

October 2022

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Chair Summary **Canadian Advocacy Council**



Barb Bauer, CFA, CFE
Chair, Canadian
Advocacy Council

We say goodbye to October and hello, November! The days are shorter while the evenings become progressively longer. We have crisp cool nights, Halloween fittings, and even more regulatory consultations within our sights.

Recent consultations include the Department of Finance's Corporate Governance Consultation on improving diversity and facilitating electronic communications for federally regulated financial institutions. The Council strongly supports efforts to foster inclusion and diversity in companies and other institutions, encouraging the regulator to look beyond the current diversity requirements and consider more ambitious emerging paradigms. With respect to SEDAR, the current interface of SEDAR makes it difficult for investors to easily locate and access the documents. Implementation of an AED model should be delayed until the roll-out of SEDAR+ is complete. Our full summary is below for those interested.

As to the Department of Finance's consultation on predatory lending and the criminal rate of interest, the Council believes it is more appropriate to set the criminal rate of interest based on a floating benchmark rate plus a maximum allowable spread rather than solely through a fixed interest rate ceiling. To protect consumers from egregious loan terms, the Council believes it would be helpful to require a consistent interest calculation methodology that does not penalize prepayments or effectively charge interest on interest, as well as a workable cooling-off period. Our full summary is below for those interested.

The work the Council continues to undertake for the purposes of advancing market integrity and protecting investors would not be possible without the efforts of our tremendous volunteers. Thank you all for your ongoing commitment.

Published Comment Letters **Canadian Advocacy Council**

Department of Finance - Corporate Governance Consultation: Improving Diversity and Facilitating Electronic Communications in Federally Regulated Financial Institutions

About the notice

Canada's federally regulated financial institutions (FRFIs) and their owners (e.g., shareholders, members of credit unions, certain insurance policyholders) are supported by a robust corporate governance framework, which is contained in the Bank Act, the Insurance Companies Act, and the Trust and Loan Companies Act (collectively referred to as the federal financial institutions statutes). As a general approach, the federal financial institutions statutes typically follow the framework set out for federally incorporated companies in the Canada Business Corporations Act (CBCA). This framework is modified as necessary to reflect the unique nature of FRFIs.

The corporate governance framework for FRFIs should take into account the changing social, economic, and technological context in which they operate, to best enable them to respond to today's challenges for the benefit of their owners and clients.

In light of recent developments, including the introduction of diversity disclosure requirements in the CBCA and the digitalization of the financial sector that has been further accelerated by the COVID-19 pandemic, the Government is reviewing certain aspects of the corporate governance framework. In this context, Budget 2021 proposed a public consultation on measures that would:

- adapt and apply the Canada Business Corporations Act diversity requirements for FRFIs; and,
- expand FRFIs' use of electronic communications with their owners, including the delivery and provision of governance documents, as well as virtual meetings.

Overview of the Council's Comments

We strongly support efforts to foster inclusion and diversity in companies and other institutions and encourage the regulator to look beyond the current diversity requirements and consider more ambitious emerging paradigms. We also support engaging with owners/investors in Federally Regulated Financial Institutions (FRFIs) through electronic means as long as the materials are easily accessible through an advanced and easy-to-use system, and paper copies are easily available to investors without charge.

Our comments on the consultation questions on the diversity disclosure requirements for FRFIs are summarized below:

- We believe the expectations for disclosure relating to senior management in the CBCA will not necessarily work well with all types of financial institutions, and clear definitions should be included to be consistent over time.
- We think the scope and content of the CBCA's disclosure requirements are appropriate for financial institutions, although more granular disclosure should be considered for each business line in an FRFI.
- We also believe the four designated groups outlined in the CBCA provide a starting point and assessing the state of diversity should encompass representations of 2SLGBTQ+ and diverse gender identities. We support the separate classification of Indigenous peoples outside of the category of visible minorities.
- We generally agree that the CBCA diversity disclosures help inform investment/voting decisions for investors. Given the size and complexity of some FRFIs, we think some generalized disclosures about the board and senior management do not appropriately capture all relevant levels and business lines.
- We think the requirements should apply to all FRFIs. We do not believe the impact of these disclosure requirements on non-distributing FRFIs differs materially.
- We believe FRFIs could be mandated to set their own targets for improved diversity and support publicly disclosing these targets as a way of driving them to achieve those goals.
- We think director term limits create more opportunities to recruit diverse candidates.
- We believe there should be prescribed minimum disclosure for comparability purposes but have concerns that a prescribed form may unduly circumscribe additional incremental disclosure.
- We also believe that FRFIs will be best motivated to achieve compliance through the proposed enhanced disclosure requirements.

CFA Institute's Diversity, Equity, and Inclusion Code (the "DEI Code") provides guidance and practical ways that could be further explored relating to this Consultation.

