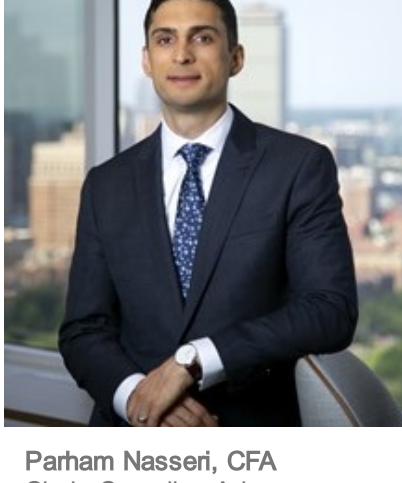


**December 2020****Was this forwarded to you? Subscribe here to get future updates.****Subscribe****Chair Summary****Canadian Advocacy Council****Parham Nasser, CFA**  
Chair, Canadian Advocacy Council

A lookback at 2020 provides an opportunity to reflect on our team's challenges and accomplishments over the year.

An extraordinary year in many ways, filled with many new beginnings and many more challenges that collectively made us and our advocacy efforts even stronger. For our CAC team, we finished 2020 stronger than ever and reached many of the milestones we set out to achieve. We worked tirelessly to strengthen our leadership team and our team composition, in turn improving the quality and potency of our advocacy effort. A sincere thank you to all our volunteer leaders, advisors and partners who supported us in fulfilling our advocacy efforts.

As we look forward to 2021, we are emboldened by our accomplishments and realize that, now more than ever, our voice for advancing market integrity, transparency and investor protection matters.

**Published Comment Letters****Canadian Advocacy Council**[CSA Proposed Amendments to NI 45-106 Prospectus Exemptions and 45-106CP related to the Offering Memorandum Prospectus Exemption \(Filed December 16, 2020\)](#)**About the notice**

The proposed amendments impact the disclosures that would be required to be included in an offering memorandum used by collective investment vehicles or issuers involved in real estate activities for purposes of the offering memorandum prospectus exemption. The new requirements will provide issuers with additional clarity as to what must be disclosed. As examples of additional disclosure that will be required for "collective investment vehicles" (i.e. an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities) will be the need to disclose penalties and sanctions for persons involved in the management of the investments and information regarding the performance of the portfolio. Most of the additional obligations will fall to those conducting "real estate activities", which will be defined to include an issuer that intends to spend a material amount of the proceeds of the offering on an interest in real property. Such issuers will need to provide an independent appraisal of the properties in the portfolio. Additional tailored information would be required for developing real property such as a description of the approvals required, and the age, condition and occupancy level of real property that issuers own and operate. General amendments, such as requiring interim financial statements, and disclosing information on redemption/retraction rights including unfulfilled requests, would be required for all issuers.

**Overview of the Council's Comments:**

The CAC supports the approach where disclosure is standardized across issuers and supplemented with industry specific information in Schedules to the greatest extent possible. We urge the CSA to continue to consider emphasizing clear and prominent fee and conflict disclosures upfront on the face pages of the offering memorandum ("OM") as an important investor protection mechanism. We would encourage the CSA to also consider imposing a "plain language requirement" for specific portions of the OM, including the summary section, with cross references to where more detailed disclosures can be found in the document. Given the length and detailed nature of the prescribed form of OM, we would suggest mandating that issuers include an easily understandable organizational chart of their structure, showing the flow of fees and other funds upfront. The Proposed Amendments do not focus on the current "Use of Available Funds" chart in the OM. However, we believe this chart must also be improved in order to help investors understand the projected gross return of an investment. We have concerns about issuers with a practice of utilizing overly promotional marketing materials which is not consistent with the disclosure in the corresponding OM. Even though issuers are required in several jurisdictions to incorporate OM marketing materials by reference into the OM, stricter rules on the composition of marketing materials is required to ensure they are balanced. They need to contain key material facts and disclosure about the investment structure, fees and risks. Assumptions used should be clearly disclosed, and the timing and likelihood of these assumptions occurring should be indicated where possible. A description of the assumptions is particularly important in the current economic environment, where business plans might take longer to materialize. We understand the inherently promotional nature of marketing materials, but regulators must set out their expectations for balanced marketing materials specifically in connection with the use of the revised OM Exemption. We are also supportive of harmonizing, when possible, prospectus exemptions across Canada for ease of use by registrants, investors and issuers and to reduce the possibility of regulatory arbitrage across jurisdictions. We encourage regulators to continue to try to provide uniform protections across the country to investors purchasing securities under the OM Exemption. In order to help fulfill the stated purpose of providing more certainty to issuers on the disclosure expectations, if the Proposed Amendments are adopted it would be helpful to quickly publish regulatory guidance identifying any issues so that they can be corrected and avoided in a timely manner.

