

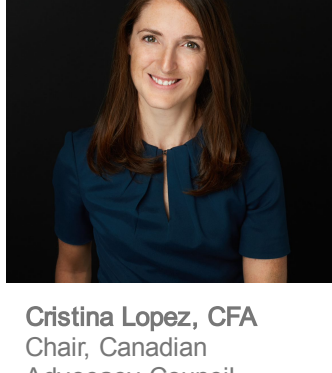
November 2021

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Chair Summary

Canadian Advocacy Council



Cristina Lopez, CFA
Chair, Canadian
Advocacy Council

As the 2021 rollercoaster ride draws to an end, the CAC remains busy responding to a number of requests for comment. An important initiative for CFA Institute has been on the promotion of diversity, equity and inclusion ("DEI") recently releasing an exposure draft of a forthcoming voluntary DEI code for US and Canada that will help support and promote a more diverse workforce in the investment industry that is both equitable for all involved and inclusive of differing cultures, awareness and education. The recent DEI work by CFA Institute dovetailed well with a recent request for comment from FCNBNSSC on diversity in the capital markets. The CAC supports existing gender diversity disclosure requirements but acknowledges that diversity extends beyond just gender and needs to be more multifaceted and inclusive, including of individuals from diverse cultural backgrounds. I strongly encourage all members to read the drafted response from CAC (see below) along with the exposure draft of the [CFA Institute voluntary DEI code](#).

The CAC is drafting seven letters at present including responses to CSA's Proposed NI 51-107 relating to disclosure on climate-related matters and the Ontario Ministry of Finance's Capital Markets Act consultation. Both of these letters are due in January with summaries likely available by the January edition of the Advocacy Newsletter.

With the holiday season kicking into gear, I want to take this opportunity to wish all members, readers and their loved ones a Happy Holiday season and all the best as we embark on 2022.

Published Comment Letters

Canadian Advocacy Council

FCNBNSSC Consultation Paper - Diversity in the Capital Markets (Filed November 15, 2021)

About the notice

The Nova Scotia Securities Commission and the New Brunswick Financial and Consumer Services Commission have asked for responses to specific questions about the disclosure regime regarding diversity. The consultation seeks feedback on how practices and disclosure needs have evolved since the "women on boards" disclosure requirements were first adopted and in particular, whether additional disclosure requirements are needed, how investors may use such information, and the impact on public companies in disclosing the data.

Overview of the Council's Comments

The CAC is supportive of the FCNB's and NSSC's intent to continue to consult on diversity in the capital markets, and particularly how the disclosure needs of Canadian investors have changed since the existing gender diversity disclosure requirements for issuer boards were adopted. We are of the view that regulatory efforts to encourage gender diversity in Canadian capital markets should evolve to become more overtly supportive of diversity, equity, and inclusion across a wider range of participants in the Canadian capital markets. We believe that investors and other stakeholders see diversity as multi-faceted, extending beyond just gender.

Research has shown the benefits of diversity in decision-making across a range of corporate and investment decision structures, and we believe that policy should be more overtly supportive of progress to this end. For example, Boards with diverse backgrounds are more likely to act independent of management and are better equipped to debate the merits of complex governance matters such as managerial oversight or financial transactions. To achieve and maintain targets, it is critical for the firm to create an inclusive culture to attract both underrepresented individuals to the firm and also create an environment where they are more likely to stay. Indigenous reconciliation also dictates greater inclusion of Indigenous people in corporate Canada.

We believe that regulators can be leaders through their example and encourage progress throughout the Canadian capital markets through education, policy, and regulatory efforts. We believe there is a broad body of research that demonstrates the benefits to all of investors, issuers, and the broader stakeholder community, and an emerging societal consensus that demands further action.

Response Drafting in Progress

Canadian Advocacy Council

AMF Draft Regulation respecting Complaint Processing and Dispute Resolution in the Financial Sector (Due December 8, 2021)

About the notice

The AMF released a draft regulation that is intended to harmonize the fair processing of complaints in the financial sector in Québec, and would apply to a number of financial institutions, financial intermediaries (including securities dealers and advisers) and credit assessment agents. The draft regulation sets out requirements for a dispute resolution policy, the appointment of a designated complaints officer, communication with complainants, a complaints register and a timeframe for dealing with complaints and/or forwarding the records to the AMF for examination. The draft also prohibits certain actions, such as using the term "ombudsman" in referring to the complaint process. It also sets out the various monetary administrative penalties that may be levied by the AMF for breaching the regulation.

