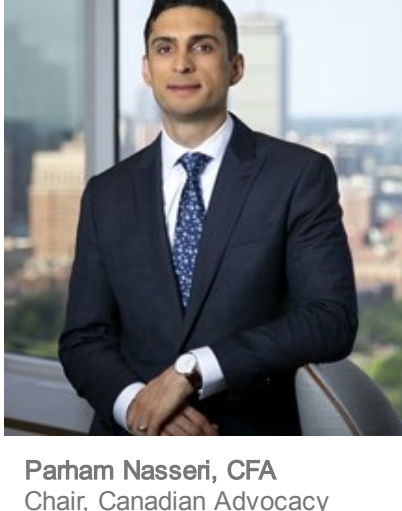


November 2020

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Chair Summary
Canadian Advocacy Council

 Parham Nasser, CFA
Chair, Canadian Advocacy
Council

Over the course of the month of November and October's half day meetings, the CAC team has explored feedback gathered during our 1-on-1 meetings. With an eye for continuous improvement, we have debated how best to remain engaged and fulfill our mandate, all while continually improving the quality of our advocacy. While the CAC team remains engaged on a growing number of advocacy initiatives (see examples of active initiatives below), it has become glaringly apparent that, the current health crisis combined with the Zoom meetings has made the hours available for volunteering ever more scarce.

Considering what appears to be a more permanent nature of our work from home lives, in partnership with CFA Societies Canada, our group has explored thoughtful incremental approaches to help us meet our mission, all while being respectful of volunteers' time and professional responsibilities. At the very least, it has become evident that our advocacy is best measured by the quality of the work and less about the quantity of letters. As such, over the next several quarters, our team will explore approaches to improve operational aspects of our mandate. With the end goal of fostering advocacy that will make our team and members proud.

Published Comment Letters
Canadian Advocacy Council
[CSA Consultation Paper 25-402 Consultation on the Self-Regulatory Organization Framework](#) (Filed October 28, 2020)

About the notice

The CSA is seeking comments on the current structure of the SRO framework, particularly how the evolution of the financial services industry has impacted the framework as well as the specific targeted outcomes set out in the Consultation Paper. Some stakeholders had indicated to the CSA that the two current SROs result in duplicative costs and a lack of oversight standards. Additionally, stakeholders were concerned about higher operational costs and investor confusion by clients who can't access the same product from their representatives across platforms and don't know the redress avenues available to them for issues. The Consultation Paper inquires about these issues as well as others, such as concerns raised about lack of public confidence in the current environment as a result of regulatory capture and the separation of market surveillance from statutory regulators. Next steps will include a consultation paper with the CSA's proposed options for further comment.

Overview of the Council's Comments

The CAC agrees with many of the concerns raised by stakeholders in the CSA's informal consultation process. We provided a statement on our "first principles" in consideration of this subject matter including regulatory efficiency, noting that we believe the case has been soundly made for SRO consolidation, particularly if it serves as an opportunity to reflect on and entrench the public interest and other design principles moving forward. Confidence and trust of the public is critical to the effective functioning of our markets, and a credible and transparent SRO framework is essential. We supported the general premise of a merger between the existing SROs but noted additional analysis and evidence is required to support consolidation beyond the registration categories currently under SRO oversight. The CAC sees no significant benefit to a continuing regulatory framework that results in duplicative operating costs, many ultimately borne by the end investor. Costs should be minimized to the extent possible without prejudicing investor protection and effective compliance or enforcement.

The CAC increasingly questions the appropriateness of product-based regulation - advocating instead for a model where regulation is based on scope and quality of advice, and corresponding business models. Further, we would not support any changes that would result in lower proficiency requirements for registrants providing investment advice.

The CAC believes investors are best served when they can have confidence that their needs are being served with generally homogenous regulatory expectations regardless of the product or service that is recommended, provided, or sold. Additionally, the CAC cited concern with specific instances of regulatory inconsistency as we understand that rules relating to borrowing funds to invest in securities may be interpreted and implemented differently under SRO and CSA rules. Consistent regulation would result in regulatory efficiencies, cost savings and consistent fair treatment of clients and negate regulatory arbitrage opportunities. It would also bolster public confidence in the advice they're receiving holistically. The CAC believes that registrants should pursue a higher standard of minimum competency, continuing skills development, professionalism, and the delivery of ethically-centered advice to clients as part of the path forward.

