

## **CAC Member Report to Local Board April 17, 2019**

The CAC met on the phone on April 16<sup>th</sup>, 2019.

Regulators have been active recently and the CAC is working on 5+ responses. Band width within the council is challenged in such scenarios as the group often struggles to comment meaningfully on multiple proposals within a short period of time. The quality of our responses is high, but such circumstances are a good case study for a revised litmus test and/or better application of the existing litmus test.

### **The CAC is actively working on a response to the following consultations:**

- Joint CSA/IROC Consultation Paper 23-406- Internalization within the Canadian Equity Market (due May 13, 2019)

#### About the notice

The CSA and IROC seek feedback in response to concerns regarding the internalization of retail/small orders within the Canadian equity market. While there are a variety of competing interests, the underlying goal is to ensure the protection of investors, and to foster fair and efficient capital markets and confidence in capital markets. In addition to the specific questions put forth throughout the Consultation Paper, general comments in relation to internalization were welcomed.

- CSA Second Notice and Request for Comment – NI 45-106 Prospectus Exemptions and NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations relating to Syndicated Mortgages (due May 14, 2019)

#### About the notice

The proposed amendments to the registration and prospectus requirements relating to syndicated mortgages was first published over a year ago. The proposals would remove the exemptions for the distribution of syndicated mortgages in those provinces in which they were still eligible for the exemption (including Ontario), introduce new requirements for use of the offering memorandum exemption for distributions of syndicated mortgages and amend the private issuer exemption so that it would not be available for the distribution of syndicated mortgages. This proposal revises a few of the original changes and would introduce dealer and prospectus exemptions in Ontario, NB, NS and Nfld for “qualified syndicated mortgages”, similar to the existing BC exemption (generally meaning a retail mortgage and one which does not secure a debt incurred for the construction or development of property). Alberta and Quebec are proposing a prospectus exemption only. In addition, Alberta is proposing a prospectus exemption for syndicated mortgages distributed to permitted clients, similar to an existing exemption in BC. The different exemptions are meant to be consistent with local mortgage legislation and regulations. Changes are proposed to the original amendments to the OM exemption; namely, the property appraisal must be within 6 months preceding the date it is delivered to the purchaser (instead of 12 months) and additional guidance is provided with respect to the meaning of the “issuer” of a syndicated mortgage (i.e. the mortgage broker or borrower). The amendments will come into effect at the end of the year.

- OSC Notice 11-785 – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2020 (due May 27, 2019)

*About the notice*

A key priority identified by the OSC in this year's statement of priorities relates to promoting confidence in Ontario's capital markets. The OSC intends to achieve this through: (i) continued development of the client focused reforms with a second publication of the proposed rule amendments; (ii) continued policy work on embedded commissions with revised proposals; (iii) improved experience for retail investors, including proposed amendments to address the financial exploitation of vulnerable investors; (iv) expanded systemic risk oversight of derivatives with a proposed business conduct rule, development of a registrant regulation framework, amendments to the trade reporting rule and amendments to clearing rules; (v) timely/impactful enforcement actions, including increased visibility of priority case outcomes; and (vi) supporting the CMRA transition. Other key priorities include reducing the regulatory burden by, among other things, improving the OSC website and revising the registration information rule, facilitating financial innovation (while still planning on examining the unit creation process for the actively managed ETF market) and strengthening the OSC's organizational foundation through strategic workforce planning and modernizing a variety of internal analytical tools.

- CSA Proposed National Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Companion Policy (due June 12, 2019) & OSC Proposed OSC Rule and CP 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators (due June 12, 2019)

*About the notice*

The proposed new rules would regulate, for the first time, the designation and regulation of benchmarks, including specific requirements for critical benchmarks, interest rate benchmarks and regulated-data benchmarks. The rules would also regulate the administrators of such benchmarks, contributors of data used to determine the benchmarks and certain users of those benchmarks, particularly those already regulated under securities legislation. It is currently proposed that only Refinitive Benchmark Services (UK) Limited (RBSL) would be designated as an administrator and only the Canadian Dollar Offered Rate (CDOR) and the Canadian Overnight Repo Rate Average (CORRA) would be designated critical and interest rate benchmarks. Currently, the EU BMR has similar regulations and RBSL is an authorized administrator under those rules. The proposed NI was developed to establish an EU BMR equivalent regime in order to allow EU institutional market participants to continue to use Canadian designated benchmarks under their equivalency provisions, as well as to protect Canadian market participants.

- MFDA Request for Comment – Proposed Amendment to ss. 24.A.4 (Provision of Information by Ombudservice) (due June 26, 2019)

*About the notice*

The MFDA is proposing an amendment to its by-law to expand the type of information it would be permitted to receive from the Ombudsman for Banking Services and Investments ("OBSI"). Currently, OBSI's own terms of reference is broader with respect to the type of information that can be provided to the regulators, and the amendments would remove the potential for inconsistency between those provisions. The broader

scope would allow OBSI to provide the MFDA with information in connection with an investigation or the review of a complaint, including information about anticipated refusals of OBSI recommendations. The scope of information that could be provided would thus be the same as can be provided to other regulators, including the OSC.

- MFDA Proposed Amendments to MFDA Rule 2.3.1(b) (Discretionary Trading) (due August 2, 2019)

*About the notice*

The current MFDA rules prohibit members from engaging in any form of discretionary trading. In response to concerns raised by dealers, the amendments would allow for limited discretionary trading in mutual fund model portfolios offered by MFDA dealers to allow them to make fund substitutions and asset allocations within the pre-established parameters. Currently, any such changes require prior client authorization. The proposed amendments would permit discretionary trading only where (i) the member/individual was registered under securities legislation to provide discretionary portfolio management services, i.e. as a restricted portfolio manager (or has received an exemption therefrom); and (ii) the discretionary trading is limited to mutual funds that are part of a model portfolio offered by the dealer. The permissible trading would be more constrained from what is already permitted for IIROC dealer members.

**General Affairs:**

The CAC is still looking to add a few members to its membership base. If you are a dedicated volunteer with strong communication skills and interested in helping shape the future of our capital markets we would like to hear from you! Feel free to contact us for more information at [cac@cfacanada.org](mailto:cac@cfacanada.org).

**Reminder:**

All letters can be seen on the CAC website, [www.cfaadvocacy.ca](http://www.cfaadvocacy.ca)

Be sure to [Follow Us on LinkedIn](#) to stay up to date on our activities.

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Chair, Canadian Advocacy Council