

March 2021

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Chair Summary
Canadian Advocacy Council


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Chair, Canadian
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March has been another busy month for the CAC, as we prepare for our annual leadership transition and to welcome new recruits to our Council. We're excited by what the future holds for this group, with an ever-increasing caliber of both membership and leadership. We look forward to making announcements in the near term on both.

In advance of finalizing our consultation submission, we met with representatives of the OSC on our March call who led the analysis and writing of Consultation Paper 25-403 Activist Short Selling (more below). This gave our group a good opportunity to dive into the analysis and data in the paper, and to have a constructive dialogue about regulation on this contentious topic. Our consultation response was better for having had this opportunity, and this forum has set us up well for an ongoing dialogue with the CSA on this topic.

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 short selling generally. The CSA research indicates that most short sellers behind campaigns targeting Canadian issuers are well-established 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 IROC. 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 regulatory responses.

Overview of the Council's Comments

As stakeholders who professionally function in this subject matter, we genuinely appreciate the analytical rigour, context, explanation, and the specialist dataset employed in the research and content of this Consultation Paper. We believe any incremental regulatory response to the problematic activities under discussion must target the problematic activities in isolation and not serve as any sort of general deterrent to short sellers, or to short selling generally. To do otherwise could have wide-ranging and systemic negative consequences for Canadian capital markets.

Key Points

1. The systemic capital markets benefit of a robust environment for short selling are well-established
2. Activist short sellers often contribute to market efficiency
3. Policy and regulatory solutions must be grounded in robust analysis
4. Securities regulators already possess remedies to address the problematic behaviours and activities under consideration.

Responses to select Consultation Questions

- We interpret from the data presented that many activist short sellers are legitimately attempting to improve price discovery and contribute to market efficiency in cases of overvalued securities.
- It is important for the marketplace in aggregate to hold issuers accountable, sometimes through direct questioning and, where appropriate, the presentation and dissemination of data in support of these questions and related contradictory statements. In our view, it is not appropriate to by-default hold issuers and short sellers, or other market participants that generally exist at arms-length to an issuer to the same standard of accuracy when making statements about an issuer.
- While we recognize the impact of social media on financial markets is beyond the scope of the Consultation Paper, the prevalence of such tools raises the question of the need for a standardized definition of "dissemination", this time in the context of activist short selling activities.
- We believe that ongoing regulatory oversight of securities lending data in combination with existing regulatory tools could serve as a potentially useful deterrent for problematic behaviour and activities.
- It would be helpful for further examination by regulators if they had regularized and ongoing transparency into securities lending transactions and inventories of shares that are available for lending, both widely across Canadian issuers, and particularly in issuers then subject to activist short selling campaigns.
- We see no evidence of specific Canadian market vulnerability to activist short selling.
- We believe that a regulatory requirement for a positive locate (confirming a mutually understood reasonable expectation of borrow) may be necessary for the Canadian markets, similar to the U.S. and the E.U., for short sales, and not just those where there has been a prior extended failed trade.
- We believe the case has not been firmly established for public disclosure of short positions, and that regulators should focus on gaining transparency into transactional and position data for regulatory purposes and further study, including securities lending data.
- We are not of the view that activist short sellers should be subject to specific incremental regulation.
- We believe regulators need the data, enforcement resources, personnel, and tools to enable them to triage issues quickly and concentrate resources on cases of problematic activity or behaviour.

Response Drafting in Progress
Canadian Advocacy Council
CSA Proposed Amendments to NI 33-109 and Related Instruments - Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines (Due May 5, 2021)
About the notice

As part of its regulatory burden reduction initiative, the CSA has proposed amendments to NI 33-109 in order to make it easier for registrants (and applicants for registration) to complete the registration forms more accurately and require less duplicative information. The CSA also has proposed a new framework for reporting outside business activities, to reduce the scope of activities caught and extend the filing deadlines for informing regulators of such activities. Deadlines for reporting changes in certain other registration information are also proposed to be extended (from 10 to 15 days for some information and from 10 to 30 days for others, including other outside activities). The proposed rule would also allow corporate groups to consolidate some of the reporting of changes. Additional clarification would be provided for certain information requested in the forms, such as more specificity in termination forms on expectations for disclosure of allegations of non-compliance with standards of conduct. A new requirement to collect the professional titles used by registrants is also being proposed.

