

The Manual



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November 2018

Laws and regulations

EMD sweep findings

Updating the PPM

Writing the PPM

NI 31-103, Section 11.1

“Compliance system: A registered firm must...establish a system of controls and supervision sufficient to:

(a) provide reasonable assurance that the firm...complies with securities legislation, and

(b) manage the risks associated with its business...”

NI 31-103, Section 5.2(a)

The chief compliance officer must:

“establish and maintain policies and procedures for assessing compliance...with securities legislation”

NI 31-103, Section 5.1(a)

The ultimate designated person must:

“supervise...compliance with securities legislation by the firm and each individual acting on the firm’s behalf”

- NI 31-103CP, Section 11.1

“Operating an effective compliance system is essential to a registered firm’s continuing fitness for registration....

*A compliance system should include **internal controls and monitoring systems** that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner.”*

Does our manual include internal controls and monitoring to provide reasonable assurance that we are complying with securities legislation?

Does our manual have policies and procedures for assessing compliance?

Does our manual have internal controls and monitoring systems to identify and correct non-compliance at an early stage?

NI 31-103CP Elements of a compliance system

- *internal controls to monitor compliance and manage business risks,*
- *monitoring and supervising,*
- ***detailed policies and procedures, and***
- *detailed records of activities to identify compliance deficiencies and the actions taken to correct them.*

Inadequate policies and procedures manual

- Most frequently found deficiency during the EMD Sweep in Alberta in 2015/2016;
- and the most frequent significant deficiency

- In some cases, the inadequacies of the manual reflected the firm's compliance system in general and led to a larger finding of a significantly deficient compliance system at the firm
- CCO and UDP are responsible
- Can a firm operate without a functioning compliance system?

- Undated PPM, or PPMs dated the same year as original registration, often 2011
- Drafts of good intentions that were never put into action
- “Cut and paste” errors, such as the wrong firm’s name used, or other identifying data accidentally inserted

- Lack of table of contents or index, or different sections with the same number
- No page numbers or hyperlinks, difficult to find policies or navigate
- Policies and procedures found in multiple places, with no ultimate road map of what exists and where it can be found
- Ten pages long?

- Often, a firm's policy says: *"This manual will be reviewed and updated regularly,"* but lacks any procedures and internal controls to do so
- The manual has *not* been updated or reviewed
- What is regular review? Who reviews it? Who does the updates? Is there a procedure? How can you make sure it happens?

- NI 31-103CP, Section 11.1

“A compliance system should include internal controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner.”

- Checklist of annual compliance tasks, including PPM review
- Formal annual read-through/review of the manual by CCO
- UDP reminder
- Annual agenda item for BoD
- Presentation to BoD, along with annual Compliance Report

- CCO scans the environment, websites and alerts
 - ASC, CSA, FINTRAC and privacy
- When internal or external conditions warrant, CCO updates the section
- UDP reviews and signs off
- New section inserted, with date footer
- Email goes out, summary and new section attached

A New Issue Arises:

- “Can I sell this security to an investor in California?”
- Research
 - U.S. Investment Advisors Act of 1940 and the SEC? Exemptions?
State licensing requirements for investment advisors?
- Consider all relevant circumstances
 - Subscription documents may require Canadian residency
 - What about an existing client who moves to the US?
 - What about other foreign jurisdictions?
 - RRSP? TFSA?
- Assess possibilities and decide the firm’s policy

Example - cont.

- Formulate policy
- Formulate procedures:
 - Check client account addresses on account opening
 - Change of address procedures
 - Client correspondence received at DR's home address
- Update manual
- Disseminate the new section
- Document your research and actions in the specific case

- CCO conducts an annual review by a certain date, as part of annual checklist
- Submit the reviewed and updated manual every year to the BoD, along with the CCO's annual compliance report
- CCO maintains evidence: draft(s), dated and signed review, historical sections, email blast and addressees
- May use quizzes on the PPM to ensure that employees have read and understood the manual

- Long transition to new rules
- If an internal weakness becomes evident, make the change immediately
- Disseminate the policy and procedures:
 - Make it accessible, organized and user-friendly
 - Version control
- Deliver training

- “Cut and paste” errors, such as wrong firm’s name used, or other identifying data accidentally inserted
- Add a reviewer, if possible

- Annual certification

“As of December 31, 2018, I have reviewed and am conversant with the most recent Policies and Procedures Manual”

Writing the manual – can I just buy one?



Money



Time



Knowledge

Writing the manual - tailored to the firm



- Differences in compliance resources
- Differences in number of business units and lines of business
- Manual will be tailored to the firm's business, its size and complexity

Examples of generic statements

- “Client complaints will be dealt with promptly”
- “All trades conducted at this firm shall be suitable”
- “All necessary book and records will be maintained”
- “All conflicts of interest will be identified and managed”

- Definitions
- Examples and discussion
- Specificity
- Procedures/steps to follow
- Who does what?
- When, or with what frequency?

- Associated controls
- Means to monitor and audit to ensure the policy is being followed and working as intended
- Action timelines
- Use checklists where possible

- Steps you will take when a breach or possible breach has been identified

- What factors are considered in deciding whether
 - enhanced supervision should be set up for the employee, the account or the business line involved
 - legal counsel should be consulted
 - the firm should self-report

- Include a review and possible revision of your policies and procedures to reduce the possibility of a future violation

- Where you feel a policy is not applicable, you may have to document that as well
- “We have no referrals policy because we don’t permit referrals.” This should be documented in a policy
- “We do not have a marketing policy because we don’t advertise.” This should be documented in a policy

- Include current versions of the firm's standard forms, such as KYC and account opening documents, with dates or version identifiers

- Include documents you give to clients:
 - Privacy policy
 - Complaints policy
 - RDI

- www.bcsc.bc.ca “What We Look For in a PPM” and “Questions to Ask When Preparing a Policies and Procedures Manual”
- [http://www.portfoliomanagement.org/wp-content/uploads/2011/05/FINAL PMAC Reference Guide for P P for PMs.pdf](http://www.portfoliomanagement.org/wp-content/uploads/2011/05/FINAL_PMAC_Reference_Guide_for_PP_for_PMs.pdf)
- <http://mfda.ca/notice/msn-0008/>
- <http://mfda.ca/wp-content/uploads/schedule-k.pdf>
- <http://www.iroc.ca>

- Business continuity
- Cybersecurity
- Social media
- Elderly clients

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