

February 2020

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Chair Summary

Canadian Advocacy Council



Parham Nasser, CFA
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Advocacy Council

February proved to be yet another important and productive month for the CAC. It was a month filled with groundbreaking regulatory engagements, our annual in-person meeting in Toronto, and developments with local CFA societies from across Canada.

In addition to developing the CAC's regulatory consultation responses (see detailed below), we made strides to establish key relationships, and to offer a credible ethical voice with the regulatory and policy maker communities. For example, we participated in a number of key industry events, including the inaugural CSA Client Focused Reforms implementation working group meeting. In addition, we took proactive steps forward by publishing our very first op-ed in the Quebec/French-language edition of the Investment Executive. As evident by the tone of these examples, we have been making leaps to ensure our advocacy voice is heard in our industry.

In our Toronto meeting, we met with the CFA Societies Canada board of directors, Andrew Kriegler, CEO of IIROC, and Melissa Lanstman, Vice President National Public Affairs, Enterprise Canada.

Published Comment Letters

Canadian Advocacy Council

[IIROC Proposed Derivatives Rule Modernization, Stage 1 \(Filed February 19, 2020\)](#)

About the notice

The draft amendments follow a review by IIROC of all its derivatives related rules to ensure they are clear, up to date, and consistent with regulations for securities-related activities. Stage 1 expands current regulation for futures and options to cover OTC derivatives by replacing and expanding various defined terms. IIROC is also proposing an expansion to the definition of an "institutional client" to include individuals with at least \$10m of assets under administration and to non-individuals engaged in specified hedging activities. They further propose to expand many of the business conduct rules to derivatives activities, such as BCP requirements, sales conduct requirements, best execution and suitability. Cumulative loss limits would also be required for any type of derivative account offering, and additional account opening procedures and/or IIROC approval would be required prior to offering certain highly leveraged and complex products to retail clients. IIROC has also prepared a new draft risk disclosure statement for derivatives, and has suggested additional proficiency requirements for representatives (which would need to be worked on in conjunction with the CSA projects on proficiency and derivative registrations).

Overview of the Council's comments

We are supportive of IIROC's initiatives to review its Dealer Member rules for consistency with proposed CSA rules and to identify necessary clarifications, as well as identify inconsistencies in the treatment of listed and OTC derivatives. We believe IIROC should continue to consider how best to reduce regulatory burden without having a negative impact on investor protection, including by harmonizing rules where possible.

We agree with the proposal to broaden the definition of a derivative to detail the general features of a derivative and thus capture more instruments than futures contracts, futures contract options and options. We note however, that the definition of a listed derivative should not inadvertently include an ETF.

International derivatives participants are continuing to advance definitions and standards for the global derivatives marketplace, and it is important that the final definitions and scope of the rules be compatible with such evolving international standards.

With respect to the required monthly account statement, we are of the view that the economic exposure of the derivative product should be reported together with the market value, cash positions and other features of the derivative.

We are particularly supportive of the proposal to amend IIROC rules to require that the best execution obligation apply to all derivatives orders and transactions and include specific best execution considerations for listed derivatives and fair pricing considerations for OTC derivatives.

[CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers \(Filed February 26, 2020\)](#)

About the notice

The CSA is soliciting views on the suitability of introducing an "access equals delivery" model in the Canadian market, such that delivery of a document would be effected by the issuer alerting investors through a news release that the document is publicly available on the System for Electronic Document Analysis and Retrieval (SEDAR) and the issuer's website. They are also looking for input on which documents (prospectuses, financial statements, MD&A and other) should be included in an access equals delivery model.

Overview of the Council's comments

We are supportive of the CSA's initiatives to reduce regulatory burden without having a negative impact on investor protection, and are in favour of facilitating electronic delivery of documents where possible.

We are supportive of the proposal to facilitate an access equals delivery model for the distribution of prospectus documents, financial statements and MD&A filings.

Regardless of the timing of the implementation of the proposal, the issuer should be required to post the documents prominently on their website in an easily accessible format. The enforcement powers of CSA members should specifically extend to issuers that post documents in an obscure manner or in circumstances where documents are not posted in a timely and accessible fashion.

As the CSA continues to consider the Proposed National Systems Renewal Program Rule and Related Amendments, the ability to reformulate the withdrawal mechanism based on new technological capabilities may emerge.

The requirement to provide paper copies of documents upon request should be at no charge to the investor, as there remain some retail investors with intermittent to no online access. The enforcement powers of CSA members should also specifically extend to instances where paper copies are not easily accessible.

To the extent possible, aligning the initiative with international counterparts may bring some consistency to issuers and international investors.