****If you would like to participate or provide comments to ongoing initiatives, please contact**

cac@cfacanada.org**

Volunteer Spotlight
Canadian Advocacy Council


David Stanton, CFA

David Stanton is a retired financial services executive with 35 years of financial services industry experience, the last 25 years in the field of risk management. David was most recently the Enterprise Chief Risk Officer of TMX Group where he was responsible for oversight of all material, emerging and strategic risk exposures. Prior to that, he was the Chief Risk Officer of The Canadian Depository for Securities. He holds an MBA from Queen's University, the Financial Risk Manager (FRM) designation from the Global Association of Risk Professionals and is a CFA charterholder.

What advocacy issues are you most passionate about?

I think that we are seeing an unprecedented amount of change in the investment decision making process as a result of technological innovations such as artificial intelligence, crypto assets and data driven investing. Because of this technology-driven change, there are real opportunities and challenges for our industry and I am keenly interested in the resulting advocacy issues. Having spent a large part of my career helping to make Canadian market infrastructures well protected against risks, I am always interested in how regulation, technology and the evolution of markets affect those infrastructures.

What is it about volunteering with the CAC that appeals to you most?

I am a relatively new member of the CAC (since Aug 2019) and I was immediately impressed by the talent, dedication and knowledge of the CAC members and the terrific support we get from CFA Societies Canada. I learn something new from my CAC teammates at every meeting. It is also appealing knowing that the work that we do has a real impact on the Canadian investment industry and thereby reinforces the CFA Institute mission and vision in Canada.

News
CFA Institute - Volunteer Opportunities

CFA Institute is seeking volunteers to assist in the [CIPM® Program Standard Setting](#) workshop in April along with a number of other GIS Volunteer opportunities. Apply today!

[View All Opportunities](#)

CFA Institute - Regulator Scholarship Agreements with CSA and other Canadian Regulators

New agreements have been established between the provincial/territorial organizations of the Canadian Securities Administrators and CFA Institute to offer regulatory employees across Canada CSA Program and CIPM Program scholarships. These agreements cover approximately 2,000 individual regulatory employees across the 13 organizations and will give each participating jurisdiction at least 20 [CFA Program](#) and 10 [CIPM Program](#) scholarships per calendar year.

Additionally, agreements have been signed between IROC, the MFDA, and OBSI with CFA Institute respectively under similar terms, covering an additional ~600 regulatory employees across Canada.

A handful of these agreements are renewals of past expired agreements, but the majority are net-new first time agreements enabled by valued collaboration with and coordination by the CSA's secretariat.

We are looking forward to growing the list of other regulators across Canada participating in similar agreements. Discussions are ongoing with a number of large federal and provincial regulatory organizations.

Ontario Government Takes Steps to Implement Key Recommendations of Capital Markets Modernization Taskforce in 2021 Budget, and Renews Term of OSC Chair and CEO for One Year

On March 24, 2021 the Government of Ontario announced its 2021 Budget, and with it the implementation of key recommendations of the Capital Markets Modernization Taskforce relating to the OSC's mandate and structure, and indicated continuing work on the forthcoming Capital Markets Act (CMA) to replace much of the existing securities legislation of Ontario. Alongside the release of the budget, [the OSC and government announced](#) that Chair and CEO Grant Vingo has been extended one year to 2022 to oversee the continuing organizational transition.



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 Meeting Scheduled: Tuesday, April 13, 2021 at 4:15 pm EDT.

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