

June 2020

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## Chair Summary

## Canadian Advocacy Council



**Parham Nasser, CFA**  
Chair, Canadian  
Advocacy Council

As we entered the summer months, we approached the end of extended comment periods, resulting from the COVID-19 health pandemic. To meet these myriad deadlines, stratified teams held multiple internal meetings, and hosted guest speakers to form our responses to these consultations. Considering the challenges of the remote work environment, the team has adapted well and come together to ensure our comments were thoughtful and provided policy makers with a balanced perspective that prioritizes investor protection. Please see an overview of our responses below. During this period, our team also embarked on our annual leadership renewal process, where **Barbara Bauer, CFA** was elected as a second Vice-Chair to the team, with myself and **Laura Howitt, CFA** returning for second terms as Chair and Vice-Chair respectively.

As we approach an end to the team's fiscal year, we are taking measures to continually improve in the years to come by seeking the council's feedback. We have already collected survey data from the team and looking forward to individual meetings in the coming months. Lastly, the CAC has continued to broaden its portfolio of advocacy efforts. We are happy to report that we now have multiple channels to share our message across the country, and there is more great work in the pipeline.

## Published Comment Letters

## Canadian Advocacy Council

[OSC Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2021 \(Filed May 29, 2020\)](#)

### About the notice

Given the COVID-19 pandemic, the OSC is not currently preparing a full set of priorities for comment. Instead, it has requested comments on its existing priorities as well as its report on regulatory burden reduction initiatives.

### Overview of the Council's Comments

The Canadian Advocacy Council of CFA Societies Canada noted that we support targeted regulation and legislation which, in general, should be risk and principles based. Furthermore, OSC Staff should facilitate the reduction of regulatory burden faced by smaller registrants and make it easier to share common compliance infrastructure and best practices, and explicitly permit part time Chief Compliance Officers (CCOs) for risk-appropriate registrants. Keeping with the theme of burden reduction, proposed rules and guidance that are disproportionate in their benefits to their costs of development and implementation should be further critiqued. The OSC should continue to inform future regulation with the research stated in OSC Staff Notice 11-778 – Behavioural Insights – Key Concepts, Applications and Regulatory Considerations. The CAC continues to support the SEDAR Plus project so that all investors can more readily access important documents on a consistent and usable basis. Like many global counterparts, the OSC should further develop and strongly consider publishing its service standards in a transparent manner. Issuers and registrants should be told how long any sought exemption applications or receipt processes will take, which will help provide certainty to applicants in planning items such as transactions, registration or fund formations. We reiterate prior comments that we support any concrete measures that can be taken by the OSC to further strengthen OBSI's decision making authority. Finally, we are of the view that the OSC should continue an examination of the conflicts of embedded compensation as part of its continued work as the client focused reforms are phased in.

The final priorities were published on June 25, 2020. Per the [release](#), the feedback received was generally supportive of the OSC's leadership and proposed direction and the OSC's continued focus on investor protection and commitment to work with the Ontario government on modernizing Ontario's capital markets. Specific comments highlighted in the release included discussion on the OSC's ongoing work on embedded commissions, regulatory burden reduction, service standards, advisor titles and proficiency standards, and initiatives to improve investor protection.

### [CSA Proposed NI 45-110 Start-Up Crowdfunding Registration and Prospectus Exemptions](#) (Filed June 23, 2020)

#### *About the notice*

The proposed National Instrument and related guidance attempt to harmonize the framework for securities crowdfunding by start-ups and early stage issuers. The instrument would provide a prospectus exemption to allow a non-reporting issuer to distribute eligible securities through an online funding portal and a registration exemption for funding portals. The prospectus exemption would be subject to a number of conditions, including that the aggregate gross proceeds raised by the issuer (and certain others) during the prior 12-months cannot exceed \$1,000,000 and that each purchaser would be limited to investments of no more than \$2,500 or, if the purchaser has advice from a registered dealer, \$5,000. While the issuer would need to prepare a prescribed offering document and provide the purchaser with a two-day withdrawal right, it would not be required to provide financial statements or any other continuous disclosure documents.

The registration exemption would also be subject to conditions, including prior filings by the portal with the securities regulatory authority of a completed information form, the funding portal must hold each purchaser's assets separate and apart from the funding portal's own property, and in the case of cash, in a designated trust account at a Canadian financial institution, and the funding portal cannot provide advice to a purchaser or receive a commission, fee or other similar payment from a purchaser. A firm registered as an EMD or investment dealer may operate a funding portal provided that it meets the requirements set out in the proposed National Instrument.

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

We are supportive of measures taken to assist small and emerging companies to finance growing operations while emphasizing investor protection. We also agree with steps to harmonize registration and prospectus exemptions across jurisdictions for ease of use by issuers and investors

We offered additional views on the importance of imposing proportionate due diligence and related obligations on funding portals to protect investors from fraud or other unfair or improper practices, and additional disclosure obligations on issuers and funding portals, including:

- Obligations of Funding Portals: we highlighted that the Proposed Instrument does not appear to place any responsibility on funding portals to screen issuers before posting their offering documents online, beyond taking

reasonable measures to confirm that the issuer's head office is in Canada. Other jurisdictions, such as Australia and the United States, place additional obligations on funding portals to reduce the risk of fraud. We noted that the CSA should consider this within the regime.

