

# ADVOCACY NEWSLETTER



Canadian Advocacy Council

September 2019

## CAC Chair Summary



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

The CAC held its monthly call on September 10, 2019

Although spring is many months away, there is a certain energy in the air. New council members are joining the team, and new initiatives are being undertaken. For example, based on council members' feedback, the CAC will be introducing initiatives such as a buddy structure to help integrate incoming members, and tele/videoconferencing capabilities. This is particularly timely as two new members joined our September call, with new prospective members may be expected to join in the near future.

This theme was even more present on the advocacy front. The council's collaboration with CFA Societies Canada has created an exciting proactive dimension to our advocacy efforts. As time progresses, proactive outreach and engagement will lead to much more intelligent comment letters and overall CFA brand awareness across the country. Moreover, allowing the council to learn about forthcoming policy initiatives, in turn shaping more informed and effective advocacy. Stay tuned.

## CAC Published Comment Letters

[FCSC \(NB\) Proposed Amendments to Local Rule 11-501 Fees \(filed August 29, 2019\)](#)

### About the notice

The amendments to the fee rule in New Brunswick would impose new late fees for late filings of certain documents, including exempt distribution reports and insider reports, in each case to a maximum for each report or calendar year as applicable. In addition, requests for refunds would need to be made within 2 years. Fees are charged in similar circumstances in other CSA jurisdictions.

### Overview of the Council's comments

The council is supportive of the Proposed Amendments, as we encourage members of the CSA to seek harmonization of filing fees and filing requirements. We suggest that additional consideration could be given to including failure to file exempt distribution reports on time on the list for repeat offenders, in addition to the proposal that the new fee imposed will be shown in default on the New Brunswick reporting issuer list.

The council also referenced an article abstract from CFA Institute entitled "[Regulating Fraud in Financial Markets: Can Behavioural Designs Prevent Future Criminal Offences?](#)" (DigestSummary) which suggests that a study of three criminal securities law cases in the United States illustrates that punishments such as fines may not be the ideal deterrent for certain behaviours, but that early detection may have been. The author of the abstract suggests that behavioural insights may be a more effective tool in promoting ethical conduct in the work environment. In the context of the Proposed Amendments, consistent late filings of important disclosure documents may be a sign of a more serious underlying problem at the issuer or registrant.

[FSRA Proposed Supervision Approach for High-risk Syndicated Mortgage Investments \(filed September 5, 2019\)](#)

### About the notice

FSRA is seeking feedback on a proposed supervision approach to address the risks related to syndicated mortgages for retail investors. The notice includes the use of a proposed additional disclosure form to investors (who do not fall with a designated class), meant to highlight the risks typical of such investments, including high loan-to-value ratios, subordination and conflicts. Similar to other disclosure forms, once completed the form will need to be filed with FSRA for its monitoring purposes in real time.

### Overview of the Council's comments

The council supports the targeted approach to concentrate resources on investments that could put retail investors at the highest risk of loss. The description of the red flags found by FSRA based on its analysis of past transactions is particularly helpful in understanding the policy rationale for the Proposal. We specifically commented on the red flags as follows:

- One of the red flags identified by FSRA is a high Loan-to-value (LTV) ratio. In addition to the LTV ratio, we believe that for construction loans the Loan-to-Cost (LTC) ratio should also be disclosed, as it may be more objective of the level of risk associated with commercial real estate debt investments.
- The second red flag identified is the existence of a subordination clause. The importance of the potential impact of the subordination clause may not be fully appreciated by all retail investors that invest in junior mortgages and thus, we propose that a further requirement to explain the ramifications of the clause could be considered.
- The third red flag is the existence of a conflict of interest where the borrower or developer is related to the mortgage administrator and thus the administrator may not properly represent the interests of investors against the borrower. We are of the view that the description of conflicts and the risk of conflicts (and potential conflicts) should be more broad and consider other conflicts that investors would want to know, including any potential conflicts with the appraiser.

We are also broadly supportive of requiring additional information to be provided to retail investors for riskier investment opportunities. The description of the appraisal of the property being financed in the proposed forms could be enhanced with disclosure that addresses the risk of the assumptions that may be used in the valuation, or changes to those assumptions (such as the effect of a change in the discount rate used in the valuation).

