CSA Staff Notice 31-325 – Marketing Practices of Portfolio Managers

Purpose

Staff in various provinces from the Canadian Securities Administrators (CSA staff or we) conducted a focused compliance review (the review) of the marketing practices of firms registered as portfolio managers (PMs). This notice summarizes our findings from the review and provides guidance to portfolio managers on suggested practices in the preparation, review and use of marketing materials. We will also use this notice to assess the marketing practices of other registered firms, where appropriate.

Background

The marketing practices of PMs are an ongoing area of concern for the CSA because the materials PMs use when marketing their firm's services, skills and experience influence investors.

We continue to see a number of issues in the marketing practices of PMs, including those that advise and market non-prospectus qualified investment funds, such as pooled funds and hedge funds.

As a result, the CSA Compliance Committee (the Committee) decided to conduct the review as part of our goal to better understand the marketing practices used by PMs and to harmonize compliance oversight approaches across Canada.

For Ontario PMs

In the fiscal year 2006/07, the Ontario Securities Commission (OSC) completed a focused review of the marketing practices of Investment Counsel/Portfolio Managers (now PMs). The concerns identified, as well as suggested practices, were outlined in OSC Staff Notice 33-729 – *Marketing Practices of Investment Counsel/Portfolio Managers* (Ontario Notice). The findings in this notice are generally consistent with the Ontario Notice published in November 2007. However, this notice includes issues and guidance in new areas and includes updates in certain areas previously identified in the Ontario Notice.

The discussion of items 1, 3 and 8 below have been updated from the Ontario Notice based on new guidance. Items 6 and 7 are new issues not previously discussed in the Ontario Notice. All remaining items provide guidance consistent with the Ontario Notice.

This notice also updates the Ontario Notice on the use of hypothetical performance data as a result of further information gathered by the OSC and other CSA staff from ongoing compliance reviews and from industry consultations.

Objectives of the review

The main objectives of the review were to:

- assess PMs' compliance with applicable securities laws

- broaden our understanding of the types and content of marketing materials PMs use
- develop a consistent compliance approach when reviewing a firm's marketing practices

Scope and methodology

The Committee gathered preliminary information on the PM firms' marketing activities through a survey. The Committee then used a risk-based approach to select a representative sample of 56 PMs for a review of their marketing practices. We also reviewed other aspects of the PMs' operations.

The sample included PMs of:

- non-prospectus qualified investment funds (i.e. pooled funds and hedge funds)
- large institutional investors
- retail and private clients

These PMs, in many instances, were also registered in other categories of registration including investment fund manager and exempt market dealer. We did not focus on mutual fund sales communications that are governed under National Instrument 81-102 – *Mutual Funds* as this was beyond the scope of our review.

Outcome

We sent a compliance deficiency report to each of the PMs selected for a review. We required each PM to submit a written response to the deficiencies we identified, including the proposed corrective actions they would take.

CSA staff will work with these PMs to ensure they address and resolve the marketing, and any other, deficiencies within a reasonable time frame. Where we continue to have concerns with a firm's actions in resolving deficiencies, we may consider other appropriate regulatory action.

We also sent follow up letters to those PMs that we surveyed, but did not review, where we identified specific breaches of securities laws in the marketing materials the PMs submitted. In these letters, we identified the breaches and required the firms to remedy the deficiencies in a timely manner.

Rules

When reviewing marketing materials for compliance with securities law, we rely on specific rules and instruments, both prescriptive and principles based. These rules require PMs to deal fairly, honestly and in good faith with their clients[1]. They also prohibit any

[1] In the participating CSA jurisdictions, this requirement is found in section 2.1 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*, section 14 of the Securities Rules (British Columbia), section 75.2 of the Securities Act (Alberta), subsection 33.1(1) of the Securities Act (Saskatchewan), subsection 154.2(2) of the Securities Act (Manitoba), section 160 of the Securities Act (Quebec), subsection 54(1) of the Securities Act (New Brunswick) and section 39A of the Securities Act (Nova Scotia).

person or company from making statements that are untrue or omitting information that is necessary to prevent the statement from being false or misleading.

While the relevant securities legislation is generally principles based, we intend the guidance in this notice to provide direction to PMs regarding how to meet these obligations. There may be other ways to meet these obligations. The suggested practices will serve as guidelines that the CSA will apply when assessing and determining compliance with securities law.

Summary of issues

We identified a number of deficiencies in the preparation, review and use of marketing materials by the PMs we reviewed.

