CAC Member Report to Local Board
June 06, 2019

The CAC met in-person in Montréal on May 31st, 2019.

Our Montréal in-person meeting held a professional development workshop analyzing the strengths and weakness of the CAC and how we can best deliver value to our stakeholders. The session lasted three hours and feedback from participates has been unanimously positive. The council will build on this session, working with the new Managing Director, to elevate the product and brand of the CAC (better letters, broader network and more recognition from regulators).

The CAC has been quite busy since our last update. I am particularly proud of our letter discussing Internalization within the Canadian Equity Market. I have been deeply involved with this subject over the last two years. The substance of our letter reflects much of this expertise.

Since the April report, the CAC provided comments on the following consultations (all letters can be seen on the CAC website, www.cfaadvocacy.ca)

- Joint CSA/IIROC Consultation Paper 23-406- Internalization within the Canadian Equity Market (filed April 30, 2019)

  About the notice
  The CSA and IIROC 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.

  Overview of the Council's comments
  The council is encouraged by the collaborative consultation undertaken by IIROC and the CSA. The timing of this initiative is critical. While marketplace data shows a relatively low volume of trades, this can trend higher over time and impact the overall efficiency of the marketplace. In our view, an outright ban on retail internalization via the broker preferencing mechanism can create an economic incentive for each broker to set up their own trading venue to better access, and to trade against, their own order flow. Currently, this scenario is unfolding in Europe. While we are supportive of the status quo, we believe reasonable regulatory limitations highlighted in our letter may help dis-incentivize future proliferation of the current internalization practices.

- 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 (filed April 30, 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.

Overview of the Council's comments

The CAC is supportive of the provisions contained in the Proposal. We supported and emphasized the importance of having a governance framework for administrators including policies designed to mitigate conflicts, which are pronounced when a benchmark contributor, administrator and user are within the same corporate family. We advocated a preference for utilizing a model used for exchanges and other marketplaces, or failing that, the passport model in a manner that mirrors the model currently successfully used by DROs and CROs. Overall, the council believes the direction of the proposal is aligned with the CFA Institute Global Investment Performance Standards (GIPS®) that aim to enable investors to compare performance with confidence.

- 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 (filed May 3, 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.

Overview of the Council's comments

As stated in the response to the first publication of the Proposed Amendments in March 2018, the CAC supports the changes to the prospectus and registration exemptions for syndicated mortgages in light of the inherent risks associated with distributing such products to retail investors under the current regime. In the council's view, changes to the syndicated mortgage regime are important for investor protection. The Proposed Amendments would seek to further harmonize, to the extent possible, rules regarding the distribution of these products among all CSA jurisdictions.

- MFDA Request for Comment – Proposed Amendment to ss. 24.A.4 (Provision of Information by Ombudservice) (filed May 8, 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.

  Overview of the Council's comments

  The CAC was encouraged by efforts from regulators to harmonize rules, to the extent possible, across distribution platforms and believe it is important for OBSI to be permitted to share relevant information with respect to registrants that may have significant regulatory implications with all applicable supervisory bodies. Given the mutual objective of fostering confidence in the Canadian capital markets, the information shared by OBSI may not only help regulatory investigations, but assist registrants and shape, or even avoid, future regulation. In support of this initiative, the CAC believes that to the extent both OBSI and the MFDA are contemporaneously dealing with client complaints or potential systemic compliance issues, if the regulators work with the same data set, it may be possible to cut down the frequency and inconsistency of information requests made to a registrant with respect to the same incident(s).

- MFDA Proposed Amendments to MFDA Rule 2.3.1(b) (Discretionary Trading) (filed May 8, 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.

Overview of the Council's comments
The CAC was supportive of the Proposed Amendments. We believe that registration as a restricted portfolio manager and limitations on discretionary trading are key to ensuring the objectives of the Proposed Amendments are met. The CAC queried whether the Proposed Amendments would be interpreted more broadly than may be intended, and thus additional clarity would be required with respect to the degree of permitted discretion would be a required addition.

- OSC Notice 11-785 – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2020 (filed May 14, 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.

  Overview of the Council's comments
  We support the OSC's focus on promoting confidence in Ontario's capital markets. As commented in the past, finalizing the client focused reforms and addressing conflicts arising from embedded commissions are in our view paramount to moving the dial on improved investor protection, and we look forward to the revised proposals dealing with these issues. The council remains strongly in favour of requiring registrants who provide advice to clients to abide by a best interest standard. Lastly, the council encouraged all initiatives in the Draft Statement related to data driven governance and analytics, as regulation should in part be based on evidence that new rules are required to deal with a demonstrative regulatory issue.