FCAC Draft Guideline on Complaint Handling Procedures for Banks and Authorized Foreign Banks (Due December 11, 2021)

About the notice

The Financial Consumer Agency of Canada has released a proposed Guideline to support the implementation of the new Financial Consumer Protection Framework in the Bank Act. Banks are already responsible for setting out policies and procedures to ensure they deal with consumer complaints, and the Guideline sets out further principles and expectations for these policies, including policies to be effective, timely, and accessible. To be effective, policies are expected to include mechanisms for getting regular feedback from consumers and a process for monitoring and testing policies and procedures. Employees who are designated as being responsible for either or both of implementing a bank's policies and procedures, or receiving and dealing with complaints, are expected to have the experience, competencies and authority required to deal with complaints, and their titles should reflect that authority. Of note, the policies and procedures are expected to include an analysis of complaint data to identify opportunities to better serve the bank's consumers.

They are also to include mechanisms for identifying and remedying recurring or systemic issues and tracking the causes of complaints to identify root causes. Where such issues have been identified, the policies are expected to ensure the bank provides redress and/or reimbursement to all affected consumers. Timeliness for dealing with complaints internally are also set out in the Guideline. A bank's written response to the consumer (to close or resolve the complaint) would have to include specified information in order to allow the consumer to take the complaint to a bank's external complaints body if they chose to do so.

OSC Notices 11-794 and Request for Comments - Statement of Priorities for Financial Year to End March 31, 2023 (Due December 20, 2021)

About the notice

The OSC is currently seeking comments on its draft 2022-2023 Statement of Priorities (SoP) to inform its business planning for the fiscal year ending on March 31, 2023. The OSC has set out its four strategic goals, and the priority initiatives it will pursue in support of those goals. The first goal, promoting confidence in Ontario's capital markets, will be supported by work such as the implementation of the mutual fund embedded commission rules, improving the retail investor experience and protection (e.g., the OSC seniors' strategy), and strengthening dispute resolution services. The OSC also intends to develop total cost reporting disclosure for mutual fund investors and segregated fund holders.

Reflecting the new OSC mandate to promote competition and foster capital formation, the second goal is to modernize the regulatory environment. This goal will be supported by implementing an enhanced framework for modernizing regulation and continuing work on streamlining periodic disclosure requirements for reporting issuers and modernize delivery options. Under the goal of facilitating financial innovation, the OSC will continue to use its Innovation Office for novel businesses and expand the OSC TestLab. The fourth goal, strengthening the organizational foundation of the OSC, involves investing in its people, technology and information systems. It continues to seek to redevelop CSA national systems (e.g., SEDAR+), digital transformation and data and analytics enablement. The OSC has removed reducing regulatory burden as a specific goal within this year's SoP on the basis that it has become integrated into its core operational work.

IIROC Consultation Paper (Phase II) - Competency Profiles for Directors, Executives, Ultimate Designated Persons, Chief Compliance Officers, and Chief Financial Officers (Due December 29, 2021)

About the notice

The consultation is in the second phase of a multi-year project (to 2024) to set out competency profiles for all of IIROC's registration categories. A "competency" is a set of knowledge, behaviour, and skills that an individual must have to perform effectively in their role. The purpose of the competency profiles is to provide a benchmark to evaluate course providers, provide educational providers with guidance on course content and allow dealers to better understand expectations. The proposed profiles for directors, executives and UDFs are similar, and consist of four categories of high-level competencies related to the general regulatory framework, corporate governance and ethics, duties, liabilities and defences and risk management and oversight. There are also a number of sub-competencies, including a few directed solely at the UDF. In addition to the general competencies set out above applicable to all executives, CCOs would be subject to an additional 5 categories of high-level competencies, including related to the compliance function and operations, risk management and regulatory reporting, examinations, investigations, and actions, along with 12 sub-competencies. A CFO would be subject to the highest number of competency profiles, as in addition to those that apply to all executives, a CCO would be subject to 7 more categories of high-level competencies, including with respect to capital adequacy, books and records and reporting, credit risk management and customer accounts, and inventory, pricing of securities and underwriting, as well as 31 sub-competencies within those broader categories.

