

November 2024 | Bulletin

## The Buttoned-Up Edition

In this last bulletin of 2024, we begin by remarking on an often ignored, but historically significant, common item – the button. It is believed that buttons have been in use for centuries, celebrated each November 16th on National Button Day. Ancient Egyptians, soldiers and common folk alike all needed to fasten clothing well. In the Victorian era, buttons were also decorative, some even made of jet when used on mourning attire. Whether made of plastic, metal, pottery or stone, buttons must be fastened just so to avoid a chill. To prevent chilly regulatory oversights, please button up and review our updates below.

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### BLG Resource Corner

## 1. OSC's Draft Statement of Priorities – Staying Secure

The Ontario Securities Commission (**OSC**) has released [OSC Notice 11-799 – Statement of Priorities: Request for Comments Regarding Statement of Priorities for Fiscal Year 2025-2026](#). The proposed Statement of Priorities is intended to reflect the OSC's key priorities beyond its core regulatory operations to advance the six strategic goals that were set out in its 2024-2030 Strategic Plan earlier this year.

For ease of reference, the six goals are set out below:

- Quickly deliver effective regulatory actions in anticipation of emerging trends;
- Enhance the experience of individual investors;
- Dynamically right-size regulation informed by changing needs, risks, and practices in Ontario and globally;

- Implement a tougher, and more visible response to capital markets misconduct;
- Foster conditions for capital formation and innovation in both public and private markets; and
- Strengthen the OSC's position as a trusted and influential voice in Canadian capital markets.

The OSC believes that influence, advocacy, collaboration, and education will complement its traditional policy-driven approach to regulation. It intends to enhance its horizon scanning and research capabilities to help monitor trends that are emerging in the securities industry and to respond more quickly to those trends. Research may include further study on the impacts of artificial intelligence, as well as research on capital raising including costs, access, and new financial instruments.

The OSC intends to focus on the specific needs of different types of investors, and engage in additional investor outreach, especially for underserved communities. The OSC will continue to support its policy making process with behavioural science research, which we have noticed some market participants have appreciated based on various comment letters. As part of advancing the goal of enhancing the investor experience, the OSC intends to implement a new statutory disgorgement framework, focus on the quality of services obtained by investors and the choices available to them, and consider the proficiency of advisors and conflicts of interest, including looking at product shelves. The OSC will also work with the Canadian Investment Regulatory Organization (**CIRO**) to clarify the ability of order-execution-only firms to provide non-tailored advice to meet the needs of do-it-yourself investors.

In a related note, the CSA [indicated in a press release](#) earlier this month that it continues to work on the introduction of binding authority for an independent dispute resolution service, expected to be the Ombudsman for Banking Services and Investments (**OBSI**). The CSA intends to issue a further consultation paper in the second half of 2025 that includes its proposed approach to oversight over OBSI.

The OSC has committed to implement a systemic approach to reviewing its regulations for proportionality and relevancy. In connection with right-sizing regulation, the OSC will continue to consider feedback on an access model specific to investment fund issuers and republish for comment proposed amendments. There will also be a CSA policy consultation on exchange-traded funds, with respect to areas unique to their trading and unit creation process.

Enforcement efforts will be focused on high-impact cases, including regulatory misconduct, fraud, and misleading disclosures.

The OSC's fifth strategic goal relates to fostering capital formation and innovation. It intends to continue to encourage testing through OSC TestLab and consider rule amendments that introduce a prospectus exemption based on other means of determining investor knowledge and capacity. Of interest, as part of its forward-looking intentions, the OSC will look at financing gaps among priority growth sectors in the Ontario economy and study the capital flows in these sectors, with a view to opportunities for pilot programs to address any identified gaps.

Finally, the OSC intends to enhance its voice within IOSCO, the global standard setter in the securities sector, leverage its thought leadership division, and voice its regulatory perspective as an intervenor in appropriate securities law court proceedings.

Comments on the draft Statement of Priorities are due by **December 20, 2024**.

## 2. Holding It Together - Summary Report for Investment Fund and Structured Product Issuers

On November 5, the Ontario Securities Commission (**OSC**) released [OSC Staff Notice 81-736 Summary Report for Investment Fund and Structured Product Issuers](#) (the **Report**) for the OSC Investment Management Division (**IM Division**) for the fiscal year ended March 31, 2024. The Report dives into several topics of interest to registrants, including the new responsibilities of the IM Division, regulatory policy initiatives, and emerging issues being considered by the division. Below is a summary of the Report, with a focus on issues relating to regulatory compliance.

