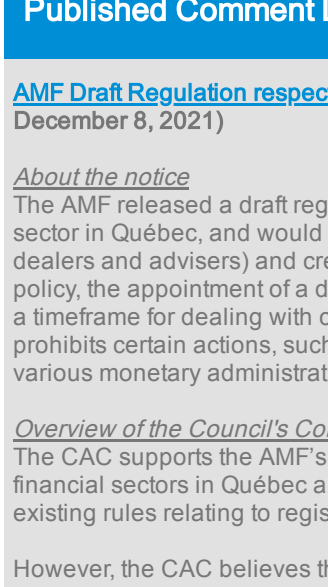


December 2021

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Chair Summary Canadian Advocacy Council



Cristina Lopez, CFA
Chair, Canadian
Advocacy Council

In the last Canadian Advocacy Newsletter, I referenced 2021 as a rollercoaster ride. Heading into 2022, it feels like we purchased extra tickets for this rollercoaster ride. As we look back on 2021, the CAC was active in our letter writing campaign, drafting 19 letters of which 7 were drafted during the fourth quarter alone. In December, the CAC published three letters, including responding to the OSC's request for comments on its 2022-2023 Statement of Priorities.

Looking ahead to 2022, the group has five letters in various draft stages including a comment on the Ontario Ministry of Finance's Capital Markets Act. The Act is set to replace the current Ontario Securities Act and Commodity Futures Act and is a key response to the work done as part of the Capital Markets Modernization Taskforce. An extension has been granted for respondents with comments now due mid-February. We will provide more colour on our response in a future newsletter.

On behalf of the CAC, I want to wish our members a safe, healthy and prosperous 2022.

Published Comment Letters Canadian Advocacy Council

AMF Draft Regulation respecting Complaint Processing and Dispute Resolution in the Financial Sector (Filed 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.

Overview of the Council's Comments

The CAC supports the AMF's efforts to strengthen and harmonize the complaint handling process across various financial sectors in Québec and believes that several proposed provisions in the Draft Regulation are an improvement to the existing rules relating to registered dealers and advisers.

However, the CAC believes that the Draft Regulation could benefit from a more plain language statement on the intended outcome, and the goal that an effective complaint processing and dispute resolution has as its implicit objective.

The Draft Regulation in part may further complicate the array of existing complaint processing and dispute resolution mechanisms and provisions. As a result, it may place an unnecessary regulatory burden on organizations required to navigate more than one set of complaint resolution rules, even if the differences are subtle. Fragmented authorities and mechanisms may not result in a system that is more easily understood and navigated by consumers, which should be a primary targeted outcome.

The definition of a "complaint" is drafted broadly to capture definitional challenges across a variety of covered financial services. The CAC believes there should be additional specificity and examples of what could constitute a complaint, to ensure efficient use of time and resources.

It is vital that consumers have access to the proposed complaint drafting assistance service. It is similarly important that financial institutions, financial intermediaries and credit assessment agents ensure that clients are made aware of this service on a proactive basis, and that requirement should also be included in the Draft Regulation.

FCAC Draft Guideline on Complaint Handling Procedures for Banks and Authorized Foreign Banks (Filed 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 address complaints, and the Guideline sets out further principles and expectations for these policies, including principles of effectiveness, timeliness and accessibility. 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 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.

Overview of the Council's Comments

The CAC remains very interested in the structure and efficacy of dispute resolution and complaint handling processes that exist in the financial services industry and has commented on similar issues to the Department of Finance Canada with respect to its consultation on strengthening Canada's external complaint handling system, and on related matters to various provincial securities authorities. The broader framework of our Canadian financial ecosystem demands that we ensure this process is consumer friendly, efficient, and transparent, while supporting financial consumer trust in the sector.