CSA Notice and Request for Comment - Proposed NI 51-107 - Disclosure of Climate-related Matters (Due January 17, 2022)

About the notice

The CSA is consulting on a proposed new National Instrument, NI 51-107 *Disclosure of Climate-related Matters*, which introduces new disclosure requirements for reporting issuers (other than investment funds and certain other issuers like designated foreign issuers). The disclosure requirements build on a number of CSA notices and existing disclosure requirements relating to material information on climate-related matters, as well as international work and the recommendations of the Ontario Capital Markets Modernization Task Force. The purpose of mandating certain disclosure is to provide clarity to issuers on expectations, and also ensure consistency and comparability among issuers. The climate-related disclosure requirements are also meant to align Canadian disclosure standards with the expectations of international investors and remove costs that would be associated with reporting to multiple disclosure frameworks. While the requirements are based on the four principles set out by the international Task Force on Climate-related Financial Disclosures (TCFD), being governance, strategy, risk management and metrics/targets, issuers will not be required to disclose a scenario analysis (i.e. how resilient an issuer's strategies are to climate-related risks and opportunities given a lower-carbon economy). Issuers will also be given the choice to disclose their greenhouse gas emissions or explain why they have not done so. Information on governance would be added to an issuer's management information circular (or AIF or MD&A if no circular is sent). The disclosures related to strategy, risk management, and metrics and targets would be included in an issuer's AIF (or MD&A if an issuer does not have an AIF). The information specified to be included for an issuer's governance and risk management of climate-related matters would not be subject to a materiality qualifier. It is proposed that there be a lengthy transition period to allow issuers time to prepare the necessary disclosure; a one-year period for non-venture issuers and a three-year period for venture issuers, and only once the instrument is expected to come into force on December 31, 2022 (i.e. for the 2024 and 2026 reporting periods).

Ontario Ministry of Finance – Capital Markets Act Consultation Draft (Due January 21, 2022)

About the notice

The Ministry of Finance (Ontario) has released a new Capital Markets Act (the "Act") that would replace the current Ontario Securities Act and Commodity Futures Act, and is responsive to many of the recommendations made in the final report of the Capital Markets Modernization Taskforce (the "Taskforce") released in January. The new Act sets out a platform framework for the legislation governing capital markets participants, the OSC's powers (both regulatory and enforcement), and the new Capital Market Tribunal's (the "Tribunal") adjudicative powers, which will be separate from the OSC's regulatory powers which are to be exercised by its board or the Chief Regulator / CEO. The Chief Adjudicator will be directing the Tribunal's operations. Further to other legislation released earlier this year, the current Chair and CEO functions at the OSC will also be separated into two positions. It is intended that detailed requirements will be left to rules and not set out in the Act itself in order to promote flexibility and allow the OSC to respond to market developments in a more timely manner. The purposes of the Act will be expanded as suggested by the Taskforce, to include fostering capital formation and competition in capital markets. If the Act goes forward, commodity futures contracts and commodity futures options would be regulated as derivatives under the Act.

In addition to the requirements for recognized entities, designated entities and other marketplaces, the CMA will outline a regulatory regime for benchmarks and benchmark administrators. Similar to how the Securities Act is organized today, the Act will set out the basic registration requirements for dealers, advisers and investment fund managers, as well as the basic requirements for the distribution of securities, while leaving the detailed requirements for the content of documents, filings and exemptions for the relevant rules. A new section in the Act will regulate trading in derivatives, including permitting the board to make rules imposing registration requirements on OTC derivatives dealers and advisers. The Act will continue to prescribe disclosure requirements for reporting issuers, but will be expanded somewhat to include specifics regarding the composition of the board, code of conduct, and procedures to regulate conflicts and meeting requirements. The market conduct provisions of the Act would be expanded to include specific references to promotional activities and prescribed requirements relating to those activities. Many of the changes proposed to be included in the Act relate to the investigation and enforcement powers of the new Tribunal, Chief Regulator and Superior Court of Justice, including with respect to orders to provide information such as data found in electronic format. It is proposed that decisions of the Tribunal be appealed to the Divisional Court, and that most (not all) decisions of the Chief Regulator may be appealed to the Tribunal. OSC decisions that are final and not subject to Tribunal appeal would be subject to judicial review by a court. Other changes regarding enforcement actions include a new provision allowing the Tribunal to make disgorgement orders and the Chief Regulator to apply to a court to appoint persons to administer and distribute the disgorged amounts, including to investors that suffer direct financial losses.

It is also proposed that the OSC must publish a proposed rule for public comment for at least 60 days (currently 90 days), and the Act will provide for more flexible rule making and transitional matters from the current legislation. The Act also increases the maximum administrative penalty that can be imposed by the Tribunal to \$5 million and fine for offences imposed by a court to \$10 million. The Ministry has set out 30 consultation questions throughout its commentary on the new Act, seeking feedback on matters ranging from the appropriate statutory civil liability or distribution of ETF securities, to the impact of including the independent review committee of a private fund to the definition of a "market participant", to the appropriate requirements for managing conflicts of interest.