### Responsibilities of the IM Division

In support of the OSC's mandate, the IM Division is responsible for administering the regulatory framework for investment funds and portfolio management services that are offered to Ontario investors. The IM Division's key functions include:

- reviewing and assessing disclosure for all types of publicly offered investment funds;
- assessing applications for discretionary relief from securities legislation;
- policy making to adapt to changes in the capital market;
- engagement with stakeholders;
- issuing guidance to stakeholders;
- monitoring and responding to emerging capital market and investor protection risks; and
- monitoring and participating in investment fund regulatory developments globally.

A new Portfolio Advisers team was added to the IM Division, which is responsible for policy matters, including applications for exemptive relief, relating to portfolio management services offered by individuals and firms. The team works with the Registration, Inspection and Examination Division (**RIE**) of the OSC on novel and complex registration issues related to portfolio management and advice. As needed, the RIE may conduct targeted examinations for certain data requests on behalf of the IM Division.

### Exemptive Relief Applications

As noted above, the IM Division reviews applications for exemptive relief. During the last fiscal year, the OSC received a noteworthy exemptive relief application with respect to fund financial statement filings.

A mutual fund that is **not** a reporting issuer and only distributes its units to accredited investors was granted a 30-day extension of the annual financial statement filing and delivery deadlines and the interim financial statement filing and delivery deadlines under National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)*. NI 81-106 requires investment funds to file and deliver annual financial statements within 90 days of its most recently completed financial year end and to file and deliver interim financial statements within 60 days of its most recently completed interim period. The relief was necessary for the fund given its December 31<sup>st</sup> year-end as it was primarily invested in a diversified portfolio of domestic underlying funds, the majority of which also had December 31<sup>st</sup> year-ends.

Normally, extensions of the financial statement filing deadlines are only granted to top funds that are not reporting issuers and which invest in underlying funds that are domiciled in foreign jurisdictions that have financial statement delivery deadlines exceeding 90 days. In addition to being notified of this change in financial statement delivery timelines, investors were offered the right, within two business days, to redeem their units of the top fund at the greater of the current net asset value (**NAV**) or the original purchase price of their units, with the filer to reimburse the fund in any case where an investor redeems their units where the original purchase price exceeds the current NAV.

Staff noted that market issuers who request financial statement filing extensions will be reviewed on a case-by-case basis, and any relief will be granted for existing top funds and not for future oriented funds.

### **Investment Fund Survey**

The Investment Fund Survey (**IFS**) was initially launched on April 26, 2021, to seek key information about investment funds with at least \$10 million in net assets managed by IFMs registered in Ontario. In September 2023, the OSC began sharing the historic survey results of the IFS via a public dashboard which can be found on the [OSC Investment Fund Survey data](#) website landing page. January 17, 2024, the OSC launched the 2024 IFS, which like prior years, sought data points including type of holdings (by geography and asset class), leverage, ownership, liquidity profiles and asset class exposure of investment funds. The IFS applies to all IFMs, regardless of fund size. The deadline to submit this information was April 30, 2024, and the OSC received data on approximately 5,700 prospectus-qualified and exempt investment funds managed by more than 400 IFMs as part of this exercise.

### **Landing Page on OSC Website**

The Report highlights that the IM Division landing page of the OSC website contains information relevant for investment fund issuers and their respective IFMs. Information can be found on the following areas: types of investment funds, prospectus offerings for investment funds in Ontario, operating an investment fund in Ontario, ongoing disclosure requirements for investment funds in Ontario, marketing and sales of investment funds, OSC eNews publications, applying for discretionary

relief, the investment fund survey, investment fund survey data, refiling and Errors List, latest policy developments affecting investment funds, and the latest orders, rulings and decisions.

If you would like to discuss the Report further, please contact your [usual AUM Law lawyer](#).

### 3. The Missing Piece? Proposal to Modernize the CIRO Arbitration Program

The Canadian Investment Regulatory Organization (**CIRO**) [is proposing reforms to its Arbitration Program](#). The Investment Industry Regulatory Organization of Canada (**IIROC**), one of CIRO's predecessor organizations, had previously sought comments on the program, which were based on recommendations made by an independent working group. Comments on the proposal are due on **January 31, 2025**.