The Proposed Guideline sets out the FCAC's expectations with respect to compliance with the new complaint-handling provisions in the Bank Act and the Financial Consumer Protection Framework Regulations. The CAC agrees with the key principles of effectiveness, timeliness and accessibility as expressed in the Proposed Guidelines. It is imperative for the principle of effectiveness to capture the concept of continuous improvement with respect to the resolution of systemic and/or recurring issues that impact financial consumers. Institutions should be empowered to not only address individual complaints, but to analyze trends in complaints, with the scope of broadly mitigating future complaints through policy recommendations. Complaints can be a credible indicator of systemic problems that can only be solved through policy action or rule-making activities. In this light, sharing complaint data amongst regulators, institutions and external dispute resolution bodies is an important step towards meeting the effectiveness principle. The longer-term result will be the development of a more effective ecosystem that self improves thus lowering the resulting ongoing maintenance and resolution costs for members, and implicitly delivering an improved consumer experience.

From a financial consumer's perspective, the timeline for dealing with complaints is an important feature of the complaint resolution process; some retail consumers may be experiencing a life changing event as a result of the circumstances of the complaint. The CAC understands that banking legislation and regulation provides that a complaint must be dealt with within 56 days following the day it is received. The term "received" is interpreted differently by different financial institutions; some view it as the day the consumer made the complaint to the first person the consumer spoke to in the institution, while others see it as the day the file is documented as opened. The Proposed Guideline correctly emphasizes the importance of timely resolution, while implicitly recognizing that in certain cases delay is caused by the complainant (e.g., lack of response to questions) rather than the bank. Consumer and complainant expectations might be better managed through additional proactive communication on the part of financial institutions and dispute resolution bodies.

The CAC remains very supportive of the prohibition on using misleading terms with respect to complaint-handling procedures, including any term that suggests independence from the bank where it doesn't exist and highlighted specific concerns with the use of the term "ombudsman" in a prevalent manner by certain banks, which is very confusing for consumers.

OSC Notice 11-794 and Request for Comments - Statement of Priorities for Financial Year to End March 31, 2023 (Filed 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.

Overview of the Council's Comments

The CAC is supportive of many of the priorities set out in the SoP, as well as the general process for engaging stakeholders in a timely manner.

With respect to promoting confidence in Ontario's capital markets, the CAC strongly supports the implementation of the ban on the use of OSCs, and of trailing commissions where no suitability determination is made. These practices created irresolvable conflicts of interest between registrants and their clients.

The CAC reiterated strong support for the strengthening of OBSI's decision making authority. We believe OBSI's role as an independent dispute resolution service for the securities industry should be supported. Under priority 1.5, it is noted that the OSC will provide an analysis of a framework for binding decisions of a dispute resolution service, such as OBSI, within increased claim limits. The CAC urged such analysis be made public.

With respect to vulnerable clients, the CAC stated that more proactive and forward-looking policy research should be undertaken in this area for a better understanding and adaptation of the client-registrant relationship and regulation to the unique challenges of aging and vulnerable clients. Given the concentration of wealth at this juncture in an aging segment of the Canadian population, demands for expertise here will only increase the call for research and policy leadership.

The OSC's commitment to implement the BlackNorth Initiative (BNI) CEO pledge is laudable but, Indigenous reconciliation is absent alongside this commitment in the SoP. Data from reporting issuers indicates significant Indigenous under-representation within senior management and boards, and anecdotal evidence suggests significant under-representation within registrants and at securities regulators in Canada. The CAC called on the OSC to educate staff by implementing the BlackNorth Initiative and Action 57 (Professional Development and Training for Public Servants) and embrace Call to Action 92 (Business and Reconciliation). These initiatives might be best implemented throughout the CSA, forming the basis for a wider CSA initiative on Indigenous reconciliation.

Response Drafting in Progress Canadian Advocacy Council

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 guidance on course content and allow dealers to better understand expectations. The proposed profiles for directors, executives and UDPs 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 targets and oversight. There are also a number of sub-competencies, including a few directed solely at the UDP. 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 related to the compliance function. 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 materiality for the relevant parties. A new section in the Act will regulate trading in derivatives, 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 February 18, 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 responsible for 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 competition 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 OSC 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 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 for 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 separate forums 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 CC-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.

