

EMD Compliance for CCOs



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1. The Regulatory Requirements

NI 31-103, S. 11.1

“A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to:

- a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and
- b) manage the risks associated with its business in accordance with prudent business practices”

NI 31-103, S. 5.1

“The UDP...must do all of the following:

- a) Supervise the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm’s behalf, and
- b) Promote compliance by the firm and individuals acting on its behalf, with securities legislation”

NI 31-103, S. 5.2

“The CCO...must do all of the following:

- a) Establish and maintain policies and procedures for assessing compliance by the firm and individuals acting on its behalf with securities legislation;
- b) Monitor and assess compliance by the firm...
- c) Report to the UDP ...as soon as possible if the CCO becomes aware of... non-compliance...; and
- d) Submit an annual report to the firm’s board of directors...”

2. Role of the Compliance Officer

Establish and maintain Compliance System

- Policies and procedures
- Internal controls
- Monitor and assess compliance
 - Day-to-day monitoring
 - Systemic monitoring
- Supervision
- Training

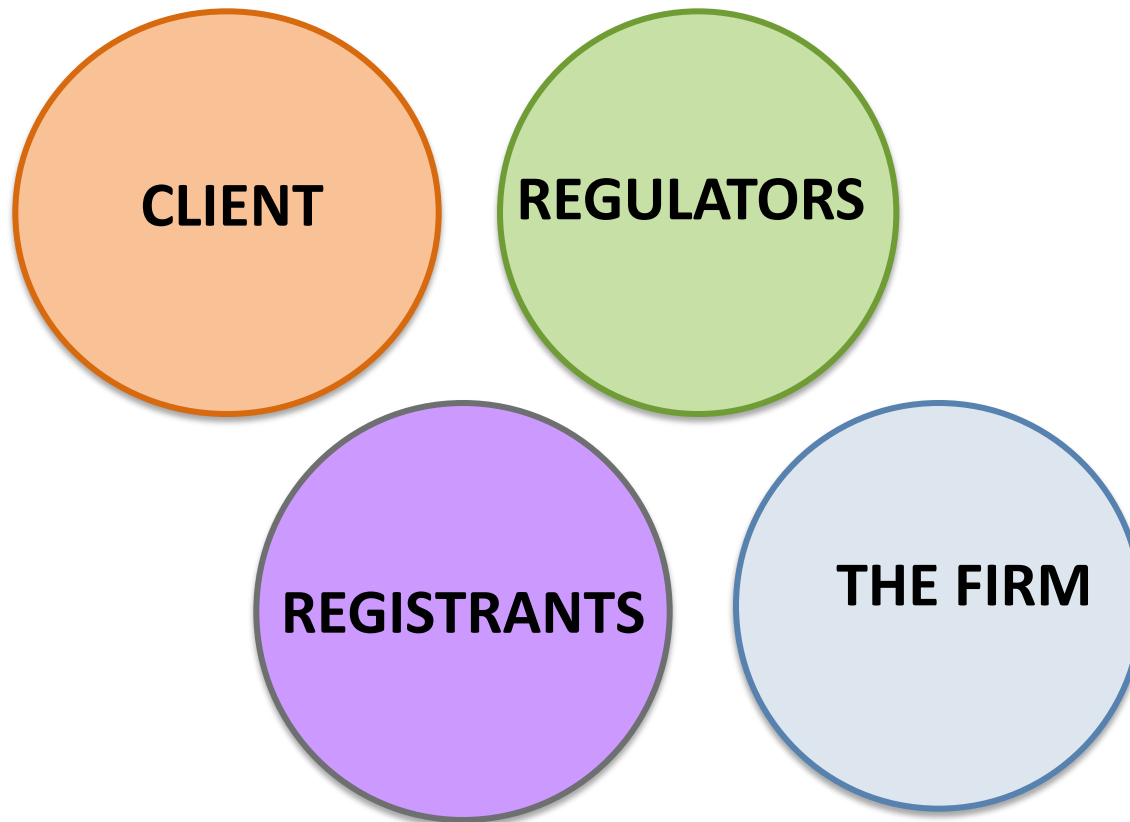
“We the dealer shall ensure that all trades are suitable.”