Specific comments related to the Proposed Amendments:

**Issuers Engaged in Real Estate Activities**

The Proposed Amendments would require issuers engaged in real estate activities to provide an independent appraisal of an interest in real property to the investor in the specified circumstances, including if the issuer intends to spend a material amount of the proceeds of the offering on an interest in real property. Different issuers and their managers may interpret the term "material" differently and/or too liberally, which presents risks to investors. Additional regulatory guidance on this point would help balance the cost burden with the benefits of additional transparency when warranted. This requirement could be further expanded to require an appraisal within a shorter timeframe if there has been an event that has had a material adverse impact on the value of a property, but only in circumstances that in aggregate would have a material impact on the issuer's total portfolio.

Item 3.1(k) in Schedule 1 would require disclosure, for real property that the issuer leases to others, of the occupancy level as at a date not more than 60 days before the date of the OM. We believe the CSA should mandate additional disclosure if this metric is included. Such disclosure should include the potential biases in presenting the information, which may otherwise understate the risk and inflate the prospects of the offering.

We strongly support the additional disclosures contemplated by the Proposed Amendments for related party transactions. Issuers should also be required to disclose the basis or methodology of the amount of consideration, and whether an independent valuation was made available.

**Issuers that are Collective Investment Vehicles**

The Proposed Amendments would require collective investment vehicles to add specific disclosure on a new Schedule 2 to Form 45-106F2, including disclosure regarding the performance of the portfolio, in order to help provide prospective investors with additional information on the composition and performance of the portfolio. We think that additional guidance on the regulatory expectations for the preparation of performance numbers is important for issuers, particularly for those who may not have had to calculate performance numbers for distribution previously. The CSA should set out its expectations for the calculation and methodology used to present performance data over and above what is currently set out in the Proposed Amendments.

**General Amendments**

Many comments are made regarding Proposed Amendments intended to address disclosure issues, including, but not limited to, the following:

- Support an electronically searchable OM
- Support disclosure of a working capital deficiency or paid dividends or distributions that exceeded cash flow from operations
- Suggest ensuring no gaps between new definition of a "related party" and that under IAS 24 Related Party Disclosures
- Support the addition of a chart illustrating the issuer's redemption and retraction history

[OSC Notice 11-791 – Statement of Priorities; Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2022 \(Filed December 16, 2020\)](#)**About the notice**

The OSC has set out four strategic goals and the priority initiatives it will pursue in support of those goals for the April 2021-2022 year. The first goal, promoting confidence in Ontario's capital markets, will be supported by further work to implement projects such as the Client Focused Reforms, policies on DSCs, continued consultation on the SRO framework, more timely and impactful enforcement action, collaboration on financial literacy initiatives, strengthening OBSI and expansion of the OSC's systemic risk oversight (focusing on derivatives and investment fund leverage and liquidity risks). The second goal of reducing regulatory burden will involve completing the actions identified in the OSC's existing burden reduction plan. Under the goal of facilitating financial innovation, the OSC will implement their plan for the Office of Economic Growth and Innovation and continue the work of LaunchPad in engaging with fintech market participants. The fourth goal, strengthening the organizational foundation of the OSC, involves continuing to develop SEDAR+, modernizing OSC technologies and fostering a culture of inclusion and diversity. The OSC has indicated it will update its priorities to address the Covid-19 pandemic, as well as to accommodate any changes adopted by the Government of Ontario that has been recommended by the Capital Markets Modernization Taskforce.