Generally, the deficiencies were grouped into one of the following areas:

1. Preparation and use of hypothetical performance data
2. Exaggerated and unsubstantiated claims
3. Policies, procedures and internal controls
4. Use of benchmarks
5. Performance composites
6. Holding out and use of names
7. Other performance return issues
8. Disclosure related issues

Summary of guidance

Based on the results of the review, we identify below suggested practices to assist PMs in meeting their obligations under securities law, including the obligation to deal fairly, honestly and in good faith with their clients and to ensure that statements provided to investors are fair and not misleading. We expect and encourage PMs to refer to the suggested practices when preparing their marketing materials.

The following is a summary of the suggested practices we discuss in this notice:

1. presenting actual client performance returns and not hypothetical performance data with its inherent risks and limitations except in limited circumstances when appropriate
2. being able to substantiate all claims made in marketing materials
3. developing and implementing written policies and procedures that govern firms' marketing activities
4. using benchmarks that are relevant and comparable to a PM's investment strategy
5. including all portfolios that meet the criteria of a composite in the composite
6. firms and registered individuals using registered trade names and business titles that are not misleading
7. reporting performance returns from a previous firm or a firm's proprietary account only in limited circumstances where it is appropriate
8. ensuring marketing materials contain disclosure that is accurate, meaningful and up-to-date

Use of social media web sites

Before we discuss the specific issues and guidance from the review, we want to discuss a recent trend of using social media for marketing. In the review, we found that generally PMs are not currently making use of social media web sites to market the firm's advisory services. However, since there has been a steady increase in the general use of social media web sites such as Facebook, Twitter, LinkedIn and various chat rooms and blogs, we anticipate that firms and their registered individuals may begin to use these methods of communication to market their business activities and communicate with clients. We expect that firms and their registered individuals will comply with applicable regulatory requirements and securities legislation in their use of social media web sites.

Potential concerns

There are compliance and supervisory challenges that we expect registered firms to consider when using social media web sites as a means of communicating with clients and the general public for business purposes. Under subsection 11.5(1) of National Instrument 31-103 – *Registration Requirements and Exemptions* (NI 31-103) registrants are required to maintain records of their business activities, financial affairs and client transactions. There is increased risk that registrants may not be retaining adequate records of their business activities and client communications when using social media web sites. This is the result of interactive social media web sites that include the posting of both real time and static content. Registrants need to consider designing systems that will allow for compliant record retention as well as retrieval capability.

The use of social media web sites poses challenges from a supervisory perspective as firms need to consider the type of supervision that would be appropriate. Registered firms must determine the level or extent of supervision necessary as they have an obligation to protect clients from the use of misleading and false statements. This may include the use of a risk-based approach to determine the extent to which a firm's review of electronic communications is appropriate to meet its supervisory obligations.

Guidance

Registered firms should consider the following when determining whether to use social media web sites for business purposes:

- establishing policies and procedures for the review, supervision, retention and retrieval of materials on social media web sites
- designating an appropriate individual to be responsible for the supervision or approval of communications
- reviewing the adequacy of systems and programs to ensure compliant record retention and retrieval capability

Specific issues and guidance

The following is a more detailed discussion of the issues we identified in the review and suggested practices. We encourage registrants to use this notice as a self-assessment tool and to determine the areas where they can improve their marketing practices.

1. Preparation and use of hypothetical performance data

Hypothetical performance data is performance data that is not the performance of actual client portfolios. It is sometimes referred to as "simulated" or "theoretical" performance data and typically consists of either:

- back-tested performance data (i.e. past period), or
- model performance data (i.e. real time or future periods)

Hypothetical performance data also includes statistics such as standard deviation and Sharpe ratios, which are measures of volatility. Some of the PMs we reviewed presented the hypothetical performance data for the primary purpose of attracting new clients.

Back-tested performance data

Back-tested performance data refers to performance results created by applying a particular investment strategy to historical data over a period of time. PMs may create the data by using quantitative methods or formulas that may use historical index data, historical information about individual securities or historical performance data from existing investment funds the PMs manage.

For example, we identified a few PMs that presented back-tested performance data for fund of funds based on performance of existing funds or the performance of a particular index.

Model performance data

Model performance data refers to simulated investment results of a notional portfolio of securities that are presented over a period of time. In some cases, no actual client accounts follow the model. Generally, model portfolios are forward looking and are presented by the PM on an ongoing basis. They may also include portfolio returns that attempt to illustrate expected future returns.

