

# ACTIVITY UPDATE



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# TABLE OF CONTENTS

03

CSA-SRO  
ISSUES

14

GOVERNMENT  
& TAX ISSUES

22

OPERATIONAL  
ASSISTANCE

24

PUBLICATIONS

26

PROFILE-BUILDING  
INITIATIVES

# CSA-SRO ISSUES

## BEST INTEREST STANDARD

In April 2016, the CSA released Consultation [Paper 33-404](#) *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients* regarding conflicts of interest, know-your-client, know-your-product, relationship disclosure, suitability, proficiency requirements, titles and designations used by representatives, and the roles of the ultimate designated person (“UDP”) and chief compliance officer. The CSA is also considering a regulatory standard mandating that registrants act in their clients’ best interest. At the time of the paper’s release, all CSA jurisdictions supported the proposed targeted reforms, but there was mixed support for the best interest standard. The BCSC expressly rejected a best interest standard because it may be unworkable and have unintended consequences.

In its September 2016 comment [letter](#), the IIAC encouraged regulators to first consider the results of the CSA’s announced multi-year Point of Sale (POS) and CRM impact study to inform the need for any new regulation, as well as engage in a rigorous cost-benefit analysis. The IIAC noted that a broad, sweeping and vague best interest standard has uncertain application which may lead to client confusion and have negative consequences for investors—reducing choice among business models, reducing access to financial products, decreasing affordability of financial advice, heightening uncertainty with respect to client-advisor relationship obligations—resulting in onerous compliance requirements, and increasing exposure to risk and liability for advisors. The IIAC retained Deloitte LLP to conduct a Cost of Compliance Survey respecting certain reforms. The findings can act as a launching pad for a full cost-benefit analysis undertaken by the CSA.

IIAC President and CEO Ian Russell [reiterated](#) the industry’s concerns at a [roundtable](#) hosted by the OSC on December 2016, and in an Investment Executive [Letter to the Editor](#) in February 2017. He also met with the securities commissions in BC, Alberta, Saskatchewan and New Brunswick in early 2017.

For more information, please contact Michelle Alexander ([malexander@iiac.ca](mailto:malexander@iiac.ca)) or Adrian Walrath ([awalrath@iiac.ca](mailto:awalrath@iiac.ca)).

The IIAC will continue to meet with provincial securities commissions across the country to forcefully articulate the IIAC’s concerns with a proposed best interest standard and the targeted reforms.

## EMBEDDED COMMISSIONS

On January 10, 2017, the CSA released a Consultation Paper on The Option of Discontinuing Embedded Commissions. A Discussion Paper (i.e. the original consultation paper) was published in 2012 and subsequent research papers in 2015 and 2016.

The CSA pinpointed three investor protection and market efficiency issues stemming from embedded commissions. They: (1) raise conflicts between the interests of investment fund managers, dealers and advisors and those of investors; (2) limit investor awareness, understanding and control of dealer compensation costs; and (3) do not align with the services provided to investors.

The CSA is considering a ban on embedded commissions and is consulting on the potential effects on investors and market participants with respect to the provision and accessibility of advice, and business model and market structure. The CSA is also seeking to identify potential measures to mitigate any negative impacts, and alternative options.

The IIAC is calling for an adequate transition period for the industry to adapt, should the regulators ultimately proceed with a ban. The IIAC will raise the possibility of regulatory arbitrage between the mutual fund and insurance industries—a segregated fund may be an insurance product, but is basically sold as a mutual fund with embedded fees.

For more information, please contact Michelle Alexander ([malexander@iiac.ca](mailto:malexander@iiac.ca)) or Adrian Walrath ([awalrath@iiac.ca](mailto:awalrath@iiac.ca)).

The IIAC has formed a Working Group to respond to the January 2017 Consultation Paper. The deadline to do so is June 9, 2017.

## BEST EXECUTION

In December 2015, IIROC published proposed guidance to help dealer members strengthen their compliance with their best execution obligation in a multi-marketplace environment.

