

## January 2021

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### **Chair Summary**

## Canadian Advocacy Council



As we embark on a new calendar year, we turn our attention to a number of advocacy files that will surely dominate the regulatory agenda for 2021. For the past year or two, our focus has centered on finding ways to reduce regulatory burden, foster capital formation and most importantly advance investor protection and transparency within these themes. We believe these themes will surely accelerate in the coming year as the focus of major regulatory projects turns to implementation. Most importantly, as we develop our voice and strengthen our relationships with policymakers and regulators, fulfilling our mandate for advancing market integrity, transparency and investor protection will be more important than ever.

Lastly, the CAC is excited to announce that it is seeking applications to join our Council. Those interested in applying should submit a resume and a short summary on why you should be considered for the Council to info@cfacanada.org by Friday, February 19th, 2021.

Parham Nasseri, CFA Chair, Canadian Advocacy Council

# **Published Comment Letters**

# **Canadian Advocacy Council**

# IIROC Client Focused Reforms - Proposed Rule Amendments for Public Comment (Filed January 18, 2021)

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.

## Overview of the Council's Comments

The CAC supports publishing the proposed rules specific to IIROC dealers member firms and their business models. In the absence of overarching best interest standard, we support the CSA's new core requirement for registrants to put their clients' interests first when making a suitability determination and in dealing with conflicts. We note that an example of expectations that may still require further clarification surrounds the framework and level of diligence expected for specific types of securities such as GICs and government backed agency bonds. We appreciate that the retail suitability requirements will require consideration of a reasonable range of alternative actions, and that IIROC is working on a second guidance note to provide clarity on the enhanced suitability requirements. IIROC may wish to consider including supplementary supporting language explaining how a consideration of alternative results will lead to a recommendation that puts clients' interests first. We are of the view that the current KYP requirements should be permitted to take hold before initiating any potential rules for shelf access. We note however, that additional and more specific KYP guidance provided at this time may help pre-empt unintended consequences if in future additional rules are instead added with the purpose of narrowing the issues for dealers from a KYP perspective. With respect to the specific exemptions from the Proposed Amendments, we agree that dealers who offer order execution only accounts should not be exempted from the product due diligence requirements for products that they make available on their product shelf.

MFDA Proposed Amendments to Regulatory Instruments to Conform to Requirements under the Client Focused Reforms Amendments to NI 31-103 (Filed 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 MFDA rules 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.

# Overview of the Council's Comments

The CAC supports publishing the proposed rules specific to MFDA dealer member firms and their business models. In the absence of an overarching best-interest standard, we support the CSA's new core requirement for registrants to put their clients' interests first when making a suitability determination and in dealing with conflicts. We note that an example of expectations that may still require further clarification surrounds the framework and level of diligence expected for investment products. We appreciate that draft Rule 2.2.6 will require members and approved persons to consider a reasonable range of alternative actions available to the approved person through the member at the time a suitability determination is made, and that the MFDA is working on amendments to guidance set out under MSN-0069 regarding suitability. The MFDA may wish to consider including supplementary supporting language explaining how a consideration of alternative results will lead to a recommendation that puts clients' interests first. We are of the view that the current KYP requirements should be permitted to take hold before initiating any potential incremental rules for shelf access. We note however that additional and more specific KYP guidance provided at this time may help pre-empt unintended consequences if in future additional rules are instead added with the purpose of narrowing the issues for dealers from a KYP perspective.

# Response Drafting in Progress

# **Canadian Advocacy Council**

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 by critical stakeholders 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 wellestablished and based in the U.S, with anonymous short sellers accounting for less than 20% of the total number of 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 for short sellers to report publicly on their positions. 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\*\*

# Volunteer Spotlight

# **Canadian Advocacy Council**



Robert Gouley, CFA Rob Gouley, CFA is a Principal, Trading at OMERS. He has worked on the trading desk of OMERS for the

and Finance divisions of OMERS. As a trader, Robert is the eyes and ears of the OMERS organization in the capital markets. Robert implements investment decisions on a global basis by leveraging a strong network of relationships. Robert has a BA (Honours Economics) from McMaster University, is a CFA charterholder, a CAIA charterholder, holds the FRM and CMT designations, and is a Fellow of the Canadian Securities Institute.

past 10 years trading global equities. Prior to the trading desk, Robert worked in the Investment Operations

Canadian Advocacy Council of CFA Societies Canada. Robert is the proud father of Chelsea Gouley. In his spare time, he enjoys swimming, marathon running and competing in Ironman triathlons.

Robert is a past Chairman of the Canadian Securities Traders Association and a past Chairman of the

1. What advocacy issues are you most passionate about? As an advocacy volunteer, my focus is aimed at understanding, and where appropriate, re-structuring

behavioral incentive systems to encourage better results for investors. 2. What would you tell another Canadian CFA charterholder about the CAC?

As CFA charterholders, we are all ambassadors of the Code of Ethics and Standards of Professional Conduct. Getting involved as a volunteer with CFA Institute and the CAC specifically is a great way to apply

council to info@cfacanada.org by Friday, February 19th, 2021.

the code of ethics and to give something back to your community. I like to think of it as leaving the campsite in better shape than when you found it.

# **News**



# The CAC is looking for volunteers who are passionate about advocating on behalf of CFA charterholders

The Canadian Advocacy Council - Call for Volunteers

and the Code of Ethics and Standards of Professional Conduct... The Council is particularly looking for professionals with expertise at the intersection of regulation and any

of fixed income, derivatives, ESG and/or Fintech. Interested applicants can submit a resume and a short summary on why you should be considered for the

Learn More Here

# FCAC Renewing National Strategy for Financial Literacy - Comment Letter

CFA Societies Canada recently submitted a comment letter to and had direct engagement with the Financial Consumer Agency of Canada on their renewal of Canada's National Strategy for

Financial Literacy. Thank you to the working group who participated on this letter from across Canada, and to Doug Sarro, CFA for holding the pen on our response!



**Comment Letter** 

# Modernizing Ontario's Capital Markets: Capital Markets Modernization Taskforce Final Report

Read More Here



charterholders.

On January 22, 2021, the Ontario Capital Markets Modernization Taskforce released its final recommendations and report. This report serves the paramount interests of job creation and economic prosperity as the critical outputs of a successful capital markets regime. In our engagement with

government and the Taskforce, we focused on the overriding concerns of investor protection and market integrity, while positioning Ontario's capital markets to be the best possible conduit and catalyst for economic growth. Our comment letter to the Taskforce's initial report is quoted on page 32 of the final Read the Report Here

CFA Institute Disciplinary Review Committee Volunteer Opportunity

#### The volunteer application for the CFA Institute's Disciplinary Review Committee (DRC) opens on February 22, 2021 for the term beginning in CFA Institute's FY2022 (September 2021). CFA Institute is encouraging qualified society leaders and members to apply when the portal

opens on February 22nd. Contact <a href="mailto:DRCVolunteers@cfainstitute.org">DRCVolunteers@cfainstitute.org</a> for more information.

Learn More Here

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

Follow us on LinkedIn!

Next Meeting Scheduled: Friday, February 26, 2021 at 1:00pm EST

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If you no longer wish to receive future communications from CFA Societies Canada, please reply to info@cfacanada.org with a subject UNSUBSCRIBE.