PMs sometimes present model portfolios to illustrate their primary investment strategy for client portfolios. A PM will typically have clients whose managed account portfolios follow the same investment strategy and hold the same securities as the model. However, there may be variations in the percentage of each security held, the timing of security purchases and sales, and the price of a particular security.

Concerns

Approximately 20% of the PMs we reviewed had deficiencies with the hypothetical performance data they presented to investors. We identified the following general concerns related to the use of hypothetical performance data:

- many investors may not have sophisticated investment knowledge sufficient to fully understand the inherent risks and limitations of this data
- any outcome may be achieved as the performance data is produced with the benefit of hindsight and is subject to potential manipulation

- the data is often combined or linked with actual client performance data, which may give the appearance of a longer track record and that the information is based entirely on actual client performance
- there is inadequate disclosure regarding the methodology and assumptions used by the PM in calculating the data
- PMs can take increased risks with the creation of hypothetical portfolios as they do not have to manage these portfolios in real market conditions
- it is difficult to verify the calculation of hypothetical performance data
- PMs do not always deduct trading and other costs from the performance data (e.g. commissions and custodial fees). If they do, the amounts they deduct are estimates and not actual trading costs

PMs must comply with their obligations to deal fairly, honestly and in good faith with clients in the preparation and presentation of hypothetical performance data. This includes ensuring that the use of hypothetical performance data is fair and not misleading.

Factors we consider

We expect PMs to present actual performance returns for clients of the firm. However, in limited circumstances it may be appropriate to present hypothetical performance data in marketing materials. We consider all of the following factors when determining if the use of hypothetical performance data is fair and not misleading:

- Does the client receiving the information have sophisticated investment knowledge sufficient to fully understand the risks and limitations of the hypothetical performance data?
- Is the performance data calculated on a reasonable basis?
- Is the information provided in a manner that is not widely disseminated (e.g. provided to clients as part of a one-on-one presentation)?
- Is there clear and meaningful disclosure that the data is hypothetical and not actual, as well as the underlying assumptions used, the calculation methodology, the risks and limitations of the hypothetical performance data and other relevant factors?

Guidance

We expect PMs to market their actual client performance results. However, if a PM presents hypothetical performance data, considering the factors described above, we typically expect the following practices to be applied:

- ascertaining an investor's level of investment knowledge sophistication, as part of the PM's obligation to obtain KYC information and assess suitability, prior to the presentation of hypothetical performance data
- restricting the presentation to investors known to have sophisticated investment knowledge (i.e. not widely disseminating the presentation on a website or in an advertisement)
- labelling the presentation as "hypothetical" in a clear and prominent manner
- not linking the hypothetical performance data with actual performance returns of the PM. We expect hypothetical performance data to be presented separately from actual client performance data

- including clear and meaningful disclosure regarding the methodology and assumptions used to calculate the performance data, and any other relevant factors, and
- disclosing clearly a description of the inherent risks and limitations of the hypothetical performance data

2. Exaggerated and unsubstantiated claims

Exaggerated and unsubstantiated claims are statements made by PMs in marketing materials distributed without evidence to verify these claims. Generally, these claims relate to the PMs' performance, skills, proficiency, education, investment experience and client service.

This was the most common deficiency we identified, with approximately 60% of PMs deficient in this area. For example, we identified:

- claims of "superior track record" that were not substantiated or where the actual performance presented was lower than the returns of a relevant benchmark
- claims that individual PMs were "experts" in particular areas of portfolio management without sufficient evidence to support these claims

Concerns

Exaggerated and unsubstantiated claims to existing and prospective clients do not adequately reflect the PM's actual performance, skills, experience and education. Furthermore, prospective investors may place undue reliance on these types of claims when deciding whether or not to contract the services of a PM.

PMs must comply with their obligations to deal fairly, honestly and in good faith with clients in the preparation and review of their marketing materials. This includes avoiding making claims that are exaggerated or unsubstantiated. Certain CSA jurisdictions also have specific securities legislation prohibiting a registrant from making misleading representations. Registrants should not make a statement that a reasonable investor would consider relevant when deciding to enter into an advisory relationship with that PM if the statement is untrue or omits information necessary to prevent the statement from being false or misleading.

Guidance

PMs should be able to substantiate all claims they make in their marketing materials. We expect to see adequate references to the information supporting their claims so that investors can easily assess the merits of these claims. If a PM cannot verify a particular claim, it may be inappropriate to use.