The IIAC expressed concerns about the need for detailed disclosure relating to order handling and routing practices. It noted it is inconsistent with the flexible manner in which firms undertake best execution, based on a number of fluid factors and circumstances. The IIAC was also concerned that the proposals appeared to require non-executing brokers to develop and audit best execution policies for their executing brokers, despite their lack of expertise or ability to control such execution. Lastly, there appear to be issues regarding the application of certain inappropriate best execution principles to the OTC market.

IIROC republished its proposals for comment in October 2016, incorporating many of IIAC's recommendations, but leaving a few problematic requirements in place, particularly for institutional trades.

In December 2016, the IIAC responded to IIROC enumerating a number of outstanding concerns in relation to the Proposed Provisions and the accompanying Guidance.

For more information, please contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

The IIAC is awaiting IIROC's reply to its December 2016 letter and will respond accordingly.

## IIROC PLAIN LANGUAGE RULE RE-DRAFT

In July 2016, the IIAC submitted comments regarding the re-publication of IIROC's Proposed Plain Language Rule Book, whose purpose is to restructure and clarify IIROC's rules. The IIAC pointed to a number of areas where the intended benefits may not be achieved because the changes identified do not improve regulatory policy or conform to existing requirements. An overarching concern is the introduction (under the proposed registration rules) of significant new burdens on registrants in the absence of clear problems. Investors may be negatively impacted, if advisors are driven away from the IIROC platform which has the highest standards in the industry. Additionally, the business conduct and client account rules introduced new requirements that may disadvantage clients, such as non-renewable discretionary account agreements. Finally, a new model for managed accounts could negatively impact clients' trade execution opportunities. The IIAC advocated that such new requirements be submitted for a necessary fulsome review by the industry to avoid negative unintended consequences.

On March 9, 2017, IIROC published a revised proposed Plain Language Rule Book for a 60-day comment period.

For more information, contact Michelle Alexander (malexander@iiac.ca), Susan Copland (scopland@iiac.ca), Jack Rando (jrando@iiac.ca) or Annie Sinigagliese (asinigagliese@iiac.ca).

The IIAC will provide comments on IIROC's proposed Plain Language Rule Book by May 12, 2017.

## COOPERATIVE CAPITAL MARKETS REGULATORY SYSTEM (CCMRS)

Following earlier consultations on the CCMRS in 2014 and 2015, the Participating Jurisdictions released a revised *Capital Markets Stability Act* (CMSA) in May 2016. The CMSA sets out powers granted to the Capital Markets Regulatory Authority regarding national data collection, systemic risk related to capital markets and criminal enforcement. The revised draft addressed many of the IIAC's concerns regarding the potential for undue regulatory burdens on capital market participants. It also included a number of positive changes that will help to ensure that the new systemic risk powers granted to the Capital Markets Regulatory Authority are used only if necessary, and in coordination with all Canadian regulators, to promote efficient capital markets and achieve effective regulation.

On July 6, 2016, the IIAC submitted comments on the revised draft of the Act, suggesting additional amendments for consideration.

For more information, please contact Michelle Alexander (malexander@iiac.ca).

The IIAC will monitor developments and respond accordingly.

## CLIENT RELATIONSHIP MODEL (CRM)

CRM is the most comprehensive initiative to reform the regulatory framework governing financial advisory services. CRM rules addressing relationship disclosure, conflicts of interest management/disclosure, and suitability assessment were among the first to be implemented. Rules related to pre-trade disclosure of advisor compensation and fees came into effect in July 2014. Amendments requiring registered firms to provide investors with enhanced client statements took effect year-end 2015, while rules relating to better disclosure around fees and investment performance took effect on July 15, 2016 and will be fully implemented by July 14, 2017.

In July 2016, The CSA sought comments on proposals to address matters that have arisen in the course of implementing the 2013 CRM2 amendments, including proposals to codify exemptions from certain requirements, revise guidance and propose new disclosure requirements for non-cash incentives and embedded fees. In October 2016, the IIAC issued a response in which it identified substantive changes in the proposed amendments included as guidance, without corresponding rule amendments to substantiate the requirements. The IIAC also expressed concern that there may be follow-on changes to SRO rules, which would create a great deal of confusion as member firms are already complying with their SRO's CRM2 rules, which have been finalized.

