banking Services and Investments (**OBSI**) to share information with CIRO relating to its investigation and review of complaints against dealer members.

Questions

CIRO has asked stakeholders to comment on eight specific questions in addition to seeking general comments. The questions relate to items such as the need to republish the complete set of proposed Dealer and Consolidated Rules prior to approval, any undue burden that might be caused by requiring cross-guarantees between investment dealers and mutual fund dealers and CIRO's proposals regarding increasing the maximum fine a CIRO hearing panel can impose and the expansion of activity restrictions for sanctioned individuals.

Conclusion

This set of proposals is wide ranging and touches many of the existing rules. CIRO dealer members and other stakeholders should carefully review the changes and CIRO's questions and consider commenting to CIRO. The comment period expires on **July 17, 2024**.

In Brief

Will the Money Pour in from Restricted Dealers New Fees (or, Metaphors of Compliance)

As first reported in our [November 2023 bulletin](#), the Ontario Securities Commission (**OSC**) was consulting on new fees applicable to certain dealers. The [final amendments to OSC Rule 13-502 Fees and OSC Rule 13-503 \(Commodity Futures Act\) Fees](#) have now been published. The amendments include the expected new fees for restricted dealers and firms that have been permitted to carry on business under terms and conditions, as follows:

- \$24,500 at the time of registration as an additional fee; and
- An additional \$24,500 for an exemptive relief application if the restricted dealer operates as a marketplace.

The fees address the costs the OSC faces when onboarding restricted dealers. As initially proposed, the final amendments also change the definition of a "registered firm" to include individuals and companies required to be registered under Ontario securities law, thus capturing non-compliant unregistered firms in the requirements to pay participation fees and late fees.

The final amendments are expected to come into effect **July 2, 2024**.

The Poetic Art of Compliance - ASC and FCAA Extend Self-Certified Prospectus Exemption

The Alberta Securities Commission (**ASC**) and the Financial and Consumer Affairs Authority of Saskatchewan (**FCAA**) have extended the prospectus exemption available to certain self-certified investors in ASC Blanket Order 45-538 *Self-Certified Investor Prospectus Exemption* and FCAA General Order 45-538 *Self-Certified Investor Prospectus Exemption*. Previously, the exemption was set to expire on April 1, 2024. The exemption allows these investors to be treated in a similar manner to and invest along side individuals who qualify as accredited investors, provided they certify they have the specified financial and investment knowledge, acknowledge certain investment considerations and risks and comply with the other conditions of the exemption, including caps on investment. Conditions also include that the head office of the issuer must be located in either Alberta or Saskatchewan, the purchaser must be provided access to substantially the same information about the securities as would be provided to an accredited investor, and if the sale is by the issuer, the issuer must file a report of exempt distribution and pay applicable fees on or before the 10th day after the distribution.

Ode to Market Data Access

Back in [November, 2022](#) we wrote about CSA Consultation Paper 21-403 *Access to Real-Time Market Data*, which dealt with concerns about the cost of accessing market data in Canada where there are multiple marketplaces competing for the same securities to trade. The issues are relevant to anyone responsible for investment, order routing and execution decisions, as real-time market data contains information about orders sent to and trades executed on all Canadian marketplaces, both exchanges and alternative trading systems. Several CSA considerations and areas for feedback were set out in the Consultation Paper, ranging from the need to enhance the transparency of fee proposals related to real-time market data to how to incentivize market participants to provide consolidated real-time market data to all clients at reasonable prices.

On April 18th, the CSA released [Staff Notice 21-334 Next Steps to Facilitate Access to Real-Time Market Data](#) (the **Notice**). The Notice summarizes the twenty comment letters received on the Consultation Paper and advises stakeholders on the CSA's next steps. The views of commenters were diverse, particularly between marketplaces and market participants. As a result, the CSA has decided to move forward with the initial options proposed and is not currently pursuing the longer-term options but will undertake a further consultation to determine whether the introduction of consolidated real-time market products for retail investors and their advisors will benefit the Canadian capital markets.

As a result, the Notice indicates the CSA will take the following next steps:

- Implement an enhanced transparency regime for any fee proposals by requiring marketplaces to publish proposals relating to real-time market data products and services.
- Reconsider the use of the data fees methodology and establish an industry committee to provide recommendations.
- Assess facilitating access to real-time market data products and services by retail investors and their advisors and establish an industry committee to explore the creation of a framework to provide incentives to offer such products and services.
- Establish an industry committee to present recommendations about standardizing key terms and definitions for consolidated real-time market data agreements.

Further detail on each of these actions is set out in the Notice.

Important Reminders

The Analyser: Use of the Words “Financial Advisor”

Earlier this month, the Financial Services Regulatory Authority of Ontario (**FSRA**) sent out a notice reminding industry members that the transition period for using the Financial Advisor title (or similar titles) in Ontario has ended. A person is required to have an approved credential from an approved credentialing body to use that title, or FSRA is authorized to take enforcement action as set out in the *Financial Professionals Title Protection Act*.

BLG Resource Corner

Our colleagues at BLG have provided a variety of insights we thought might interest our readers, including a discussion of the type of conflicts fund managers should consider from the recent IRC sweep, and the consultation on the qualified investment rules for registered plans outlined in the federal budget.

- [18-year check up: Continuous disclosure review and guidance for IRCs](#)
- [Federal budget 2024: An attempt to restore generational fairness by targeting the wealthy](#)
- [Canadian Sustainability Standards Board proposes sustainability and climate-related disclosure standards](#)
- [When is a Financial Institution not a Financial Institution: CRA Announces New Administrative Positions on FATCA/CRS Compliance](#)

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

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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.

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