3. Policies, procedures and internal controls

Approximately 33% of the PMs we reviewed had deficiencies relating to at least one of the following areas:

- no or inadequate written policies and procedures governing the preparation, use and approval of marketing activities
- lack of review of marketing materials by compliance or independent personnel

- no or inadequate books and records to properly record marketing activities conducted

Concerns

There is a risk that misleading statements will be communicated to investors, unless procedures are in place to ensure that this does not occur, such as, procedures to conduct an adequate review and obtain approval for marketing materials. The most common deficiency we identified was inadequate written policies and procedures for marketing activities or policies that did not reflect the actual marketing practices of the firm. For some of the PMs we reviewed, there were inadequate controls in place to ensure that marketing materials were adequately reviewed and approved by an independent individual, other than the preparer, prior to the dissemination of the marketing materials.

Registrants must establish, maintain and apply policies and procedures that establish a system of controls and supervision to ensure compliance with securities legislation and manage the risks associated with the registrant's business in accordance with prudent business practices. This requirement includes having processes in place to ensure that a firm regularly updates its written policies and procedures to reflect changes in the firm's business practices or to securities legislation. See section 11.1 of NI 31-103.

In addition, firms must maintain appropriate books and records to record and demonstrate compliance with their policies and procedures, as well as applicable requirements of securities legislation, as required under subsection 11.5(2) of NI 31-103.

Guidance

PMs should establish, maintain and apply written policies and procedures that are tailored to their marketing activities. At a minimum, we would expect compliant written policies and procedures to include guidance on:

- preparation, review and approval of marketing materials to prevent false and misleading statements
- ensuring compliance with applicable securities legislation, including prohibitions on holding out a non-registered individual as a registrant and misrepresentations
- independent review and approval of marketing materials by individuals with appropriate authority and proficiency (e.g. Chief Compliance Officer (CCO))
- construction, presentation and disclosure of performance composites, hypothetical performance data or any other performance data
- selection and presentation of benchmarks, including blended benchmarks

4. Use of benchmarks

A benchmark is a standard against which the performance of the PMs' investment strategy can be objectively compared and measured. PMs typically use benchmarks to assess the relative performance of their investment strategies, as they select benchmarks to represent the characteristics of the investment strategy.

Approximately 23% of the PMs we reviewed were deficient in the presentation and use of benchmarks in marketing materials. We identified the use of benchmarks that were not:

- comparable to the PMs' investment strategy
- disclosed with the full name of the benchmark
- presented in the same currency or on the same basis as the investment strategy or investment fund (e.g. total return or return without reinvested dividends)

In some instances, PMs did not maintain adequate books and records to support their calculations of the blended benchmarks or inadequately disclosed the composition of blended benchmarks they used in their marketing materials.

Concerns

Presenting inappropriate benchmarks does not provide a meaningful and relevant comparison to the PM's investment strategy or performance. As a result, investors or clients could draw, or infer, incorrect conclusions from the comparison. Inappropriate benchmarks may also result in the appearance that an investment fund or strategy is performing better than it actually is. PMs must comply with their obligation to deal fairly, honestly and in good faith with their clients when presenting benchmarks in their marketing materials.

Guidance

PMs should compare their performance returns against relevant benchmarks. In most cases, this means that there should be a significant degree of comparability and similarity between the investment strategy and the benchmark used.

In limited instances, it may be appropriate for a PM to compare its performance returns against a benchmark that has a different composition to that of its investment strategy. For example, a PM may compare its investment strategy to the S&P/TSX Composite Index or the S&P 500 Index, which are widely known and followed indices. In these cases, we would typically expect adequate disclosure to be made to explain the relevance of the benchmark in order to make the comparison fair and meaningful to clients. As applicable, we also expect a PM to include a discussion of the differences between the benchmark and the PM's investment strategy as well as the reason for using the benchmark.

5. Performance composites

A performance composite is an aggregation or grouping of the performance of one or more client portfolios that represent a similar investment objective or strategy. Often, PMs use performance composites when reporting performance to prospective clients. In our review, PMs typically presented composites to institutional and high net worth clients.