In December 2016, the IIAC developed a CRM2 webinar for advisors titled "Meet the Challenges. Capture the Opportunity". The webinar provides practical tips on helping clients understand the new fee and investment performance reports, addressing client questions and articulating value. A vigorous response to client queries will allay concerns and boost confidence.

In a news release, the IIAC called attention to the fact that the vast majority of member firms are already providing their clients with the new fee and investment performance reports, a full six months ahead of schedule.

For more information, please contact Michelle Alexander ([malexander@iiac.ca](mailto:malexander@iiac.ca)) or Adrian Walrath ([awalrath@iiac.ca](mailto:awalrath@iiac.ca)).

The IIAC will continue to engage its members, through its CRM2 Working Groups, to ensure smooth and successful implementation of all CRM2 requirements.

## EXCHANGE TRADED FUNDS (ETF) DISCLOSURE REQUIREMENTS

On December 8, 2016 the CSA released final rules that will require dealers to provide clients purchasing ETF securities with a summary disclosure document called "ETF Facts" within two days of purchase. ETF Facts contains key information about the purchased investment product, written in plain language.

As part of the CSA's initial consultation, the IIAC called for a sufficient implementation timeline to ensure a positive investor experience as well as an efficient and cost effective implementation that avoids any negative market impact.

Effective September 1, 2017, ETFs will be required to produce and file an ETF Facts and make it available on the ETF's or the ETF manager's website. Dealer delivery obligations related to the ETF Facts will come into effect on December 10, 2018.

For more information, contact Adrian Walrath ([awalrath@iiac.ca](mailto:awalrath@iiac.ca)).



## IIAC MARKET RESTRUCTURING PROJECT

In 2016, IIAC established a Committee to examine the reasons behind the recent wave of consolidation in the investment industry through mergers, acquisitions and firm closure—both from a broad perspective and through lens of the individual firm coping with challenging business conditions. It sought input through in-depth interviews with executives of firms that are no longer IIROC members. The Committee also examined the impact of consolidation on capital formation and market liquidity. The Committee identified a series of practical, specific recommendations to address the issues raised by the executives, including measures to: reduce the excessive regulatory burden; reduce barriers to entry in the start-up of new firms, or the transfer of ownership of existing firms; facilitate the return of firms from the exempt market to the mainstream investment banking community; and improve capital formation in the public venture and SME market.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

The IIAC will be working with regulators and government officials to implement the Committee's recommendations.

## STRATEGIC REVIEW OF THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS (OBSI)

A 2016 independent review of OBSI produced a series of recommendations aimed at improving its operations and practices for investment-related complaints. These recommendations formed the basis of OBSI's strategic plan, released January 19, 2017.

Among the recommendations of the independent evaluators was that OBSI have the authority to bind firms to observe its compensation recommendations when complainants' cases are deemed worthy of compensation.

The IIAC maintains that OBSI should not have binding compensation authority without a right of appeal to an independent body.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

The IIAC will continue to consult with OBSI to ensure that recommendations enacted as part of OBSI's strategic plan balance the interests of all industry stakeholders.

## CUSTODY AND TRADING ARRANGEMENTS FOR PORTFOLIO MANAGERS

In November 2016, the CSA issued a [Notice](#) to provide information and guidance to CSA-regulated portfolio managers that enter into custody and trading arrangements with IIROC-regulated investment dealer firms. Under these arrangements, an investment dealer holds an investor's assets and a portfolio manager trades those assets on a discretionary basis for the client. The investors is, thus, the client of both the portfolio manager and the investment dealer firm who each have different regulatory obligations to the client.

The CSA's staff notice indicates that provincial regulators' compliance reviews have uncovered several concerns with these custody and trading arrangements, including: inadequate or inconsistent disclosure to clients; inadequate or inconsistent agreements between the portfolio manager and the firm; and portfolio managers relying on dealers' records instead of maintaining their own as well as relying on dealers' account statements without ensuring those statements are complete and accurate.