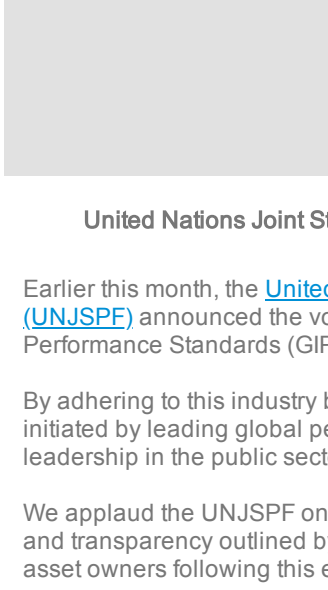
CSA Staff Notice and Request for Comments 11-343 - Proposal to Establish a CSA Investor Advisory Panel (Due February 1, 2022)

About the notice

The CSA has proposed to establish an Investor Advisory Panel (Panel), in order to better represent the views of retail investors through a pan-Canadian panel instead of just through ad hoc engagement with various CSA members or through comment letters. The Panel is intended to represent a diverse range of investor interests, be independent from the CSA yet have direct access to the CSA, and the CSA will invest resources to support the Panel. Its focus will be on providing feedback to proposed CSA rules and policies. The Panel will be able to use a number of methods to get input, including focus groups and surveys. Applications for membership will be solicited in early 2022 (5-6 members) and members will be remunerated for their work. The Panel is expected to meet at least quarterly, provide an annual report on its activities and attend the CSA Chairs' meeting to report on matters specified by the CSA. The draft terms of reference sets out a number of operational items, including the membership selection process, the duration of the Panel terms and expectations for disclosure of conflicts.

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

Volunteer Spotlight Canadian Advocacy Council



Dr. Li Zhang, CFA

Li has served on the CAC since July 2021.

Li is an associate professor at the School of Business and Economics, Thompson Rivers University. Her research interest includes corporate finance, corporate governance, environmental information, and institutional investors. Prior to joining Thompson Rivers University, she taught finance and accounting at Shanghai Jiao Tong University in China and was the Area Editor of China Finance Review International. Li holds a Ph.D. from McGill University and an MBA from McMaster University.

1. Why does advocacy matter to you?

I believe advocacy matters because people need to know what's the right thing to do. Especially in the investment profession are responsible for the the wellbeing of others. It is an especially important matter.

2. What would you tell another Canadian CFA charterholder about the CAC?

The CAC is committed to the integrity and efficiency of capital markets and discusses all regulation changes to achieve it.

News Canadian Advocacy Council

Alpha Summit

CFA Institute

CFA Institute's Alpha Summit Global is back on May 17-19, 2022 with a hybrid conference experience. Each conference in the Alpha Summit event series from CFA Institute is designed to deliver knowledge, information, and professional connections to help you think beyond the horizon.

Alpha Summit 2022 will deliver a dynamic agenda of speakers sharing their valuable insights on impactful topics with five critical themes:

- Opportunities and Responsibilities with Sustainable Investing
- Excelling in a Post-Pandemic World
- Harnessing the Benefits of Innovation and Technology
- The Future of Capital Markets Today
- Advancements for the Investment Management Professional

On-demand recordings are available until January 26, 2022.

[Register Here](#)

United Nations Joint Staff Pension Fund Claims GIPS Compliance

Earlier this month, the [United Nations Joint Staff Pension Fund \(UNJSPF\)](#) announced the voluntary adoption of the Global Investment Performance Standards (GIPS®) from CFA Institute.

By adhering to this industry best practice, the UNJSPF follows the path initiated by leading global pension funds to practice and promote ethical leadership in the public sector pension industry.

We applaud the UNJSPF on their commitment to the high standards of ethics and transparency outlined by the GIPS Standards and hope to see more asset owners following this example.

The Annual Report, required by the *Auditor General Act*, includes value-for-money audits of Ontario public-sector and broad-based public-sector programs, and our observations on the attest audits of the General Account. It also includes reports and reviews required under other legislation or undertaken at the Auditor General's discretion.

[Read the Report](#)



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: Friday, February 25th, 2022.

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