**Overview of the Council's Comments:**

The CAC is strongly supportive of several priorities set out in the Draft Statement with a view to meeting the OSC's stated goals and strategic plans. We agree that an organizational goal of reducing regulatory burden while balancing the need to avoid any negative impact on investor protection is important and should continue to permeate and be considered in conjunction with any new regulatory initiatives. Key Priority 1.1, which relates to client-focused reforms can represent a watershed moment for the protection of investors by requiring registrants to put the client's interest first when making a suitability determination and addressing material conflicts in the best interest of the client. Key Priority 1.2 indicates that the OSC will work with managers and dealers to streamline implementation issues and work to finalize the response to the use of the deferred sales charges option (DSC option). As the client-focused reforms continue to evolve and take on practical import, clear guidance is still required with respect to how registrants can meet the requirement to put clients interest first when recommending a DSC product, even if the availability of those products will be more circumscribed in future. Key Priority 1.6 relates to a consideration of ongoing SRO developments and feedback on the initial consultation paper. We are supportive of continued dialogue and study of this area. We also wish to reiterate prior comments that we support the strengthening of OBSI's decision making authority, as indicated in Key Priority 1.7. We continue to support Key Priority 4.1, and the SEDAR+ project, and welcome any acceleration that could be initiated for this undertaking. The CAC is deeply supportive of new Key Priority 4.3, to foster inclusion and diversity in the OSC community, including by promoting opportunities for learning and dialogue and specific steps to end systemic racism. We look forward to continuing to work with all relevant stakeholders as the recommendations from the Capital Markets Modernization Taskforce are finalized.

[CSA Multilateral Notice and Request for Comment 45-327 Proposed Prospectus Exemption for Self-Certified Investors \(Filed December 21, 2020\)](#)**About the notice**

The ASC and FCAA (Sask) are proposing a new prospectus exemption for issuers in those provinces who wish to sell securities to investors in those provinces as an alternative to the accredited investor exemption, which is intended to facilitate the growth of the angel investor ecosystem. To use the exemption, an investor would need to complete (and attest to) a Self-Certified Investor Statement and Acknowledgment. The investor would need to certify that they have a CFA designation, a CPA designation (in Canada), are admitted to the practice of law in Canada (focusing on M&A or financings) or hold an MBA with a focus on finance or a degree in finance. Alternative criteria building on the foregoing is proposed for purchasers that are not individuals. The risk statement includes detailed and comprehensive information on the risks of the securities, including that certain information that would otherwise be available in a prospectus (which is described) is not being made available, an extensive description of resale restrictions, notes about the impact of the lack of a public market and the potential inability to get the investment back. The amount that could be invested in reliance on the exemption by any one person is limited to \$10K in the last 12 months for the issuer, and \$30K in the last 12 months for all issuers. A private placement form would be required to be filed within 10 days of the closing of a distribution. The exemptions would be made available through local bank orders for three years as a pilot project.