The CAC views the current market surveillance system as functioning well and that wholesale change could be disruptive without clear investor or public benefits. We recommended, to the extent there are concerns with existing surveillance mechanisms, that incremental improvements be made. For example, a revamped SRO with a continued market surveillance mandate could be provided with broader powers to examine records of additional market participants, and additional avenues for operational integration with related functional groups at the CSA could be explored or encouraged, particularly to better ameliorate systemic risk concerns.

[FSRA Financial Professionals Title Protection Rule and Guidance](#) (Filed November 12, 2020)

About the notice

FSRA's proposals consist of a new Rule and Approach Guidance that relate to granting approval to become a FSRA credentialing body and to obtain a Financial Planner or Financial Advisor credential from those bodies, as well as ongoing requirements to keep such approvals. The Approach Guidance sets out FSRA's proposed administration of and expectations for credentialing body applications and for specific acceptable credentials, all within the framework already set out under the Financial Professionals Title Protection Act, 2019. Once the Act is proclaimed in force, it will restrict the use of these two titles to persons who have obtained a credential issued by an approved FSRA credentialing body. The Rule establishes approval criteria for credentialing bodies, criteria to issue acceptable credentials, sets out the application process and provides transition periods for individuals already using those titles (five years for FPs and three years for FAs). The Rule sets out baseline competency profiles for title users in both categories, and the consultation notes that it focuses on minimum standards instead of trying to build a consistent level of proficiency for all individuals who use either title or hold a license or designation.

Overview of the Council's Comments

The CAC agrees with the sentiments expressed by many commentators to the effect that there is much confusion in the marketplace with respect to the use of titles and credentials by persons providing financial advice and financial planning services, along with a wide array of expertise and knowledge in the field. The importance of the design and enforcement of rigorous uniform minimum standards for the use of both the FP and FA titles in the context of a title protection framework cannot be overstated. We are concerned that there is not yet enough guidance on examples of reasonably confusing titles to help industry identify those that would not be permissible, and to clarify the scope of application to titles for consumer and investor advocates. Similarly, the background information preceding the text of the Draft Rule indicates that upon the coming into force of the Draft Rule, no individual will be permitted to use the FP or FA titles without an approved credential. We believe this note should be expanded to refer to the FP, FA or reasonably similar titles (or words to that effect). FSRA currently expects that its supervisory approach will consist of complaints-based enforcement, however, we believe that FSRA's approach should be more proactive. With respect to conduct requirements, the minimum conduct requirements should be harmonized in the requirements for all credentialing bodies and acceptable credentials, with the importance of a minimum acceptable duty of care to clients being paramount and uniform across both titles and all users of credentials and credentialing bodies. We agree with many of the stated FP and FA baseline competencies and have the following suggested amendments: a client's risk profile includes both the client's risk tolerance as well as their risk capacity; it would be helpful to expand upon (through additional guidance and illustrative examples) the expectation of gathering sufficient detailed personal and financial information about a client; when providing either financial planning services or financial advice, an FP and FA respectively should be able to analyze and determine the appropriate asset allocation for their clients, as this is central to making almost any appropriate client recommendation. It will be important for FSRA (and credentialing bodies by extension) to consider whether they should generally prohibit individuals from providing advice in areas or products with which they are not familiar. With respect to disclosure, we believe FP and FA title users should be required to disclose to their clients the recognized credential(s) that they hold, and direct questions to a FSRA-operated website with one FA and a public registry of acceptable (and if applicable, exempted) credentials, the corresponding credentialing bodies, and individuals who hold one or more of these. We believe that FSRA should be responsible for any such educational initiatives to avoid potentially misleading, confusing, or inconsistent messaging if direct to consumer or direct to industry information were to be provided by the credentialing bodies themselves.

[FCNB Proposed Repeal and Replacement of Local Rule 45-509 Community Economic Development Corporations and Cooperatives](#) (Filed November 12, 2020)

About the notice

This local rule in New Brunswick provides a registration and prospectus exemption for Community Economic Development Corporations ("CEDCs") and cooperatives which are registered under the Small Business Investor Tax Credit Act in the province, and the proposed replacement rule is intended to reflect the province's new Cooperatives Act. The new rule and companion policy will require a new risk acknowledgement form and exempt distribution form with information relevant for a distribution of securities by a CEDC, and will also deem CEDCs to be market participants, allowing the regulator to conduct compliance reviews. The mandated form of offering document would also be amended to include additional disclosure for investors.