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

- CSA Proposed Amendments to NI 44-102 and 44-102CP Shelf Distributions relating to At-the-market Distributions (due Aug 7, 2019)

  About the notice

- An at-the-market offering allows issuers to sell equity into the market on an exchange at the prevailing market price through registered dealers using a short form base shelf prospectus. Typically, an issuer will issue a notice to the dealer specifying items such as minimum acceptable pricing and execution timing. Currently, exemptive relief is required from the prospectus delivery and certain disclosure requirements to engage in these offerings. The proposed amendments would codify the relief frequently given from the requirement to physically deliver a prospectus and provide rights of withdrawal/ rights of action for non-delivery of the prospectus for equity ATM offerings. The CSA is exploring two options, one would impose a requirement that the securities be highly liquid or that the aggregate number of securities distributed on any trading day cannot exceed 25% of the trading volume of that class on that day. Second option would not impose a cap on the basis that issuers and underwriters are already incentivized not to conduct distributions that would have a material impact on market price.

- CSA Proposed National Systems Renewal Program Rule and Related Amendments (due Jul 31, 2019)

  About the notice
  Proposed new National Instrument 13-103 would replace the current rules and framework for SEDAR, the National Cease Trade Order Database, the Disciplined List, SEDI, NRD and the National Registration Search in four phases beginning in early 2021. Phase 1 will focus on replacing SEDAR, the National Cease Trade Order Database, the Disciplined List and certain filings through the electronic portals in Ontario and B.C. made by issuers. Once fully implemented, the system would provide single-window access for market participants to file documents and pay fees.

- IIROC Request for Comment – Minor Contravention Program and Early Resolution Offers (due Jul 24, 2019)

  About the notice
  IIROC is moving ahead with proposals to introduce a minor contravention program ("MCP") which would be a middle ground between a cautionary letter and formal disciplinary action. Unlike the original proposal, the MCP would not be available for dealer members but only for Approved Persons (individuals). MCP Notices would be issued for contraventions of IIROC requirements that are isolated and result in limited harm to the public. The MCP would be based on stated criteria for eligibility, and sanctions would be fixed at $5,000 per contravention (an increase from the $2,500 originally proposed). Each case would have to be approved in a streamlined process by a one member hearing panel. A public notice setting out all matters resolved by way of MCP Notice would be issued quarterly but without identifying the Approved Person. They are also proposing to adopt a staff policy on Early Resolution Offers to complete settlement agreements earlier in the enforcement process based on the stated criteria for eligibility. Dealers and Approved Persons who resolve a case would be granted a 30% reduction on the sanctions IIROC staff would otherwise seek in a settlement agreement.

- MFDA Proposed Amendment to MFDA by-law No 1 – ss. 3.3 (Election and Term), 3.6.1 (Governance Committee), 4.7 (Quorum) (due Jun 12, 2019)

  About the notice
  The MFDA board is comprised of an even number of industry directors and public directors. Currently, a quorum consists of a majority of directors, and the proposals would instead require that a majority of public directors be present to constitute a quorum. In addition, the governance committee consists of two public and two industry directors, and the amendments would increase this size by adding one public director and by requiring a majority of public directors to constitute a quorum (instead of one public and one industry director). Finally, with respect to term limits, the current term of office for an industry directors is two years for a maximum of three terms, while public directors serve three years with a maximum of two terms. The amendments would increase term limits to eight years for both type of directors. The proposed amendments are intended to align the MFDA governance structure with those of similar organizations and reflect best practices.

At the in-person meeting in Montréal, the CAC met with representatives of the following organizations:

- Casgrain & Company Limited: Roger Casgrain, CFA, Executive Vice-President
- CFA Institute: Olivier Fines, CFA, Head of Advocacy EMEA
- AMF: Lise Estelle Brault, CFA, Senior Director, Fintech, Innovation and Derivatives

General affairs:

- Parham Nasseri was elected Chair and Laura Bewick Howitt was elected Vice Chair for the fiscal 2019-2020 beginning on July 1st.

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.

Reminder:

All letters can be seen on the CAC website, www.cfaadvocacy.ca

Be sure to Follow Us on LinkedIn to stay up to date on our activities.

Rob Gouley, CFA
Chair, Canadian Advocacy Council