**Overview of the Council's Comments:**

The CAC appreciates the opportunity to provide comments on the Proposed Exemption. The notice explaining the Proposed Exemption states that it is not intended that the issuer take steps to independently confirm the education or experience qualification of persons attesting to the foregoing in a statutory declaration. While that is a departure from the usual burden placed on issuers to ensure that an exemption from the prospectus requirement is available, we agree that a statutory declaration could suffice for the time being. However, to the extent that a registrant is involved in the distribution, we believe it is important that it be clearly stated that the statutory declaration does not abrogate the registrant's KYC, KYP or suitability obligations. Presumably, part of the dealer's responsibility would be to ensure that the individual qualifies for the exemption under the stated criteria as part of his or her suitability obligations. It is important that the self-certification not become a "check-the-box" exercise on the part of proposed investors, and dealers should bear some responsibility for ensuring the accuracy of the self-certification. If there are ramifications to inaccurate statements, those ramifications should extend to the registrants facilitating the issue. While the investor may have the credentials to make them aware of the general risk characteristics of an investment, that same investor may not have a proven ability to withstand the loss of part or all of their investment in the issuer. Therefore, it will be crucial for registrants to confirm as part of the KYC and suitability assessments that any investor utilizing the Proposed Exemption is not investing using borrowed funds beyond their ability to repay should the investment prove either worthless or illiquid. We anticipate that the Proposed Exemption would be used by start-ups and emerging businesses in Alberta and Saskatchewan to sell securities to professional colleagues, friends and acquaintances of promoters and officers/directors of the issuer who are unable to purchase securities under an existing prospectus exemption. We believe many of these investors might be just shy of the requisite income or financial asset threshold to qualify as accredited investors. We believe the limits on investment are reasonable. We believe that additional disclosure items should be added related to investment illiquidity and potential tax impact. We would be pleased in the future to consider whether there are other educational avenues or areas of study, such as economics, applied mathematics, business strategy or entrepreneurship, coupled with professional experience related to public or private financings or mergers and acquisition transactions, which could be seen as equivalent in specific circumstances. We have some concerns with respect to interpreting the "not the public" prong of the private issuer exemption such that it would automatically include a vehicle that is predominately owned by accredited investors.

**Response Drafting in Progress****Canadian Advocacy Council****IIROC Client Focused Reforms – Proposed Rule Amendments for Public Comment (Due January 18, 2021)****About the notice**

The proposed amendments to the IIROC rules are intended to make the rules uniform (in all material respects) with the client-focused reforms in NI 31-103 (the "CFRs"). The amendments impact rules relating to KYC, suitability, misleading communications, conflicts and fee and relationship disclosure. Substantive changes are also proposed to guidance regarding product due diligence by dealer firms and KYP obligations on approved persons. Exemptions from specific KYC and KYP requirements are proposed for certain account types (such as order execution only accounts), client types (e.g. institutional clients) and service arrangements (e.g. carrying broker arrangements) that are unique to the IIROC infrastructure. The rules will be amended to explicitly provide that material conflicts must be addressed in the best interest of clients and that clients' interests must be put first when dealers make their suitability determinations. The requirements for client-directed trades would also be updated such that, similar to the CFRs, dealers will be required to recommend suitable alternatives rather than simply accept the trades. The proposed new guidance for dealers will set out how product due diligence and KYP obligations can be tailored depending on a number of factors, including the type of security and a dealer's business model. With respect to product due diligence, IIROC suggests that dealers may determine that some securities should not be made available to retail clients, such as inverse ETFs and debt-structured derivatives.

**MFDA Proposed Amendments to Regulatory Instruments to Conform to Requirements under the Client Focused Reforms Amendments to NI 31-103 (Due January 18, 2021)****About the notice**

The proposed amendments impact a number of MFDA rules and staff notices relating to know-your-client, know-your-product and suitability requirements, as well as specific conflict matters such as personal financial dealings with clients. The purpose of the amendments is to conform to the client-focused reforms in NI 31-103 (the "CFRs"). While most of the changes repeat the CFR requirements, some have been adapted to be more specific to the existing MFDA rules, such as with respect to the requirement for clients to confirm the accuracy of collected KYC information. Rules related to KYC, updating KYC information, KYP expectations, relationship information and fee disclosure, unsolicited orders, branch reviews and suitability requirements have all been expanded substantially, and the suitability requirement would explicitly reference putting a client's interests first. The proposed amendments would also clarify the prohibitions and the exceptions for approved persons borrowing from or lending to clients. Comments are only being sought on whether the changes are clear and consistent with other MFDA rules and applicable to the business model of MFDA members and not on the substantive changes made by the CFRs.

