

OSC releases guidance on sales communications by investment funds

On July 18, 2013, as part of an ongoing review of advertising and marketing materials of publicly offered investment funds, staff of the Investment Funds Branch released OSC Staff Notice 81-720 (the Notice). The Notice relates to a targeted continuous disclosure review that commenced in May 2012, of sales communications of eight medium to large mutual fund groups, four smaller fund groups and several specialty funds. Included in the review were conventional mutual funds, closed-end funds, ETFs, commodity pools and labour sponsored funds.

Staff reviewed newspapers, presentations, brochures, internet ads, social media, websites, radio and television ads, emails and greensheets. The stated objective of the review was to raise awareness among market participants that sales communications are monitored on an ongoing basis and to provide guidance on staff's interpretation of existing rules.

definition of "sales communication" under NI 81-102

The definition of "sales communication" under National Instrument 81-102 Mutual Funds (NI 81-102) is broad and includes communications made to securityholders of a mutual fund, or to other persons to induce the purchase of securities of a mutual fund, which is not contained in a prospectus (or related documents), financial statements or MRFP of the fund. Staff noted that if a communication is intended to promote corporate identity or the

expertise of a manager, and does not focus on one or more funds, it falls outside the definition. Although the requirements of NI 81-102 currently only apply to mutual funds, staff expressed the view that these requirements applicable to sales communications serve as best practice principles for all types of investment funds.¹

staff guidance on sales communications

Although staff found that the requirements for sales communications were generally met by the funds that were reviewed, they took the opportunity set out the following the key guidelines and principles that market participants should adhere to when releasing sales communications.

fairness

- Use plain language and avoid industry jargon, defined terms, acronyms, vague or exaggerated statements and hypothetical data.
- Disclosure of distributions or yield in sales communication should specify the basis of calculation, the percentage of distributions comprising reinvested units, whether based on NAV or market price, the time period covered by the distributions, the key assumptions and the impact of any changes to the key assumptions on the target distribution or yield.

misleading communications

- Avoid statements that create an unrealistic expectation or an unjustified sense of safety.
- Communications relating to commodity pools should be clearly identified and explain how commodity pools differ from conventional mutual funds. Staff expressed the view that commodity pools should not be referred to as mutual funds in sales communications.
- Communications should not contain statements that are vague or exaggerated, or that cannot be verified.

- If returns of a similar fund managed by the manager or its affiliate are highlighted but that fund is not available in Canada, the communication must give equal prominence to the fund actually being offered. The communication must also include all facts that could materially alter the conclusions implied by the comparison, and the comparison data should cover the same time periods.
- Equal prominence should be given to risk disclosure as is given to disclosure about the potential investment returns and benefits of the fund.
- Only include asset management clients in a representative client list and not the clients that the manager deals with in another capacity. Staff expressed the view clients listed should be investors in the fund being advertised or a similar fund.

performance data

- Standard performance data should be given equal prominence as is given to other performance data, rather than placing standard performance data in a disclaimer at the end of the sales communication.
- If referring to awards, include the name of the award provider, the ranking and where the reader can get additional information about the award. Only refer to awards that the investment fund has won and that are still relevant to the investment fund's current investment objectives and strategies.
- Staff expressed the view that using hypothetical data should be avoided in communications directed at retail investors. While hypothetical data may be appropriate for internal or confidential communications, it should include clear disclosure regarding methodology and assumptions.

other communications

- For sales communications on the Internet (such as webpages, banner advertisements, video streams, discussion forums, social network sites and mirco-blogs), include warning language on the same page as the sales communication or within "one-click" of the sales communication.

- Communications directed at dealers should be labeled "for advisor use only" and a pro-active effort should be made to restrict broad distribution of the marketing material.

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[a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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