- How do we do our trades?
- What are the characteristics?
- How will this compliance be achieved?
- Who does what?
- Timelines?
- How/when will we audit to see if procedures are accomplishing the objective?

Document what you do



Managing Between



- Each situation is different

- The industry is constantly innovating
 - Requires judgment
 - Requires looking through the Securities Regulation lens

“You cannot do indirectly what you are not permitted to do directly”

– Sydney Smith

- Substance over form
- Cannot rely on luck
- Permitting poor practices or improprieties will be more costly in the end



3. Managing Registrants

"It is difficult to get a man to understand something, when his salary depends upon his not understanding it"

- Upton Sinclair

What DO salespeople want?

Most sales training is aimed at overcoming objections and finding a way, which can result in a...

Compliance collision



What DO salespeople want?

Clarity

- Ambiguity leaves the door open to confusion or obfuscation
- Construct “binary” compliance systems

Context

- Defeats any impression of arbitrariness
- Helps ensure comprehension

Consideration

- Show consideration for the client relationship

Open the door, cruise the floor

- Know your salespeople and advisors
- Attend functions, meetings and events



Trust, but verify.

New Representatives



- Differentials in commissions may incentivize unsuitable recommendations and may warrant enhanced supervision
- If possible, incentivize good sales compliance

- Representatives may become “Mother-Deaf”
- If yours is the only compliance voice heard, it may be easier to dismiss

If you can enlist others:

- The message is reinforced
- Builds trust in you

- Other representatives are watching and learning
- Use misfortune, yours and others, as a teaching tool

- Document actions in compliance files and in personnel file
- Options:
 - Reprimands
 - Re-training
 - Commission hold-backs tied to costs of infractions (**if clearly communicated in advance**)
 - Time-outs
- Investigations include supervision

May take a lead role
OR
support Compliance

4. Management Relations

- Consistency
- Demonstrated commitment to the Firm
- Communication

Communication:

- Distinguish between outright prohibitions and the gray areas that increase the firm's risk
- Outline the facts, the regulations pertaining to the situation, your reasoning and your recommended action
- Document

- Split focus between the dealer's business and the CCO role and duties
- Competing demands in operating a dealer
- Stepping back and being objective

- Management may underestimate the extent to which Compliance issues are implicit in every decision of the Firm
- Including CCO in strategic planning and new business initiatives lessens the chances of expensive mistakes or embarrassing course corrections
- Build in Compliance processes from the planning stages for the new business line

Scenario 1:

- CCO identifies a compliance issue, urgently reports it to management, with recommended actions
- Management needs time, “just leave it with me”
- Weeks pass and the issue remains unresolved, unaddressed

Is the firm then knowingly operating in breach of securities laws?

Scenario 2:

- CCO notices a compliance issue, sends out an email
- Three months, four other compliance events and one vacation later, the CCO fails to notice that no response was ever received
- Issue is uncovered in a regulatory audit, or a lawsuit is filed


Has the CCO negligently permitted the firm to breach securities laws?

- The original compliance issue becomes a breach, or the breach worsens
- CCO is in the wretched position of knowing without fixing
- Explaining or excusing the delay later - to client, to legal counsel, to regulators - will be difficult
- Had the CCO known this would happen from the start, the CCO would have chosen a different course

Build in response timelines to every issue

- Diarize reminders
- Put reminders or queries in writing

4. Managing Yourself as CCO

- Uncertainty  Get help
- Deal and Document
 - before you forget!

5. Best Practices

- Over-arching principles are enunciated in laws and regulation, but you are responsible for how to comply, given your firm's unique business
- Time and experience has shown that some practices, if adopted, will keep firms and registrants in compliance
- Some best practices may be considered as a reasonable standard in the absence of published guidance

What is best practice in one case may be a **necessity** in another case – it depends on the specific situation

- Circulation of securities commission compliance bulletins and enforcement actions
- Client calls
- DR testing
- Regular compliance audits
- DR activity reviews, branch audits
- Segregation of duties
- Continuing education, e.g. CSC course, CCO course

Not an Option



Thank You!

Thank you for listening.

For more information, please go to:

- National Instrument 31-103
- National Instrument 31-103 Companion Policy
- ASC website www.albertasecurities.com