· Disclosure Obligations: We highlighted that investors may not be cognizant of the fact that each additional financing by the issuer will dilute their investment, and thus the risk warning (or other similar warning prominently displayed by the portal) should specifically address the risk of dilution due to additional financings. We also have concerns about the potential lack of disclosure on the financial condition of the issuer. Under corporate or other applicable laws, an issuer's obligation to prepare and distribute annual financial statements after completing a crowdfunding offering will vary depending on its jurisdiction of incorporation and the type of securities it issues. We proposed eliminating this potential source of confusion by making the preparation of annual financial statements and their distribution to crowdfunding securityholders an ongoing obligation of issuers that have completed a crowdfunding offering.

### **[Proposed NI 52-112 and 52-112 CP Non-GAAP and Other Financial Measures Disclosure](#) (Filed June 29, 2020)**

#### *About the notice*

The CSA is setting out a revised proposal that would set disclosure requirements for certain non-GAAP financial measures, non-GAAP ratios and other financial measures (as defined) and would apply to fewer documents and issuers than originally proposed in an earlier version of this proposed NI in 2018. The disclosure requirements have also been simplified in response to feedback and regulatory burden reduction considerations and to 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.

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

The CAC agrees with the analysis that non-GAAP financial measures lack standardized meaning, context when disclosed outside of financial statements, and transparency as to their calculation.

We support the CSA in the developments on the IASB's Primary Financial Statements Project. We would suggest that the adoption of the Proposed Instrument should be a milestone in an ongoing CSA policy project to improve issuer disclosures across the range of financial and non-financial metrics that form a substantive portion of issuer disclosure, with the goal of pursuing quality, clarity, consistency, and ultimately usability, by investors. For example, a second-stage review of the requirements could include reviewing sector specific financial reporting requirements, including for oil and gas issuers and mining companies.

We also understand that the scope of application of the Proposed Instrument has been substantially narrowed. We agree with the decision to exclude certain investment funds, designated foreign issuers and SEC foreign issuers from the requirements of the Proposed Instrument. While we support the Proposed Instrument as a whole, we do note that many of the changes that have occurred since it was originally published involve deletions, and not additional investor protection safeguards.

Our opinion is that non-GAAP financial measures must be presented with no more prominence than the most comparable financial measure presented in the issuer's primary financial statements to which the non-GAAP financial measure relates.

We believe this disclosure requirement is a key feature of the Proposed Instrument.

We are concerned about the lack of guidance provided with respect to the use of oral statements (or transcripts thereof) in the proposed Companion Policy. However, we are supportive of the requirement to consider website and social media platforms as documents subject to the requirements of the Proposed Instrument.

### [Proposed OSC Rule 81-502 and 81-502 CP Restrictions on the use of the Deferred Sales Charge Option for Mutual Funds \(Filed June 30, 2020\)](#)

#### About the notice

The OSC is proposing restrictions on the ability of dealers to sell mutual fund securities with a Deferred Sales Charge ("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.

#### Overview of the Council's Comments

The CAC views the current system of financial incentives associated with DSC products as driving sub-optimal behaviour and inherently ridden with irresolvable conflicts. The financial industry and investors would benefit from a structure of economic incentives that promotes transparent, simple fee structures, full attribution of all costs to the end investor related to their financial advice, and a structure that promotes competition in the distribution of investment fund products to investors on the basis of product quality and value-for-advice rather than compensation to advisors. However, barring the ability to ban DSCs in Ontario, we support the Proposed Rule and believe the suggested restrictions are incrementally positive for investors and the industry.

We highlighted the need to review substantively similar compensation arrangements in products similar to securities-regulated products regulated via other channels (such as segregated funds regulated in the insurance channel) and would strongly support collaboration and harmonization across regulatory channels/verticals to deliver uniform outcomes and protections to investors, who may not be aware of differences in regulatory coverage between products, advice, and sales channels.

We raised concern that there may be a possibility that investors purposely or inadvertently exceed the contemplated cap if they open more than one account at a dealer (through a holdco, dealer nominee account, or otherwise). To the extent the dealer has the relevant information, the cap should be per investor and not per account.

Finally, under the new client focused reforms, registrants will have an obligation to consider a reasonable range of alternative recommendations available to the registered individuals through the registered firm when providing advice. For larger firms, we expect that many dealers will be required to make investors aware of alternative products that may be less costly, suggesting that the DSC business model may be likely to be phased out over time.

### **Update on the OSC Reducing Regulatory Burden Initiatives**

#### About the notice

In November 2019, the OSC published its decisions and recommendations in the [Reducing Regulatory Burden in Ontario's Capital Markets Report](#). The report was the result of numerous consultations involving market participants and investors, undertaken in coordination with the Ministry of Finance, to reduce regulatory burden in capital markets. In it, the OSC detailed 107 initiatives that it would aim to complete leading through 2021.

