

March 2020

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## Chair Summary

## Canadian Advocacy Council



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

Without overstating the obvious, the month of March has been turbulent for everyone, including the Canadian capital markets and its participants. In light of the current situation, the Canadian securities regulators have taken active steps to alleviate pressure by extending comment periods on the current consultations. This reprieve has allowed the CAC to regroup and set up working groups to address the consultations (listed below) in a thoughtful and proactive manner.

During the month of March, the CAC also hosted several senior members of the Canadian Securities Administrators (CSA) who have led the proposed amendments to address financial exploitation of vulnerable investors. During this meeting, the CAC welcomed the CSA's efforts to protect vulnerable investors and include the guidance provided to the investment industry.

## 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 May 13, 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 than originally proposed. 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.

#### **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)**

##### *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.

#### **CSA Proposed NI 45-110 Start-Up Crowdfunding Registration and Prospectus Exemptions (Due May 27, 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.

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

## Volunteer Spotlight



**Barbara Bauer, CFA**

Barbara has spent more than 13 years investigating potential market abuse, including insider trading, manipulation, as well as other capital market misconduct at the Alberta Securities Commission. In 2014 she was appointed as Alberta's representative for Market Analysis Platform (MAP) Project, a new investigative analytics system to support market misconduct cases, including insider trading, quote stuffing, spoofing, and other market manipulation. The MAP system is a joint investment among the Canadian Securities Administrators (CSA) and is a leading-edge trade surveillance and analytics system. Barbara is a CFA charterholder (2007), a Certified Fraud Examiner as well as a Certified Anti-Money Laundering Specialist. She is the current President of CFA Society Calgary, a member of CFA Institute's Global Disciplinary Review Committee (DRC), and a member of the Canadian Advocacy Council (CAC) of CFA Societies Canada.

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

Advocacy matters to me as it gives an opportunity to be a voice. I can speak for a senior or a vulnerable person who may not even understand what it is that they need to say. I can speak on behalf of capital market participants on matters important to them so that they can more efficiently fulfill their obligations. Advocacy matters as it allows me to share my experience to advance our Canadian capital markets while protecting investors.

### **What advocacy issues are you most passionate about?**

I am passionate about advocating for the highest ethical standards in our Canadian financial system. Being a part of the CAC allows me a voice in advocating for ethical rules that improve market integrity and transparency, while creating market efficiencies. I believe we can strike a balance between a regulatory framework where investors are protected from the bad actors and one that allows our capital markets to thrive.

## Other Updates



**[The Canadian Investment Performance Council](#)** (CIPC) is seeking new volunteers, read more [here](#). If you're passionate about performance measurement and/or GIPS - this is the right opportunity for you!

Submit your application to [info@cfacanada.org](mailto:info@cfacanada.org) by April 30, 2020.



Parham Nasser, CFA, Chair of the CAC has been appointed Vice President of Regulatory Strategy at InvestorCOM. 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.*



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Next Conference Call Scheduled: Tuesday, April 14, 2020 at 4:15pm EDT

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