

CAC Member Report to Local Board July 15, 2019

The CAC held its monthly call on July 9, 2019.

The team is developing responses on three key comment letters. Since last month's report, excellent progress was made on IIROC's Minor Contravention Program and the CSA's At-the-market offerings. Moreover, a sub-committee has been formed to tackle the ASC's Consultation Paper on energizing Alberta's Capital Markets (summaries provided below).

In addition to advancing on the three comment letters, it has proven to be very, very busy summer months for the council as we:

- Integrated within the CFA Societies Canada umbrella and developed a more consistent and poignant social media footprint,
- Actively engaged key stakeholders and regulators by inviting key stakeholders to speak during our meetings, invite post comment letter discussions with regulators and partnered with Michael Thom on a range of in person meetings,
- Transitioned the CAC's leadership team, welcoming Laura Howitt Bewick into the Vice-Chair role while thanking Robert Gouley for his excellent leadership,
- Commenced council member feedback meetings to seek member insights on the CAC's priorities, develop sustained leadership and continually improve, and
- Began interviews for our strategic recruitment cycle.

Since the June report, the CAC provided comments on the following consultations (all letters can be seen on the CAC website, www.cfaadvocacy.ca)

- IIROC Request for Comment – Minor Contravention Program and Early Resolution Offers (filed July 10, 2019)

About the notice

IIROC is moving ahead with proposals to introduce a minor contravention program ("MCP") which would be a middle ground between a cautionary letter and formal disciplinary action. Unlike the original proposal, the MCP would not be available for dealer members but only for Approved Persons (individuals). MCP Notices would be issued for contraventions of IIROC requirements that are isolated and result in limited harm to the public. The MCP would be based on stated criteria for eligibility, and sanctions would be fixed at \$5,000 per contravention (an increase from the \$2,500 originally proposed). Each case would have to be approved in a streamlined process by a one-member hearing panel. A public notice setting out all matters resolved by way of MCP Notice would be issued quarterly but without identifying the Approved Person. They are also proposing to adopt a staff policy on Early Resolution Offers to complete settlement agreements earlier in the enforcement process based on the stated

criteria for eligibility. Dealers and Approved Persons who resolve a case would be granted a 30% reduction on the sanctions IIROC staff would otherwise seek in a settlement agreement.

Overview of the Council's comments

The council supports the proposed MCP and Early Resolution Offers as they may assist staff in deploying resources to more serious offences. In our view, the fairness of the program relies on the overall governance regime with respect to the discretion exercised by staff. The MCP should remain a principled program and to ensure the program has appropriate oversight, it should be reviewed periodically to assess the appropriateness of cases selected. Additionally, our view is that if an MCP notice is issued in lieu of a full disciplinary hearing, it will be particularly important for IIROC to ensure that there are no more serious systemic issues underlying the one small contravention. While closely monitoring Approved Persons who have been subject to an MCP notice for further infractions. We also query whether a proposed MCP Agreement should be submitted for acceptance automatically to a one-member hearing panel rather than potentially a three-member hearing panel if the circumstances so warrant.

- CSA Proposed National Systems Renewal Program Rule and Related Amendments (filed July 10, 2019)

About the notice

Proposed new National Instrument 13-103 would replace the current rules and framework for SEDAR, the National Cease Trade Order Database, the Disciplined List, SEDI, NRD and the National Registration Search in four phases beginning in early 2021. Phase 1 will focus on replacing SEDAR, the National Cease Trade Order Database, the Disciplined List and certain filings through the electronic portals in Ontario and B.C. made by issuers. Once fully implemented, the system would provide single-window access for market participants to file documents and pay fees.

Overview of the Council's comments

The council is broadly supportive of the updates being made by the CSA to the CSA National Systems, including SEDAR. The council believes that is important that users of the information filed on the systems can find the continuous disclosure material quickly and without difficulty, as not every investor has access to subscription services that allow filed materials to be searched by topic and keywords.

With respect to SEDAR, our comment letter provides EDGAR as an example of a model to mirror. In the U.S., academic research has supported the use of data mining of issuer filings on EDGAR. The researchers conclude that historical EDGAR data is being extracted in a sophisticated manner. The council believes this model would provide additional benefits to the ongoing CSA burden reduction initiatives.

The CAC is actively working on a response to the following consultations:

- ASC Consultation Paper 11-701 – Energizing Alberta’s Capital Market (due September 20, 2019)

About the notice

The ASC is seeking comments on potential securities regulatory solutions to creating more vibrant public and private capital markets in Alberta and increase access to capital. This consultation is in addition to the existing burden reduction initiatives in the province, so the ASC is focused on comments relating to the private markets. The paper examines quantitative information about the Alberta market and a summary of themes collected from industry consultations and internal committees. The paper provides a number of “brainstorming ideas” to elicit comments, including potentially expanding the Accredited Investor prospectus exemption to investors with educational/investing experience, expanding dealer registration exemptions to help small business financings, facilitating alternative capital raising such as angel investment funds or public funds to invest in early stage businesses, and exploring secondary market liquidity options.

- CSA Proposed Amendments to NI 44-102 and 44-102CP Shelf Distributions relating to At-the-market Distributions (due August 7, 2019)

About the notice

An at-the-market offering allows issuers to sell equity into the market on an exchange at the prevailing market price through registered dealers using a short form base shelf prospectus. Typically, an issuer will issue a notice to the dealer specifying items such as minimum acceptable pricing and execution timing. Currently, exemptive relief is required from the prospectus delivery and certain disclosure requirements to engage in these offerings. The proposed amendments would codify the relief frequently given from the requirement to physically deliver a prospectus and provide rights of withdrawal/ rights of action for non-delivery of the prospectus for equity ATM offerings. The CSA is exploring two options, one would impose a requirement that the securities be highly liquid or that the aggregate number of securities distributed on any trading day cannot exceed 25% of the trading volume of that class on that day. Second option would not impose a cap on the basis that issuers and underwriters are already incentivized not to conduct distributions that would have a material impact on market price.

General Affairs:

The CAC is still looking to add a few members to its membership base. If you are a dedicated volunteer with strong communication skills and interested in helping shape the future of our capital markets we would like to hear from you! Feel free to contact us for more information at cac@cfacanada.org.

Reminder:

All letters can be seen on the CAC website, www.cfaadvocacy.ca

Be sure to [Follow Us on LinkedIn](#) to stay up to date on our activities.

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