On May 27 2020, the OSC published an [update on the current status of each decision and recommendation](#). To date, of the 107 initiatives, 29 (27%) have been completed and 38 (36%) are on track, while 40 (37%) are delayed, 9 of them due to COVID-19.

The [report](#) lays out the timeline for each initiative.

## Response Drafting in Progress

## Canadian Advocacy Council

### **CSA Proposed Amendments to NI 31-103 and 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations to Enhance Protection of Older and Vulnerable Clients (Due June 3, 2020, extended to July 20, 2020)**

#### About the notice

The proposed amendments are intended to address financial exploitation and diminished mental capacity in vulnerable clients (i.e. those at risk of exploitation because of an illness, impairment, disability or aging process limitation).

Registrants (including those regulated by SROs) would be required to take reasonable steps to get a name and contact details of a trusted contact person ("TCP") that the registrant could contact in prescribed circumstances. The TCP would be a resource to help protect the client, but wouldn't be the same as an individual appointed under a Power of Attorney or have the authority to transact. The proposed amendments would also provide a "safe harbour" to place a temporary hold on the purchase or sale of a security, or the withdrawal or transfer of securities or cash from an account if the firm reasonably believes that a vulnerable client is being financially exploited or that the client does not have the mental capacity to make financial decisions with respect to an instruction given by them. The firm would have to take a number of steps if they did put a temporary hold on an account, including providing the client with notice of any decision to continue the hold at least every 30 days.

### **TSX Notice of Proposed Amendments and Request for Comments – Trading Sustainable Bonds (Due July 27, 2020)**

#### About the notice

TSX is proposing to post for trading sustainable bonds ("**Sustainable Bonds**") that satisfy the eligibility criteria set by TSX. The eligibility criteria is set forth in the table below in the row titled "Eligible Securities". It is anticipated that TSX will post for trading Sustainable Bonds issued in Canadian or US dollars, and the Sustainable Bonds will trade in the currency in which they are issued. TSX anticipates initially posting for trading approximately 30 Sustainable Bonds.

The posting of Sustainable Bonds for trading on TSX is intended to increase the accessibility and transparency of these securities to Canadian investors.

TSX is proposing changes to the TSX Rule Book and to certain TSX marketplace functionality (collectively, the "**Proposed Amendment**") to accommodate trading of Sustainable Bonds on TSX. The Sustainable Bonds will not be listed by TSX, but will only be posted for trading similar to how a Canadian ATS posts TSX-listed securities for trading today.

### **MFDA Consultation Paper on Account Transfers (Due September 29, 2020)**

### About the notice

Current MFDA Rules require MFDA dealers to act diligently and promptly to facilitate the transfer of accounts in an orderly and timely manner. The Consultation Paper seeks comments on recommendations regarding account transfer rules, as those that involve non-MFDA members or certain assets can become complicated. The MFDA is requesting preliminary feedback on issues that contribute to delays in the transfer of assets as well as potential solutions.

**\*\*If you would like to participate or provide comments to ongoing initiatives, please contact [cac@cfacanada.org](mailto:cac@cfacanada.org)\*\***

## Volunteer Spotlight

## Canadian Advocacy Council



### **Kareen Stangherlin, CFA**

Kareen is proud to lead a diverse group of finance professionals at Zelos Capital. She oversees the firm's strategic direction and is active in portfolio management decisions and serving Zelos clients. In addition, Kareen frequently serves on Boards, such as the \$18 billion Alberta Teachers Retirement Fund where she was the Chair of the Audit & Finance Committee, a member of the Investment Committee, and a member of the Human Resources & Compensation Committee. She also recently served as a Board Member, Chair of the Audit Committee, and member of the Compensation & Governance committee for a venture-listed Canadian company.

When people meet with Kareen they frequently remark that her passion for investing is palpable. She is a self-described life-learner, and can frequently be found completely immersed in a new topic of interest. Outside the office, Kareen loves outdoor adventure and exploring new cultures around the world. She is also a long-term Calgary Search and Rescue Association volunteer.

Kareen is a Chartered Professional Accountant, a CFA® charterholder, a Certified Financial Planner, and holds the ICD.D designation from the Institute of Corporate Directors. She also has a bachelor's degree in Accounting from the Haskayne School of Business at the University of Calgary.

#### **1. Why does advocacy matter to you?**

Advocacy matters because as a professional body with members working in every facet of the financial markets, we have a uniquely qualified voice in maintaining and improving market integrity, transparency and investor protection. The CAC considers issues within the capital markets with intellectual rigor, drawing from the collective knowledge of CFA charterholders and industry experts. I believe it is important to provide an objective perspective when considering issues that frequently have strong industry advocates with vested business interests in an outcome.

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

I truly believe the work of the CAC makes a meaningful and observable difference in shaping and improving the Canadian financial markets. In addition, if you like to learn and surround yourself with people who are smarter than you, this is an amazing group to volunteer with. The members of the CAC have industry leading knowledge and expertise in every facet of

the financial markets, and if there is a knowledge gap on any particular advocacy topic, the CAC brings in subject matter experts.

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*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, July 7, 2020 at 4:15pm EDT

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