Our comments on the consultation questions on electronic communications and virtual only meetings are summarized below:

- We generally support an access equals delivery model. However, the current interface of SEDAR makes it difficult for many investors to easily locate and access the relevant documents. We believe the implementation of an access equals delivery model should be delayed until the roll-out of SEDAR+ is complete.
- We agreed with the CSA's proposal to implement an access equals delivery model in stages, with documents requiring immediate shareholder attention continuing to be delivered in paper format.
- We would support regulation that requires FRFIs to mention in the press release how to access paper copies.
- We do not have any objections to an FRFI holding a virtual shareholder meeting, noting the importance that the meeting materials are easily accessible and that questions are addressed equitably at the meeting.
- We believe the risks and opportunities are similar for both distributing and non-distributing FRFIs.
- We believe the elements listed in question 9 will all help ensure that communication during virtual meetings is effective, and it will be important to ensure that the needs of persons with disabilities can be accommodated.

Department of Finance - Consultation on Fighting Predatory Lending

About the notice

Budget 2021 announced the Government of Canada's intention to consult on fighting predatory lending by lowering the criminal rate of interest in the *Criminal Code of Canada* applicable to, among other things, installment loans offered by alternative lenders, including payday lenders.

This consultation paper seeks feedback on questions related to the criminal rate of interest and the provision of high-cost installment loans in Canada. High-cost installment loans appear to be the most widely held high-cost lending product in Canada. In a recent study conducted by the Financial Consumer Agency of Canada (FCA), 44 per cent of consumers who had taken out high-cost credit reported taking a high-cost installment loan in 2020.

The criminal rate of interest in the *Criminal Code*, which is currently set at 60 per cent effective annual interest, is applicable to most lending products in Canada (e.g. installment loans, lines of credit, auto loans, auto title loans, credit cards, and more). The only exceptions are payday loans (loans for values of \$1,500 or less and for a term of 62 days or less) offered by licensed or specifically authorized persons in provinces that have enacted consumer protection laws and where the province has been designated by the federal Governor in Council. Nine provinces have been designated. The *Criminal Code* provisions governing payday loans are not the subject of this consultation paper.

Overview of the Council's Comments

The Council strongly supports initiatives to re-examine potentially predatory lending activity impacting consumers and believes additional guardrails are required to alleviate some of the predatory pricing concerns.

Our key comments are summarized below:

- We think it is more appropriate to set the criminal rate of interest based on a floating benchmark rate plus a maximum allowable spread rather than solely through a fixed interest rate ceiling.
- We do not believe the creditworthiness of the borrower is a primary consideration for many of the loans provided through alternative lending channels.
- We believe financial consumers access high-cost installment loans for many reasons, such as being unqualified for a loan at traditional lenders and being attracted by convenient, time-efficient, and accessible channels of high-cost lenders.
- To protect consumers from egregious loan terms, we believe it would be helpful to require a consistent interest calculation methodology that does not penalize prepayments or effectively charge interest on interest, as well as a workable cooling-off period.
- We do not have any specific concerns that lowering the criminal rate of interest will have any negative impact on the availability of credit for financial consumers.
- In our view, to minimize any negative impacts on other types of credit products, the new regulation should be conscious of prevailing rates and spreads when setting a new criminal rate.
- We also believe it is important to educate consumers on alternatives to high-cost installment loans, which may involve a telecom-based lending/banking solution in remote and/or indigenous areas.

Response Drafting in Progress **Canadian Advocacy Council**

CCIR/CISRO - Discussion Paper on Upfront Compensation in Segregated Funds (Due November 7, 2022)

About the notice

The Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) are consulting on concerns they have regarding upfront commissions used in the sale of segregated funds and individual variable insurance contracts (IVICs). Earlier this year, CCIR and CISRO already stated that the use of Deferred Sales Charges (DSCs) in segregated fund contract sales should cease fully by June 1, 2023. The consultation paper notes that upfront commissions in the sale of segregated funds create potential issues relating to conflicts of interest where consumers rely on advisors to sell them a suitable product and the advisor is paid by the insurer for the sale and servicing of those products. The primary purpose of the consultation is to better understand compensation arrangements in segregated funds and IVICs, and what changes to upfront compensation may be needed to improve customer outcomes. A number of targeted customer outcomes are outlined in the consultation, including a regulatory approach which effectively addresses conflicts created by upfront compensation which can misalign the interests of insurers, intermediaries and customers, enhance customer awareness of intermediary compensation and reduce the risks of mis-selling segregated funds and IVICs over securities products by dually licensed intermediaries due to different upfront compensation arrangements.

CSA - Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers (Due December 26, 2022)

About the notice

The proposed amendments to various national instruments would provide an alternative for investment funds that are reporting issuers to delivering financial statements and management reports of fund performance to unitholders. The purpose of these changes is to modernize the method by which these documents are made available to investors and would replace delivery with a requirement to post the documents on a designated website, issue, file on SEDAR and post a news release announcing the availability of the documents, and a requirement to deliver the documents upon request or upon standing instructions. Reporting issuer funds would no longer have to send an annual reminder or annual notice to rely on standing instructions regarding the delivery of financial statements. Investors could still request or provide standing instructions to receive the documents in either paper or electronic format.