OBSI Request for Comment - Independent Evaluation of the Ombudsman for Banking Services and Investments (Due January 31, 2022)

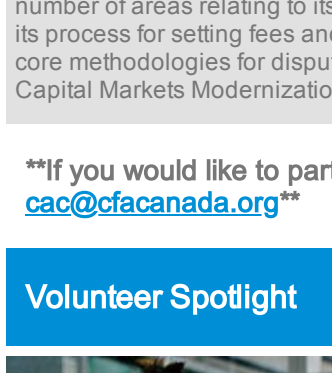
About the notice

Professor Poonam Puri has been appointed by the board of OBSI to evaluate its operations, including through input from stakeholders. Two requests for comment have been released seeking feedback on a number of different issues, one focused on OBSI's role as one of two authorized External Complaints Bodies under the Bank Act, and the other on its role as an independent dispute-resolution service for consumers with complaints against registered advisers and dealers. The questions relating to OBSI's banking mandate are drawn from the requirements of the applicable regulations under the Bank Act, as well as the guidance set out for OBSI in CG-13 Application guide for external complaint bodies published by the Financial Consumer Agency of Canada. These relate to, among other things, OBSI's reputation, accessibility, governance, accountability to its members, complainants and the Commissioner of the FCAC, transparency and effectiveness. The questions relating to OBSI's investment mandate are drawn from the requirements of a memorandum of understanding with certain members of the CSA. The request for comment asks questions on a number of areas relating to its investment mandate, including OBSI's governance structure, independence, timeliness, its process for setting fees and allocating costs, resources, transparency through public consultations, processes for its core methodologies for dispute resolution and accessibility. The consultation also notes the recommendations from the Capital Markets Modernization Taskforce regarding OBSI's powers.

****If you would like to participate or provide comments to ongoing initiatives, please contact cec@cfcacanada.org**

Volunteer Spotlight

Canadian Investment Performance Council



Simon Filleau, CFA

Simon has served on the CIPC since June 2016, and is the current Chair.

Simon is a CFA charterholder and holds the position of Vice president, Valuation and Performance at CDPQ. In this role, he leads the teams responsible for portfolio valuation across private asset classes, performance attribution on a global firm level as well as performance communication to clients and management, GIPS compliant reporting, and benchmarks management. Other responsibilities include strategic advisory on investment performance and IT solutions planning.

Simon received his CFA designation in 2007 and graduated with a B.A. in finance from Sherbrooke University.

1. What is it about volunteering with the CIPC that appealed to you most?

I wanted to become part of a community of experts passionate about investment performance, sharing experiences and challenges on technical and management topics alike. CIPC allowed me to meet and work with the best performance professionals in Canada and the larger CFA charterholder network around the world.

2. Why do you think promotion of industry standards like the GIPS Standards is important?

Canadians work hard to save part of their income for important objectives like buying a house, planning retirement or children's education. In this respect, every investor should feel confident that the performance information received to help their investment decision making is accurate and complete. The GIPS standards are providing a fair and level playing field to help investors when selecting managers or assessing actual portfolio performance. At the end of the day the adoption of GIPS by the industry is helping Canadians reach their financial goals.

News

CFA Institute ESG Disclosure Standards for Investment Products

On 1 November 2021, CFA Institute issued the Global ESG Disclosure Standards for Investment Products, which are the first global voluntary standards for disclosing how an investment product considers ESG issues in its objectives, investment strategy, and stewardship activities.

[Read More](#)

New Firm Claims GIPS Compliance

We congratulate **Delphia** on their recent claim of compliance with the CFA Institute Global Investment Performance Standards (GIPS®) and commend their ongoing commitment to the highest standards of professionalism, disclosure and transparency.

Find out the steps your firm can take towards claiming compliance.

[Learn More](#)

OSC Dialogue 2021

On November 23rd, CFA Societies Canada Managing Director, **Michael Thom, CFA**, joined the OSC Dialogue panel for a discussion on the new SRO model and how it will address duplication, transparency and enhance oversight of an evolving financial landscape.

[Read More](#)

Continuing Education Course Accreditation by IIROC

Following an internal review of the current process, the Investment Industry Regulatory Organization of Canada (IIROC) has decided to assume direct responsibility over the accreditation of Continuing Education (CE) courses for Dealer Members or external course providers who wish to submit them, as per IIROC Rule 2703 (4).

The Continuing Education Course Accreditation Process Centre (CECAP) is currently under agreement to provide IIROC with CE course accreditation services and will continue to do so for the duration of the current CE cycle ending this year. IIROC will assume direct responsibility over CE course accreditation as of January 1, 2022 and end its agreement with CECAP on December 31, 2021.

[Read More](#)

The Canadian Advocacy Council, on behalf of CFA Societies Canada, advances investor protection, industry professionalism, market integrity and transparency to the benefit of society.

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Next Meeting Scheduled: Tuesday, December 14th at 4:15 pm EST

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