The Arbitration Program is available now to claims by clients of investment dealers under \$500K and is relatively flexible in terms of its rules and procedures to suit the parties involved. Arbitration awards are final, and the program is like a court's fact finding and adjudication process, including discoveries, examinations, expert evidence and legal arguments. Parties must pay both the administrator and arbitrator fees, typically split 50% between the parties. The Arbitration Program has had low uptake, which the working group speculated was a result of the lack of awareness of the program and its costs. CIRO believes the program still has value for complex disputes that typically require more formal and adversarial procedures, and if it were to be closed, investors may not have any option but to go to court.

CIRO is proposing to make several changes to the existing Arbitration Program, in response to the working group recommendations and comments received on the original IIROC proposal. It proposes, for example, to make the Arbitration Program available to clients of both investment dealers and mutual fund dealers.

The consultation describes the potential interaction between the Arbitration Program and the dispute resolution available through the Ombudsman for Banking Services and Investments (**OBSI**). OBSI staff usually investigates complaints and makes compensation recommendations based on documents and interviews with the parties and can make non-binding recommendations up to \$350K (there is a proposal to increase this limit to \$500K). CIRO is currently proposing to limit access to the Arbitration Program to claims below the OBSI compensation maximum, to ensure that investors are aware of and try to resolve their claims through OBSI first. CIRO has posed specific consultation questions relating to access to the Arbitration Program for claims outside of OBSI's mandate or that have been withdrawn from OBSI. The upper award limit of the Arbitration Program would be raised to \$1 million, or higher on consent of the parties.

CIRO also poses questions relating to the appropriate limitation period, which is currently set at two years. It also proposes to set the ultimate claim resolution limit to 12 months.

As costs have been identified as a factor in contributing to low usage, CIRO proposes to:

- fund reasonable costs of case management and mediation (available for all claims);
- set reasonable arbitrators' fees and offer fixed fee arbitration options; and
- refer unrepresented litigants to legal clinics and lawyers offering pro bono services.

Finally, as a transparency measure, CIRO proposes to publish enhanced statistics about the usage of the Arbitration Program, including case volumes by region, type of dealers involved, time to resolution and detailed key issues, as well as select anonymized case studies.

## In Brief

### Navigating the Proposed SEDAR+ System Fee Increases Without Falling Apart

The Canadian Securities Administrators (**CSA**) except for the British Columbia Securities Commission (pending governmental approval post-election) have published [proposed amendments](#) (**Proposed Amendments**) to Multilateral Instrument 13-102 *System Fees* (MI 13-102). As a response to accelerating IT labour costs, the CSA is proposing an updated fee regime with **annual** increases in system fees over a five-year period, commencing later in 2025. The Proposed Amendments will increase system fees, intending to better align system fee revenues with projected national systems operating costs over the next five years.

The CSA has proposed a **60% system fee increase in November 2025** and 3% increases in each of the following four years. The Proposed Amendments note that the increase will be less than \$2,500 for 95% of filing and registrant organizations and less than \$1,000 for 85% of filing and registrant organizations, in the first year. However, we note that larger organizations with multiple SEDAR+ filings will tend to bear the bulk of the increased costs. These system fees are separate from any regulatory or other fees a user may be required to pay in any particular Canadian jurisdiction for various filings.

The CSA also note that they are considering whether they can develop and operate national systems more effectively and efficiently.

The consultation closes on **February 19, 2025**, and we would be pleased to assist you in determining the impact, if any, on your firm.

### From Threads to Seams: Delegation of Certain Registration Functions to CIRO

The Canadian Securities Administrators (**CSA**) [announced on November 20](#) that as part of an effort to create efficiencies and reduce regulatory burden its members are considering delegating select registration functions to the Canadian Investment Regulatory Organization (**CIRO**). More specifically, certain regulators are considering delegating the routine applications of firms in the category of investment dealers and of mutual fund dealers (both firms **and** individuals) in certain jurisdictions.

The announcement indicated that for now, portfolio managers, investment fund managers, exempt market dealers, scholarship plan dealers and restricted dealers would continue to be registered and overseen by the CSA.

Simultaneously, the Ontario Securities Commission (**OSC**) [announced](#) that it intends to delegate these expanded registration functions to CIRO which, subject to regulatory approval and an appropriate oversight framework, will be effective **very shortly** in spring 2025. The OSC has already delegated the registration of individuals acting on behalf of investment dealers to CIRO. As a second phase, the OSC is considering delegating additional registration functions to CIRO, which is part of the OSC's 2025-2026 draft statement of priorities. The Statement of Priorities indicated the OSC will examine the roles and interactions among Canadian regulatory authorities that oversee the capital markets to support optimal allocation of responsibilities and streamlined experiences for Ontario investors and businesses.