Overview of the Council's Comments

The CAC is supportive of measures taken to try to assist small and emerging companies to finance their growing operations without compromising investor protection and are also strong supporters of harmonizing Canada's registration and prospectus exemptions across provincial jurisdictions for ease of use and common understanding by issuers and investors. We support the proposition that the same disclosure forms for various offerings (such as syndicated mortgages or CEDCs) should be utilized and then modified as needed to reflect the unique nature of the offering. The CAC does have some concerns about the potential lack of audited disclosure on the financial condition of the issuers utilizing these exemptions and we believe it is important that the annual financial statements provided to the Commission and to investors be audited.

[FSRA Proposed Guidance on High-Risk Offerings issued under the Co-operative Corporations Act](#) (Filed November 12, 2020)

About the notice

The proposed interpretation and approach guidance would apply to certain co-operatives issuing securities through the offering statement required by legislation governing co-operatives in Ontario and receipted by FSRA that the regulator considers to be "high-risk offerings". Such offerings include those that appear to be intended as an investment vehicle or that use promoters or market the securities to retail investors. Required enhanced disclosure would include matters related to ranking, details of upcoming debt repayments, how the co-op will satisfy financial obligations, and quantification of risks that could impact the operations of the co-op.

Overview of the Council's Comments

The CAC supports FSRA's objectives to promote high standards of business conduct for co-ops and to help investors make more informed investment decisions. Given the breadth of the proposed definition of a "high-risk offering", and the fact that even other persons who participated economically in a co-op and buy its products and services may benefit from enhanced disclosure found in the offering statement, we query why the enhanced disclosure cannot be made a requirement for all co-op securities offerings. Given the high-risk nature of these securities, we believe it would also be beneficial if prospective purchasers were required to sign a risk acknowledgement statement prior to purchase, similar to Form 45-106F4 Risk Acknowledgement. Going forward, it might be possible to form a working group involving other regulators to discuss some of these issues and a harmonized approach to securities offerings where the legislative framework permits distributions of securities outside the scope of securities legislation and related regulatory requirements.

[IIROC Consultation Paper – Competency Profiles for Registered Representatives and Investment Representatives Retail and Institutional](#) (Filed November 16, 2020)

About the notice

The consultation is the first phase in a multi-year project to set out competency profiles for all of IIROC's registration categories, which are sets of knowledge, behaviours and skills that an individual must have to perform effectively in their role. The purpose of the competency profiles is to provide a benchmark to evaluate course providers, provide educational providers with guidance on course content and allow dealers to better understand expectations. For retail registered representatives, IIROC proposes seven categories of high-level competencies associated with relationship skills, regulatory skills and technical skills and more than 30 sub-competencies, some of which depend on the products a person is approved to trade. Institutional registered representatives have different high-level competencies associated with regulatory and technical skills and over 20 sub-competencies. IIROC is not proposing separate profiles for investment representatives but expect registered representatives to understand and apply the competencies and investment representatives to understand, apply or provide support, as applicable.

Overview of the Council's Comments

The CAC supports the progressive proficiency framework, as we believe it focuses on minimum standards that are responsive to innovation, build professionalism and ensure skills development while encouraging the delivery of high-quality and ethically centered investment advice, regardless of the registration category. We understand that the Consultation Paper is the first phase of a multi-year project to develop competency profiles across IIROC's registration categories, with this phase focusing on retail registered representatives ("RR") and investment representatives ("IR"). We agree with a number of the stated knowledge and skills competencies for RRs and IRs and have made a few specific additional suggestions below. In addition to regulatory, relationship and technical skills, there are also personal skills that are applicable (and indeed important in our view) to all registration categories, including such items as collaboration, communication, curiosity and leadership, which could be considered for part of IIROC's relationship competency framework as well. In general, the knowledge competencies required for RRs and IRs for both KYC and KYP should align prospectively with those expected of dealers under the client-focused reforms, and we believe additional updating of the profiles is necessary in these areas. We believe that representatives will also need to understand general portfolio management concepts relating to how portfolios are constructed and an awareness of the suitability of a particular investment for an investor's broader portfolio, as well as investment performance disclosure and measurement and specific skills and behaviours relating to educating clients on the importance of portfolio diversification. The recognizing capacity concerns skill set should be complemented by a knowledge sub-competency which ensures RRs and IRs have information on not only how to recognize potential capacity concerns but also help them ask their clients targeted questions and provide useful examples of fraud or exploitation. Given the sweeping changes being made to NI 31-103 with respect to conflicts of interest, we believe that additional consideration and expansion of this category is necessary. There should also be a technical skill requirement involving conflicts and ethics that discusses considerations for vulnerable clients, ethical decision making, conflict management and critical evaluation. We believe there should be a specific knowledge requirement for familiarity with basic ESG terminology. We also note the potential for investor confusion that arises from discretionary portfolio management provided by an IIROC registrant and believe that regulatory expectations and application should be harmonized between the IIROC and CSA platforms in this area going forward as a separate project.