The IIAC formed a Working Group to assist the industry in complying with the requirements in a consistent manner.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

The IIAC Working Group is developing a template agreement for use by firms undertaking these types of arrangements, and will be seeking IIROC input, as well as input from Portfolio Managers, once a draft is closer to final.

## MONTREAL EXCHANGE RULE MODERNIZATION PROJECT – PHASE 2

In October 2016 the IIAC submitted a comment [letter](#) to the Montreal Exchange regarding Phase 2 of its Rule Modernization Project. This [project](#) seeks to review the structure of the Exchange's rules and align them with current practices, remove outdated articles, and recommend amendments to adapt the rules to the evolving market.

The IIAC supports the initiative. It generally believes that the Exchange's rule modifications will provide greater clarity for market participants and will be aligned with current practices in the industry. The IIAC also believes that the modernization of the language of the rules will be beneficial to industry participants.

On March 13, 2017, the Montreal Exchange issued a [circular](#) requesting comments on *Manipulative or Deceptive Methods of Trading Amendments to Article 6306 of Rule Six of Bourse de Montreal Inc.* The circular is part of the MX Modernization Project. Other circulars may be issued.

For more information, contact Annie Sinigagliese ([asinigagliese@iiac.ca](mailto:asinigagliese@iiac.ca)).

The IIAC is reviewing the March 13, 2017 circular.

## MONTREAL EXCHANGE FINES FOR MINOR VIOLATIONS

In December 2016, the IIAC raised concerns to the Montreal Exchange regarding the proposed introduction of a process to impose fines for minor violations as an enforcement alternative to the filing of disciplinary complaints. Chief among the IIAC's concerns is the lack of information on how any cost savings realized by the proposal will be put toward efforts to monitor more serious violations.

If significant savings in the cost of enforcement activities are realized, the IIAC recommends that the MX consider reducing the regulatory levy applied against firms and will continue to advocate this position in consultation with the exchange.

For more information, contact Annie Sinigagliese ([asinigagliese@iiac.ca](mailto:asinigagliese@iiac.ca)).

The IIAC awaits the Montreal Exchange's response and will reply accordingly.

## MONTREAL EXCHANGE – EFP, EFR AND RBC REPORTING FORM

The IIAC had requested, in February 2016, enhancements to the Special Terms Transactions Reporting Form (STTRF) used by Approved Participants (AP) to submit Exchange For Physicals (EFP), Exchange For Risk (EFR), and Riskless Basis Cross (RBC) transactions to the MX.

For the benefit of our readers, an EFP is a simultaneous transaction involving the exchange of futures contracts for a corresponding cash position. An EFR is a simultaneous transaction involving the exchange of futures contracts for a corresponding over-the-counter derivative instrument. An RBC transaction is a trade where an AP and a client engage in pre-negotiation discussions to agree upon the terms of a transaction on index futures contracts and on share futures.

Thanks to the IIAC's efforts, a new field was added to the form as of Monday, February 13, 2017. Firms are able to include the identification of the AP's non-SAM authorized personnel submitting the form to the MX. A non-SAM authorized person is not allowed to trade on the Montréal Automated System.

This change enhances the efficiency of the process and allows APs to keep an accurate audit trail of each transaction (re: who executed the trade, and who submitted the form).

For more information, contact Annie Sinigagliese ([asinigagliese@iiac.ca](mailto:asinigagliese@iiac.ca)).



## MARKET DATA FEES

The IIAC sent a letter to the OSC reiterating its concern with the lack of regulatory response to address the increasingly high and disproportionate market data fees in Canada. This issue was first raised in 2009, and virtually no regulatory action has been taken, despite the acknowledgement of the CSA on several occasions that this was an issue to be addressed.

The IIAC requested that the CSA set up a consolidated tape sharing regime to provide quality data at a reasonable price, similar to the U.S. system, to address the cost and monopolistic pricing demonstrated in the Canadian market.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

The IIAC will continue to monitor developments and speak out on behalf of the industry to ease the excessive cost burden faced by firms.

