

# Goodmans<sup>LLP</sup> Update

## CSA Provides Advertising, Marketing and Social Media Guidance for Crypto-Trading Platforms

On September 23, 2021, the Canadian Securities Administrators (CSA) and the Investment Industry Regulatory Organization of Canada (IIROC) provided detailed guidance directed at the marketing practices of Crypto-Trading Platforms (CTPs). Joint CSA/IIROC Staff Notice 21-330 *Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use* (“**Staff Notice 21-330**”) provides an overview of the principal requirements under securities legislation and IIROC rules pertaining to the advertising and marketing strategies of registered and prospective CTPs.

Staff Notice 21-330 was published to address certain CTP advertising practices that may have breached securities legislation requirements and/or raised investor protection or public interest concerns. Specifically, regulators voiced concerns over “gambling-style” promotions and schemes that could inappropriately encourage investors to take on excessively risky trading they would normally avoid.

### Scope of Staff Notice 21-330

The Staff Notice 21-330 is intended to provide guidance to:

- CTPs that are registered as a dealer under securities legislation (“**registered CTPs**”);
- CTPs that have or will be applying for registration as a dealer but are not yet registered (“**prospective CTPs**”); and
- other registrants that may be considering establishing a CTP as a new business line.

The Staff Notice addresses:

- statements in advertising or marketing that could be considered false or misleading;
- the use of gambling-style contests, promotions or schemes, such as the offering of bonuses or rewards based on the level of trading;
- compliance and supervisory challenges when using social media to promote CTPs; and
- complying with securities legislation generally.

### False or Misleading Advertising

Securities legislation and IIROC rules contain provisions prohibiting false or misleading statements in advertising or marketing materials. These prohibitions apply to the making of statements:

- that suggest a CTP is registered under securities legislation where this is not the case;
- that suggest a securities regulatory authority or regulator has approved or endorsed the CTP, any products offered on the CTP or any disclosure or other representation made by the CTP; or
- about any matter that a reasonable investor would consider relevant or important in deciding whether to enter into or maintain a trading or advising relationship with the CTP if the statement is untrue or omits information necessary to prevent the statement from being false or misleading.

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Registered CTPs are reminded of their obligation to treat clients fairly, honestly and in good faith, and to consider these principles when implementing their marketing strategies.

## “Gambling Style” Promotions and Schemes

Staff Notice 21-330 cautions registered CTPs that as gatekeepers of the capital markets, they should not engage in conduct that brings the market into disrepute. As such, advertising or marketing designed to encourage excessively risky trading may violate the registrant’s obligation to treat clients fairly, honestly and in good faith.

Advertising that could be considered to inappropriately encourage investors to engage in excessively risky trading include contests, promotions, bonuses and time limits, as they incentivize investors to trade and act quickly for fear of missing out on an investment opportunity or reward.

Moreover, marketing schemes aimed at encouraging trading may be considered a form of solicitation or invitation to trade triggering suitability obligations for registered CTPs. Some CTPs have or will seek an exemption from the suitability requirements on the condition the CTP will not provide recommendations or advice; however, CTPs relying on such exemption must ensure their advertising strategies are consistent with the conditions of their exemption.

## Social Media – Policies and Procedures

CTPs are expected to consider compliance and supervision when using social media websites and platforms. CTPs are required to adopt policies and procedures governing the use of social media for marketing purposes. These policies should provide for:

- the review, supervision, retention and retrieval of advertising and marketing materials, including marketing done on social media platforms;
- the designation of an appropriate individual to be responsible for the supervision or approval of marketing communications; and
- a system to monitor compliance with policies and procedures, including record retention and retrieval capability.

## Implications

Staff Notice 21-330 clarifies which CTP marketing activities are acceptable under securities legislation and IIROC rules, with the expectation that registered and prospective CTPs will conform their practices to meet these requirements. The policies in the Staff Notice are not new, but rather consolidate a number of provisions and accordingly, no transitional period has been offered. Immediate compliance is encouraged as securities regulators are becoming increasingly focused on CTP advertising in the Canadian market.

For assistance analyzing the application of Staff Notice 21-330 to your business, or for assistance approaching the CSA or IIROC regarding your business, please contact any member of the [Goodmans Technology Group](#) or [Financial Services Regulatory Group](#).

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