Approximately 30% of the PMs we reviewed were deficient in the construction, presentation and disclosure of performance composites. These deficiencies included:

- inappropriate grouping of client portfolios into a particular composite (i.e. PMs grouped client portfolios with dissimilar investment mandates and strategies into the same composite)
- composites that did not include all relevant client portfolios
- terminated portfolios not retained in the performance history of the composite up to the last full measurement period
- inappropriate claims of compliance with the CFA Institute's Global Investment Performance Standards (GIPS) when all the requirements of GIPS were not met
- inadequate policies and procedures for constructing, presenting and disclosing performance composites

Concerns

Inadequate construction, presentation and disclosure of performance composites results in inaccurate and unfair presentation of performance data to prospective clients. This is misleading to clients and considered contrary to a PM's requirement to deal fairly, honestly and in good faith with clients.

When PMs do not include all client portfolios with a similar investment strategy or mandate in a performance composite, there is a risk that the PM will "cherry pick" the portfolios with the best performance returns in order to present better than actual results. In some instances, we identified PMs that used one client's performance to represent the investment strategy of the firm instead of presenting the returns for a composite. We also identified PMs that included some, but not all, relevant client portfolios that followed the same investment strategy or objective in a composite.

As stated above, PMs must deal fairly, honestly and in good faith with their clients. NI 31-103 also requires PMs to establish, maintain and apply policies and procedures that establish a system of controls and supervision to, among other things, manage the risks associated with their business in accordance with prudent business practices. These rules apply to the use of performance composites.

Guidance

The inappropriate omission or inclusion of client portfolios in a composite will generally result in performance returns that do not reflect the actual performance of the PMs investment strategy. To avoid presenting misleading information, we expect PMs to include all portfolios that meet the criteria of a composite in the composite. In addition, we generally expect PMs to calculate composite returns by asset-weighting the individual portfolio returns.

When presenting performance composites in marketing materials, PMs should provide adequate disclosure to ensure the composite presentation is meaningful and not misleading. For example, we would expect the disclosure to:

- clearly outline the investment strategy that is reflected in the composite
- state whether the composite returns are net of fees, or gross of portfolio management fees and/or other expenses

- include any other key information about the composite including minimum asset levels for inclusion of accounts in the composite, if any, or other information such as the use of sub-advisers and currency used to express performance

PMs should also establish written policies and procedures for the construction, presentation and disclosure of composites. Where appropriate, we expect these to include requirements for composite construction, calculation methodology, and the types of disclosure that must accompany a presentation of composites.

6. Holding out and use of names

Approximately 27% of PMs, including their registered individuals, had deficiencies in at least one of the following areas:

- unregistered individuals using business titles that implied that they were registered
- inappropriate use of business or trade names
- use of names of other registered firms without prior consent

For example, we identified some PMs who used a trade name, instead of their full legal name without notifying the applicable regulator. In other instances, individuals used titles on business cards that were misleading as they implied that the individuals were registered in some capacity when they were not. In some cases, PMs used the name of another registrant on its website without the consent of that firm.

Concerns

The use of inappropriate trade names or titles is misleading and confusing to investors as they might not understand which entity they are dealing with or the experience and proficiency of an individual they are dealing with. Subsection 14.2(1) of NI 31-103 requires a firm to deliver to clients all information that a reasonable investor would consider important about its relationship with the firm. Part 14 of Companion Policy 31-103CP – *Registration Requirements and Exemptions* (NI 31-103CP) clarifies that this includes ensuring that the firm's clients understand with whom they are dealing and carrying on all registrable activities in either the PM's full legal name or its registered trade name.

Where a registered firm uses a business or trade name, the firm is required to notify the applicable regulator of its use and must register that trade name under applicable corporate legislation, where required. The securities legislation of certain CSA jurisdictions prohibits firms and individuals from making false representations about their registration. Where a PM uses or makes reference to another registered firm's name, the PM must, where required, obtain written consent prior to the use of this name in their marketing materials.

Guidance

Firms should use their full legal name or registered trade name when marketing their activities. Individuals acting on behalf of a registered firm should use job titles that adequately reflect the nature of their duties or category of registration. Individuals should

not use titles that imply they are registered when they are not. For example, an individual registered as an associate advising representative should not hold out their job title as a portfolio manager.

PMs should also ensure adequate policies and procedures are put in place to review and approve the use of trade names of the firm and of job titles by individuals.

7. Other performance return issues

We identified issues with the use of the following in marketing materials:

- performance returns from an individual's previous firm
- proprietary firm and individual PM's performance returns

Concerns

It may be misleading for PMs to market the performance returns their advising representatives achieved while employed at another firm as well as returns achieved by a firm's proprietary account or an advising representative's personal trading account. Generally, PMs with limited or no track record of their own marketed these types of returns.