Response Drafting in Progress
Canadian Advocacy Council
[CSA Proposed Amendments to NI 45-106 Prospectus Exemptions and 45-106CP related to the Offering Memorandum Prospectus Exemption](#) (Due December 16, 2020)

About the notice

The proposed amendments impact the disclosures that would be required to be included in an offering memorandum used by collective investment vehicles or issuers involved in real estate activities for purposes of the offering memorandum prospectus exemption. The new requirements will provide issuers with additional clarity as to what must be disclosed. As examples of additional disclosure that will be required for "collective investment vehicles" (i.e. an issuer whose primary purpose is to invest money provided by its security holders in a portfolio of securities) will be the need to disclose penalties and sanctions for persons involved in the management of the investments and information regarding the performance of the portfolio. Most of the additional obligations will fall to those conducting "real estate activities", which will be defined to include an issuer that intends to spend a material amount of the proceeds of the offering on an interest in real property. Such issuers will need to provide an independent appraisal of the properties in the portfolio. Additional tailored information would be required for developing real property such as description of the approvals required, and the age, condition and occupancy level of real property that issuers own and operate. General amendments, such as requiring interim financial statements, and disclosing information on redemption/ retraction rights including unfulfilled requests, would be required for all issuers.

****If you would like to participate or provide comments to ongoing initiatives, please contact cac@cfacanada.org****
Volunteer Spotlight
Canadian Investment Performance Council


Benjamin Banyai, CFA, CIPM

Benjamin is a Senior Manager, Performance and Investment Reporting at Burgundy Asset Management. He leads a team responsible for analyzing and reporting performance, performance attribution, and performance related statistics as well as contributing to the firm's overall communications and attribution processes. In addition, his role entails oversight of the GIPS compliance and verification process. Benjamin graduated from the University of Toronto Rotman BCom program in 2006, became a CIPM certificant in 2012 and a CFA charterholder in 2013. Ben is the Secretary for the Canadian Investment Performance Council of CFA Societies Canada and has served on the council since June 2017.

1. What is it about volunteering with the CIPM that appealed to you most?

The CIPM provides an ideal opportunity to connect with other volunteers and discuss performance measurement and the GIPS standards. The group members' broad experiences bring a rich depth to these conversations.

2. What aspects of the GIPS standards are you most passionate about?

The evolution of the GIPS Standards has provided a great opportunity for industry participants to collaborate with CFA Institute in developing self-regulation when it comes to the fair representation of performance results. Ultimately, the GIPS Standards are about doing the right thing for a prospective client or investor to establish the trust and confidence that are so essential to our industry. I am most passionate about promoting these standards because both industry participants and their clients will benefit from wider adoption.

News
OSC Seeks Applications for Investor Advisory Panel

The Ontario Securities Commission (OSC) is accepting applications for membership on its independent Investor Advisory Panel (IAP), which provides an investor perspective on policy, rule-making and other regulatory initiatives.

Applications are due **December 7, 2020**.

[Read More](#)

FCAC is Renewing National Strategy for Financial Literacy

FCAC is renewing its National Strategy for Financial Literacy, building on what has been learned through research, surveys, engagement with our partner organizations and the implementation of the first strategy. It will focus on helping Canadians manage their money and how financial literacy contributes to the overall well-being of Canadians.

Comments are due **January 28, 2021**.

[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 charterholders.


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Next Meeting Scheduled: Tuesday, December 8, 2020 at 4:15pm EST

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