## [ASC Consultation Paper 11-701 – Energizing Alberta's Capital Market \(filed September 9, 2019\)](#)

### 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.

### Overview of the Council's comments

With the support of a sub-committee, the council responded to seven questions within the consultation:

(a) Informational resource for Alberta start-ups and early stage businesses on capital raising options

- The council is supportive of an initiative to expand the ASC's role in this area, and believe that given the ASC's independence, there are a number of opportunities for the ASC to act as an informational resource in different contexts. As an example, entrepreneurs would benefit from interactive content such as videos and webinars hosted on the ASC website in an easily accessible format on common capital raising options. Additionally, while ASC staff certainly should not be expected to act as professional advisors to market participants, the ASC can act as a repository for industry approved resources.

(b) Informational resource for investors investing in Alberta businesses

- We suggest the possibility of a "securities regulatory" helpline, where either ASC staff or a staff of a third party supported by the ASC act as a resource to small businesses and their investors. A group of this nature should be able to facilitate access to information and function at a lower cost than multiple individual professional advisors (although individual legal sign off should be recommended).

(c) Expanding the accredited investor exemption to include educated, experienced investors

- We generally support the potential of expanding the existing definition of an accredited investor. We would be open to alternative qualifications specifically limited to persons who have obtained one or both of the CIM or CFA designations, or alternatively other educational qualifications that would be required for an individual to obtain registration by the CSA as an adviser.

(d) Addressing the compliance challenges associated with confirming accredited investor status

- The council agrees that it would save resources for both issuers and investors if there was a secure central repository or other trusted central party where an individual's status as a confirmed accredited investor was housed.

We suggest that some electronic platforms that currently facilitate information gathering from accredited investors already exist, and thus regulators can and should play a leading role in bringing industry groups together to find a solution to this particular compliance challenge.

(e) Registration exemption for finders

- Consideration could be given to a registration exemption for capital raises by an issuer who has utilized the services of a finder under a specific threshold (e.g. \$1 million) for sales to accredited investors, which would make the compliance burden of such an issuance considerably smaller for the issuer.

(f) Reducing compliance costs for registered dealers when dealing with accredited investors

- We do not believe that a change to the qualification for a suitability waiver is necessary at this time. Our concern is that adding experience or other financial measures to the test would actually increase the compliance burden.

(g) Addressing other registered dealer compliance burdens

- We agree that there could be time and cost savings if the ASC were to accept alternative means of demonstrating proficiency in the context of a registration application.
- We also support the suggestion to eliminate the requirement for dealers to provide similar documentation to different regulators at different times by developing a registration portal for information sharing purposes.
- We also understand that dealers and other registrants find the outside business activity reporting requirement particularly onerous, and it may be difficult for them to assess the actual level of risk and potential conflict associated with particular outside activities without further information from regulators.
- Some compliance burden could also be alleviated if regulatory forms could be better integrated with reputable accounting software.
- Another potential area to review relates to the prompt delivery requirement for trade confirmations by dealers. the requirement to provide a “prompt” trade confirmation may represent a significant cost and resource burden to the dealers with minimal benefits to clients.
- Additionally, if dealers or other registrants could be assigned a relationship manager, the individual at the ASC would be able to quickly get to know the registrant and work with them to establish best practices and act as a knowledge resource for best practices advice.

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

## Other Updates



The Ontario Securities Commission has announced, Michael Thom, CFA as a member of the Investment Funds Technical Advisory Committee. Read more about it [here](#).

Past Chair of the Canadian Advocacy Council, Robert Gouley, CFA, has been announced as a member of the OSC Market Structure Advisory Committee. Read more about it [here](#).

*The Canadian Advocacy Council strives to advance market integrity, transparency and investor protection, on behalf of CFA Societies Canada and Canadian CFA charterholders.*



[Follow us on LinkedIn!](#)

**Next In-Person Meeting Scheduled: Friday, October 18, 2019 in Vancouver**

Contact Us

Subscribe

CFA Societies Canada  
120 Adelaide Street West, Suite 2205, Toronto, ON M5H 1T1  
T 416.366.3658

If you no longer wish to receive future communications from CFA Societies Canada, please reply to [info@cfacanada.org](mailto:info@cfacanada.org) with a subject UNSUBSCRIBE.