## Making Adjustments – Summary of CIRO Exemptions Granted

Earlier this month, the Canadian Investment Regulatory Organization (**CIRO**) released its summary of [rule exemptions granted by CIRO in 2023](#). Some common exemptions granted included:

- exemptions from UMIR provisions granted by CIRO staff from the rules relating to trading off-marketplace during a regulatory halt or a statutory hold period;
- exemptions granted by the CIRO board relating to dual registration to allow the operation of an investment dealer and mutual fund dealer within a single legal entity;
- exemptive relief pertaining to trading in crypto assets, relating to the requisite financial bond insurance and acceptable securities locations;
- relief regarding account opening requirements in relation to bulk account movements; and
- exemptions to allow certain approved persons to use corporate officer titles when interacting with clients.

With respect to proficiency and continuing education requirements granted by CIRO staff, it was noted that most applications related to the following courses:

- Canadian Securities Course;
- Partners, Directors and Senior Officers Course;
- Wealth Management Essentials; and
- 90-Day Training Program.

Usually, the applicants were required to demonstrate that their industry experience and education with respect to the first three listed courses were an acceptable alternative. The applications with respect to the 90-Day Training Program were mostly filed in connection with a transfer of individuals from a mutual fund dealer to a related investment dealer that was still providing the requisite training.

It is helpful to be familiar with the conditions imposed by CIRO in any particular exemptive relief granted, to assist in future if relief from the same rules is sought.

## Important Reminders

### Meeting the Deadline to File Reports of Exempt Distribution with Precision

Investment funds that utilize the option in National Instrument 45-106 – *Prospectus Exemptions* (**NI 45-106**) to file Reports of Exempt Distribution on Form 45-106F1 (**Reports**) once a year should start to consider populating the required information now.

As you may recall, to rely on many of the exemptions in NI 45-106, issuers must report prospectus-exempt distributions to every securities regulator where a distribution of securities was made in that jurisdiction. Generally, the filing deadline is ten days after the date of distribution. Investment funds, however, can file their forms once a year by January 30 for distributions made in the preceding year in reliance upon the accredited investor, minimum amount, or additional investment in fund units exemptions. Distributions made by an investment fund in reliance on other prospectus exemptions may need to be reported to the relevant securities authorities within ten days of the distribution.

An investment fund that is required to file the Report must file it electronically through SEDAR+. If the investment fund does not currently have a SEDAR+ profile, it must create one prior to filing Form 45-106F1 on SEDAR+. Each securities regulator charges a separate filing fee for the Report and the filing fees are paid electronically through SEDAR+.

We recommend that you start to collect the required information and prepare your forms well in advance of the deadline. Should you require assistance, please [contact us at AUM Law](#) as soon as possible to ensure that filing deadlines can be met.

### Delivery is Not Decorative – Guidance Regarding Disruption of Mail Services

At the time of this publication, there is an ongoing postal strike across Canada. Various regulators have issued statements or other guidance, reminding market participants that securities law contains various requirements with respect to the filing of documents with regulators and the delivery of documents to security holders. As an example, the [Ontario Securities Commission \(OSC\) has stated](#) that registrants must make reasonable efforts to meet their obligations to clients with respect to trade confirmations and delivery of other client documentation, and that information required to be filed with the commission should be delivered (via courier, for example), or faxed (yes, they still exist).

The OSC has also indicated that to the extent an application for relief from the delivery requirements is needed, they would attempt to deal with the applications as quickly as possible in urgent circumstances.



The Canadian Investment Regulatory Organization has also indicated [via bulletin](#) that its dealer members must ensure that document delivery requirements continue to be met. CIRO suggests that dealers take a number of actions, including providing clients with alternative methods to receive trade confirmations and account statements.

## BLG Resource Corner

Our colleagues at BLG have provided a variety of insights we thought might interest our readers:

- [No certification for Boal investors – Fiduciary duty ruled individual issue](#)
- [Investing in the long game](#)
- [Cleaning up disclosure: CSA provides guidance on AI washing and greenwashing](#)
- [OSC short-selling prosecution dismissed](#)

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

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### ***Practical advice. Efficient service. Fixed-Fee plans. Singular focus.***

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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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