IIROC - Consultation Paper (Phase III) — Competency Profiles for Supervisors, Traders, Associate Portfolio Managers and Portfolio Managers (Due December 28, 2022)

About the notice

Investment Industry Regulatory Organization of Canada (IIROC) is in the process of developing and publishing competency profiles for all IIROC approval categories as a multi-year policy project. Last year, they published competency profiles for their Director, Executive, Ultimate Designated Person (UDP), Chief Compliance Officer (CCO) and Chief Financial Officer (CFO) categories. In 2020, they published for comment the first phase of this project, which involved the development of competency profiles for their Registered Representative (RR) and Investment Representative (IR) categories.

The third (and current) phase of this project is the publication of competency profiles for Supervisors, Traders, Associate Portfolio Managers (APMs), and Portfolio Managers (PMs). They are publishing this Consultation Paper to solicit feedback on their proposed competency profiles for Supervisors, Traders, APMs, and PMs.

****If you would like to participate or provide comments to ongoing initiatives, please contact cac@cfacanada.org****

Volunteer Spotlight **Canadian Investment Performance Council**



Matt Swan, CFA

Matt has served on the CIPC since November 2020 and is the current 2nd Vice Chair.

Matt leads the Performance Measurement & Analytics department at the Investment Management Corporation of Ontario (IMCO), responsible for accurate and timely reporting of performance measurement and analytics to support the investment decision-making process.

Prior to joining IMCO in April 2019, Matt was a Managing Director at State Street in the Performance & Analytics department, having held positions of increasing responsibility over 24 years at State Street. Matt holds a Bachelor of Commerce degree from McMaster University and is a CFA charterholder.

What is it about volunteering with the CIPC that appealed to you most?

Volunteering with the CIPC gave me an opportunity to lend my support to the promotion of the GIPS® standards. I have been in the Performance Measurement and Analytics field for most of my career, and I felt that I could leverage my knowledge and experience in the industry, as well as my knowledge of the GIPS® standards to support CIPC initiatives.

Why do you think promotion of industry standards like the GIPS standards is important?

Standards are important to provide transparency and comparability in any industry. The GIPS® standards achieve these outcomes for performance measurement on a global basis.

News



CFA Societies Canada Calls for Action on Complaint Handling

On behalf of a coalition of concerned consumer advocates, including [CFA Societies Canada](#), [FAIR Canada](#) is urgently calling on the federal government and securities regulators to strengthen the complaint-handling system in Canada by confirming a single ombudsperson with binding authority for both the banking and securities sectors.

[Read More](#)

CFA Societies Canada 2022 Annual Report

We are pleased to announce that the CFA Societies Canada 2022 Annual Report is now available!

[Read the Report](#)



MFDA and IIROC Call for Applications for Membership in the New SRO Investor Advisory Panel

In anticipation of the establishment of the New Self-Regulatory Organization (New SRO), IIROC (Investment Industry Regulatory Organization of Canada) and MFDA are seeking members for the inaugural New SRO Investor Advisory Panel. The New SRO Investor Advisory Panel will be an independent advisory panel to New SRO staff and is expected to begin meetings in 2023.

Applications are due by November 7, 2022

[Apply Here](#)

OSC requests new members for the Registrant Advisory Committee

The Ontario Securities Commission (OSC) is seeking applicants for membership on its Registrant Advisory Committee (RAC).

The OSC's RAC serves as a forum to discuss issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including registration and compliance related matters.

The Committee also plays a consultative role by providing feedback to the OSC on the development and implementation of policy and rule making initiatives that promote investor protection and fair and efficient capital markets. They welcome applicants who bring a broad diversity of thought and background including those with retail investor experience.

Applications are due by October 31, 2022.

[Apply Here](#)

Launch of Financial Literacy Month 2022



The [Financial Consumer Agency of Canada](#) (FCA) has announced the virtual launch event for Financial Literacy Month 2022 on Tuesday, November 1, from 1 pm to 2 pm ET, with special guest speaker, [Tiff Macklem](#), Governor of the [Bank of Canada](#). This year's theme, [Make Change that Counts: Managing Your Money in a Changing World](#), aligns with the National Financial Literacy Strategy and reflects our complex and changing financial landscape. Financial Literacy Month is an opportunity to collectively advance the National Financial Literacy Strategy's vision of a more accessible, inclusive and effective financial ecosystem for Canadians.

[Register Here](#)

The Canadian Advocacy Council, on behalf of CFA Societies Canada, promotes investor protection, industry professionalism, market integrity and transparency to the benefit of society.



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Next CAC Meeting Scheduled: Tuesday, November 8, 2022 at 4:15 pm EST

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