

## CAC Monthly Report August 2019

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

### Chair Summary

The CAC held its monthly call on August 13, 2019 and the theme of busy summers continued into the hot month of August.

On the regulatory response front, the team completed the drafting stage and submitted a comment letter on the CSA Proposed Amendments to NI 44-102 and 44-102CP Shelf distributions relating to At-the-market distributions. In addition, we held an external sub-committee meeting, where local CFA charterholders with expertise on the ASC's Consultation Paper on energizing Alberta's Capital Markets worked with the CAC members to shape our comment letter. While this process was resource intensive and complex, the letter will surely benefit from the breadth of expertise on the call. The latter is currently in the drafting stage and will be ready before September 20th.

In addition to advancing the aforementioned comment letters, the council:

- actively engaged key stakeholders and regulators. Last month we worked on inviting the Responsible Investment Association and the Alberta Security Commission's New Economy director to our meetings,
- continued individual council member feedback meetings and sought member insights on the CAC's priorities, and
- finalized the strategic recruitment initiative and recommended two suitable candidates to the greater council.

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### CAC Published Comment Letters:

· [CSA Proposed Amendments to NI 44-102 and 44-102CP Shelf Distributions relating to At-the-market Distributions](#) (filed August 2, 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.

#### Overview of the Council's comments

The Council is generally supportive of the first option which would incorporate a liquidity requirement, however, if the intended outcome of an ATM offering is to create quicker and more cost effective access to capital, then a cap may not be required for larger, more experienced companies with an active market following and transparency with respect to the expected use of proceeds. Additionally, as we believe that it would be beneficial for companies with securities that are dually listed on a U.S. exchange to have ATM rules that are harmonized, to the extent possible, with those in the United States to reduce unnecessarily complexity; we do not believe either a daily cap based on trading volume or the general 10% cap should be placed on dual Canadian/ U.S. listed issuers.

For smaller issuers, a specific percentage cap would be preferable to excluding securities which meet the “highly liquid securities” definition.

We also noted that in the absence of a timely news release coinciding closer to the start of any share issuances under an ATM offering, investors may not fully appreciate or be able to easily track the timing, magnitude and circumstances in which an issuer would typically utilize the offering. While the issuer would have filed a base shelf prospectus and prospectus supplement (or, potentially, a “designated news release”) describing the ATM offering, investors may not be fully aware of the commencement and size of the distribution, and may be required to reconstruct any shares issuances made under an ATM long after the fact. In addition to considering specific additional news release or other public disclosure requirements, we believe that interim financial statements and other disclosure should continue to clearly note in the share tables any securities that were specifically issued under an ATM offering.

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## Response Drafting in Progress:

### · ASC Consultation Paper 11-701 – Energizing Alberta’s Capital Market (due September 20, 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.

### · FSRA Proposed Supervision Approach for High-risk Syndicated Mortgage Investments (due September 6, 2019)

#### About the notice

The 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.

### · FCSC (NB) Proposed Amendments to Local Rule 11-501 Fees (due September 2, 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.

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



#### CAC Media Mentions:

- [Investment Executive](#) - Aug 2, 2019
- [Advisor's Edge](#) - Aug 2, 2019
- [Investment Executive](#) - Aug 23, 2019

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*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 Call scheduled: Tuesday September 10, 2019 at 4:15pm EDT

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Contact Us

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