## ORDER PROTECTION RULE – PROPOSED TRADING FEE CAPS

In April 2016, the CSA published Proposed Amendments to NI 23-101 Trading Rules, reducing the cap on active trading fees for non-inter-listed securities from \$0.003 to \$0.0017. Given the inflated trading and market data fees in the Canadian market, the CSA's efforts to ensure certain market participants do not use their position to create economically burdensome pricing structures that negatively impact the industry are welcomed.

However, in its July 2016 response, the IIAC raised concerns and sought clarification on certain elements of the Proposed Amendments. Acknowledging the CSA's concerns regarding limiting the scope of the trading fee cap to non-inter-listed securities, the IIAC called on the CSA to continue to gather information and monitor trade flows as the U.S. launches a pilot program relating to its fee caps. In addition, the IIAC sought clarification on how the Proposed Amendments would apply to certain dark orders and recommended that the fee cap not apply to the passive side for trades on inverted markets.

The CSA responded in its final version published January 26, 2017 by reducing the active trading fee on non-inter-listed securities to \$0.0017, and clarifying that the fee cap does not apply to passive trades on inverted markets.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).



## NEW INVESTMENT DEALER PROSPECTUS EXEMPTION

On April 16, 2015, the Securities Commissions in BC, New Brunswick and Saskatchewan approved a proposed prospectus exemption that would, subject to certain conditions, allow issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained advice on the suitability of the investment from an IIROC-regulated investment dealer.

The IIAC supported this proposal on the grounds that it would increase efficiency without sacrificing investor protection, and indicated it would be far more effective if implemented in all jurisdictions. Alberta and Manitoba subsequently implemented the exemption.

The IIAC has written to the other provinces urging them to introduce the prospectus exemption.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

The IIAC is awaiting the proposed Prospectus Exemptions as part of the CCMRS initiative. The IIAC will advocate for inclusion of this exemption for participating jurisdictions.

## OSC PROPOSALS ON FOREIGN DISTRIBUTIONS

On June 2016, the OSC published for comment a proposed rule that would provide issuers with more certainty when they sell securities to investors outside Canada. In its October 2016 response, the IIAC expressed support for the OSC's efforts to provide clarity regarding the extent of the application of the prospectus and registration requirements in certain cross-border transactions, noting it will promote efficiency and cost savings by introducing certainty and predictability in cross-border financings. It is important that provinces act in a unified manner. The existing and ongoing divergence in securities regulation across jurisdictions creates costly inefficiencies in the Canadian capital markets, increasing costs for issuers and investors, and reducing our competitiveness in the global market.

For more information, contact Susan Copland (scopland@iiac.ca).

Ongoing.

## CSA REVIEW OF THE PROXY VOTING INFRASTRUCTURE

Shareholder voting is essential to the quality and integrity of Canada's public capital markets as it enables shareholders of companies to have their say on corporate governance matters. In Canada, shareholders typically vote by proxy, as opposed to in-person at shareholder meetings. Concerns have been raised with respect to the quality of the shareholder voting process and the integrity of the results. In response, the CSA undertook a multifaceted review of proxy voting with the aim of improving the fragmented and complex proxy voting infrastructure. The IIAC participated in the development of guidance on the roles and responsibilities of key participants in the proxy voting process that describes the existing operational processes for tabulating proxy votes for shares held through intermediary dealers. This guidance formed the basis of the CSA's Proposed Proxy Voting Protocols.

In July 2016, the IIAC commented on the Proposed Proxy Voting Protocols, noting they will increase the transparency and accountability of the proxy voting process to the benefit of issuers and investors. The IIAC cautioned, however, that to the extent the Proposed Proxy Voting Protocols refer to any new proxy voting processes that have not been developed, a careful review must be undertaken assess costs and benefits.

Over the next two proxy seasons, the CSA will monitor the implementation of the protocols and assess the need for any enhanced regulatory measures. CSA staff will receive ongoing input from a Technical committee made up of representatives from key service providers involved in the proxy voting process.