In some cases we reviewed, PMs marketed the performance returns from a previous firm when:

- the advising representative was not responsible for generating the presented returns
- the investment strategy at the previous firm was different from that of the new firm

In these cases, it was misleading and not relevant to market the performance results from a previous firm.

We have also seen examples where PMs marketed their proprietary or advising representative's personal performance returns when:

- the advising representative was not employed by the registered firm or registered as an advising representative for the periods presented
- the returns were presented for periods prior to the firm's registration as a PM
- the investment strategy of a newly created investment fund was implemented in a firm's proprietary or individual's personal trading account prior to its launch, and was held out as the performance of the investment fund

It is generally misleading and not relevant to market the returns of a firm's proprietary account or an advising representative's personal trading account. We have concerns where individual PMs market the performance returns of their personal trading accounts since they are not accounts of the registered firm. In addition, PMs can employ different strategies and take greater risks when managing their own investments. We also have concerns if the performance returns are for periods prior to the individual's registration as an advising representative, when the individual was not subject to proficiency or

supervision requirements. In such cases, the personal account returns may be difficult to verify.

PMs have an obligation to deal fairly, honestly and in good faith with their clients when presenting performance returns, including returns from a previous firm or from the firm's proprietary account. This includes avoiding the presentation of performance returns that are misleading and not relevant.

Guidance
We expect PMs to present only the performance returns of the firms' actual performance composites or investment funds since the firms have been registered.

There are limited circumstances where it may be appropriate to market the performance from a previous firm. We consider all of the following when determining whether the circumstances are appropriate:

- the key investment decision maker at the previous firm is now employed with the new firm
- the investment strategy at the previous firm is substantially similar to that of the new firm
- the new firm has books and records that adequately support the historical data presented from the previous firm
- there is adequate disclosure that the performance presented is from a previous firm, and of any other relevant facts

There are also limited circumstances where the marketing of a firm's proprietary account may be appropriate. We consider all of the following when determining whether the circumstances are appropriate:

- the PM launches a new investment strategy in the firm's proprietary account prior to its use in a client portfolio
- proprietary returns are for periods since the firm's registration as a PM
- the PM provides adequate disclosure that the performance presented relates to the firm's proprietary account only
- the PM maintains adequate books and records to support the proprietary performance returns

Where a PM uses a substantially similar investment strategy in its proprietary and client accounts, we expect PMs not to present or report proprietary account performance data at all. Instead, we expect the PM to use and present performance composites which include all relevant client portfolios. Also, where applicable, we expect PMs not to link proprietary returns in the same table or graph with the performance returns of an investment fund because doing so would be misleading.

8. Disclosure related issues

Approximately 57% of the PMs we reviewed were deficient in this area. The disclosure related issues included:

- marketing materials that contained outdated information

- no disclosure of the source of third party information (other than data from recognized financial and statistical reporting services)
- inadequate or inconsistent disclosure in offering memoranda and other offering documents of non-prospectus qualified investment funds
- inadequate, or lack of, performance return related disclosures (i.e. performance return data that was not dated, no disclosure of whether returns were net or gross of fees and no disclaimers regarding past performance)

Concerns

Marketing materials that do not contain adequate disclosure relating to a PM's advisory activities, performance, services and product offerings may be misleading to investors, who place significant reliance on and may be influenced by these types of marketing materials. PMs must comply with their obligation to deal fairly, honestly and in good faith with clients in the preparation and review of their marketing materials. This includes ensuring that their marketing materials are not misleading.

Guidance

PMs should ensure that their marketing materials disclose information that is accurate, meaningful and up-to-date. As described above, we expect this to include implementing a process where the CCO and/or other designated individual is involved in the review and approval of marketing materials to ensure adherence to internal policies and obligations under securities legislation.

When presenting performance return data we expect firms to date the period presented and provide adequate disclaimers regarding past performance as appropriate. Where a firm presents third party information, it should disclose the source of the information if it is not obtained from recognized financial and statistical reporting services.

Next steps

CSA staff will continue to review the marketing practices of PMs through the compliance review process. While the specific securities legislation used is generally principles based, the suggested practices identified in this notice are intended to provide guidance on how the CSA expects registrants to interpret the specific legislation. The suggested practices will serve as a guideline that compliance staff of the CSA will apply when assessing and determining compliance with securities law.

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