We understand that the CSA is also considering whether other issuer documents such as rights offering materials and take-over bid circulars should be included in the access equals delivery model. As set out in the notice of the

Consultation, extending the model to time-sensitive documents and processes that require shareholder participation could, and we believe does, raise investor protection concerns in the near term.

Response Drafting in Progress

Canadian Advocacy Council

Proposed OSC Rule 81-502 and 81-502 CP Restrictions on the use of the Deferred Sales Charge Option for Mutual Funds (due May 21, 2020)

About the notice

The OSC is proposing restrictions on the ability of dealers to sell mutual fund securities with a DSC option. Sales would not be permitted to certain clients, including those over the age of 60, whose investment time horizon is shorter than the DSC schedule, whose account size is over \$50,000 or who use borrowed money to purchase the securities. In addition, dealers could not accept commissions on reinvested distributions and only for new contributions to a client account.

Dealers would have to ensure that redemptions fees are not levied on investors in certain circumstances, including permanent disability or involuntary loss of full time employment; in short, the OSC is setting out more specifically the factors dealers will need to take into account in their suitability determinations.

Investment fund managers offering a DSC series would need to ensure the maximum term of the redemption fee schedule is no longer than 3 years, clients could redeem 10% of the value of their investments (on a cumulative basis) without fees each year, and that the DSC option is placed in its own series of units (to ensure there is no cross-subsidization of larger management fees from other unitholders). It is anticipated the rule would come into force on June 1, 2022 to coincide with the ban on DSCs being implemented in all other Canadian jurisdictions.

Proposed NI 52-112 and 52-112 CP Non-GAAP and Other Financial Measures Disclosure (Due March 9, 2020)

About the notice

The CSA is setting out a revised proposal that would have disclosure requirements for non-GAAP financial measures, non-GAAP ratios and other financial measures (as defined) which would apply to fewer documents and issuers as originally proposed. The disclosure requirements have also been simplified in response to feedback and regulatory burden reduction considerations and better align disclosure requirements with those of the SEC. The proposals are intended to deal with financial measures that may lack standardized meanings and lack transparency, or that lack context when reviewed outside of the financial statements.

The proposals codify current guidance which currently applies to all issuers that disclose non-GAAP financial measures, but would exempt investment funds, SEC foreign issuers and designated foreign issuers. In addition, incorporation by reference to an issuer's MD&A of certain information would be permitted. The scope of the term "non-GAAP ratio" has also been reduced to only include ratios where a non-GAAP financial measure is used. Disclosure requirements for forward-looking non-GAAP financial measures has been reduced, particularly with respect to the reconciliation requirements.

Specific documents would not be included within the scope of the rules, such as pro forma financial statements and valuation reports, or financial measures disclosed as required by law or an SRO. The rules would only apply to non-reporting issuers in certain contexts, such as those using the offering memorandum prospectus exemption.

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

Volunteer Spotlight

Tamara Close, CFA



Tamara began her investment management career in 1991. She held various investment management positions for the Bank of Montreal and Credit Lyonnais in the global derivatives and foreign exchange markets. In 2000 she was head of research for a start-up asset management firm in Montreal. In 2008 she joined PSP Investments and held senior management roles within the risk and public markets investment groups. In 2017 she founded an independent investment management strategy and ESG advisory firm, focusing on ESG integration practices for asset managers and asset owners.

Tamara holds a Bachelor's degree in Economics from McGill, a Masters of Science degree in Finance from the John Molson School of Business (JMSB) as well as the Sustainable Investment Professional Certification from the JMSB. Tamara also holds the Chartered Financial Analyst (CFA) certification and is a council member of the Canadian Advocacy Council for CFA Societies Canada.

Why does advocacy matter to you?

Advocacy is about ensuring that peoples' voices are heard when decisions are being made about their lives. This includes rules and regulatory standards in the investment industry which should ultimately protect people as investors as well as advance market integrity and transparency.

What advocacy issues are you most passionate about?

I am most passionate about advocacy on Environmental, Social and Governance (ESG) issues. Advocacy on ESG encompasses multiple issues such as the targeting of greenhouse gas emissions, setting carbon prices or increasing funding to renewable energy R&D, as well as social issues such as gender pay equity, improving supply chain human rights disclosures or LGBT equality in the workplace.

Advocacy on these issues can be controversial and achieving significant change can be a slow process. However the investment industry can be a powerful advocate to help regulators and standard setting authorities navigate the complexities of ESG issues and ultimately help improve the long term outcomes of society.

The Canadian Advocacy Council strives to advance market integrity, transparency and investor protection, on behalf of CFA Societies Canada and Canadian CFA charterholders.



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Next Conference Call Scheduled: Tuesday, March 24, 2020 at 4:15pm EDT

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