**CSA Consultation Paper 25-403 Activist Short Selling (Due March 3, 2021)****About the notice**

The CSA's consultation paper is intended to gather comments on concerns raised relating to activist short selling, which is where one takes a short position and then publicly shares information or analysis likely to have a negative effect on the security's price. The CSA has been examining this issue closely and its research findings are set out in the paper, discussing activist short selling in Canada to date as well as concerns identified about such activity, in contrast to those who feel too much regulatory intervention will detract from the price discovery process and legitimate short selling activities. The CSA research indicates that most short sellers behind campaigns targeting Canadian issuers are well-established and based in the U.S, with anonymous short sellers accounting for less than 20% of the activist short sellers targeting Canadian issuers since 2010. While currently most Canadian jurisdictions do not have specific requirements relating to activist short selling, there are existing prohibitions such as those against market manipulation, misleading statements and fraud. Short selling as a trading activity is also regulated by IIROC. Unlike some jurisdictions (e.g. the EU), there are no requirements to report publicly on the short position of individual accounts. A number of consultation questions are posed, seeking data on the nature and extent of activist short selling in Canada, as well as comments with respect to potential remedial actions.

**\*\*If you would like to participate or provide comments to ongoing initiatives, please contact [cac@cfacanada.org](mailto:cac@cfacanada.org)\*\*****Volunteer Spotlight****Canadian Investment Performance Council****Patrick Fontaine, CIPM**

Patrick is a CIPM certificant and holds the position of Process Lead, Investment Analytics at Fiera Capital Corporation. In this role, he leads the performance measurement team's processes and is responsible for maintaining quality of outputs and compliance with service level agreements (SLA). He is also in charge of the firm's annual audit for GIPS claims of compliance and acts as a project leader on various firm projects. Prior to joining Fiera, Patrick was financial analyst for Laval University Pension Fund from 2007 to 2011. Patrick graduated with a B.A. in finance from Laval University. Patrick has served on the CIPC since June 2018.

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

Being a member of the CIPC was a goal for me and I'm happy to be part of the council. At the beginning, my objectives were to be apart of the council for the ability for collaboration and learning more about GIPS. However, over the time, I realized that being on the CIPC is much more than speaking about GIPS. You have the opportunity to share with individuals from other companies, cultures, using different systems and facing similar challenges that you deal with. I have always been a member of the council very interesting and beneficial not only at work but personally. It's found interesting to learn how other companies face and overcome similar challenges.

**2. What would you tell new members about the CIPC?**

The CIPC gives you the opportunity to be a leader in your field. I would tell new members that being on the CIPC is not only an excellent place to learn and share, but it also allows you to continue to learn about performance, attribution, operations and regulation on a regular basis. I consider the CIPC to be a hub of knowledge, making the field of performance measurement exciting and rewarding.

**News****English to French Translation of GIPS Claims of Compliance**

The Canadian Investment Performance Council has translated the 2020 GIPS Claims of Compliance from English to French to assist in hearing from Canadians in their communications with clients and the public. The CIPC is interested in hearing from Canadian firms, asset owners and their verifiers as to whether further French translations of the GIPS Standards would be beneficial.

To get your French version of the Claims of Compliance and submit a request/comment for further French translations relating to the GIPS Standards, [click below](#).

**[Learn More Here](#)****FCAC is Renewing National Strategy for Financial Literacy**

FCAC is renewing its National Strategy for Financial Literacy, building on what has been learned through research, surveys, engagement with our partner organizations and the implementation of the first strategy. It will focus on helping Canadians manage their money and how financial literacy contributes to the overall well-being of Canadians.

Comments are due **January 28, 2021**.**[Read More Here](#)***The Canadian Advocacy Council strives to advance market integrity, transparency and investor protection, on behalf of CFA Societies Canada and Canadian CFA charterholders.***[Follow us on LinkedIn!](#)**Next Meeting Scheduled: **Tuesday, January 12, 2021 at 4:15pm EST****[Contact Us](#)****[Subscribe](#)**