For more information, contact Adrian Walrath (awalrath@iiac.ca).

The Technical Committee will meet again in the fall to discuss the most recent proxy season and how the protocols are working. The IIAC will monitor developments.

## AMENDMENTS TO UMIR

IIROC proposed amendments to its trading rules (UMIR) to include a new definition of Acceptable Foreign Trade Reporting Facilities (FTRF) and allow large trades to be reported initially only to certain FINRA-operated trade reporting facilities. The IIAC requested clarification concerning how the proposed amendments would operate in practice, though it supports the intent of the proposal to mitigate the challenges posed by previously issued guidance on the definition of a Foreign Organized Regulated Marketplace (FORM) which would have required changing long-standing institutional trading practices and affected access to liquidity for large orders.

The IIAC wrote to IIROC and the OSC in June 2016. The IIAC remains concerned that retail trading challenges that emerged with the FORM guidance remain unaddressed and that its application to prohibit access to FTRFs for all retail order flow will weaken retail trading market efficiency.

The IIAC recommended that the results of a review in respect to retail order flow to the U.S. inform any consideration of trading restrictions so to avoid unintended negative consequences for retail investors.

For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca)).

Developments  
will continue to  
be monitored.

## IIROC'S PROPOSED OEO GUIDANCE

Order Execution Only (OEO) firms execute trades based solely on client instructions, and do not provide any investment advice or recommendations. In response to technological evolution, competitive pressures and client demand, OEO firms make available tools and educational resources that investors may find helpful in informing their self-directed investment decisions. Clients benefit from access to accurate information from reputable sources, and Canada's investment industry and markets benefit from well-informed investors.

On November 3, 2016 IIROC issued guidance setting out expectations and requirements for OEO firms. The IIAC raised several concerns in its response to IIROC-issued guidance. The guidance has implications for the entire OEO business model and, therefore, the industry. If implemented, the guidance would, among other things, limit the range of tools available to clients through OEO firms. This would force clients to make self-directed investment decisions without the benefit of access to information that might assist in making well-informed decisions. Even worse, it may cause clients to look to unreliable sources for information. This could result in negative outcomes for clients, and runs counter to IIROC's mission to protect investors and support healthy Canadian capital markets.

For more information, please contact Annie Sinigaglia ([asinigaglia@iiac.ca](mailto:asinigaglia@iiac.ca)).

Developments  
will continue to  
be monitored.

## ILLEGAL BINARY OPTIONS TRADING

In response to a [request for comment](#) from Quebec's Autorité des Marchés Financiers on the issue of binary options trading, the IIAC [called](#) on the AMF to put an end to illegal binary options trading to protect retail investors and shield Canada's investment industry from unfair reputational damage.

Currently, there are no individuals or companies in Canada that are registered to conduct binary options trades for retail investors. Despite public warnings issued by regulators across Canada, some retail investors are lured into trading these derivative products through illegal electronic platforms, mistaking them for regulated Canadian brokers. These investors often fall victim to unfair, abusive and fraudulent practices.

To end illegal binary trading activity, regulators across Canada must consider the possibility of allowing IIROC-regulated firms to offer binary options to investors. Dealing with an IIROC-regulated firm will ensure retail investors who wish to trade binary options properly understand the product and the significant risks involved. It will also eliminate the risk of fraud.

For more information, please contact Annie Sinigagliese ([asinigagliese@iiac.ca](mailto:asinigagliese@iiac.ca)).

Developments will continue to be monitored.

## NEW ISSUES NOT AVAILABLE IN QUEBEC

Section 40.1 of the *Quebec Securities Act* mandates the translation of all prospectuses filed in Quebec as well as all documents incorporated by reference. Because of this obligation, half of new "national issues" are not filed in Quebec. As a result, investors in Quebec are largely excluded from the primary market. To address this problem, the IIAC has recommended the adoption of the "European approach" of translating only a summary of the prospectus.

This issue will be pursued as part of a broader project of addressing the structural issues that have contributed to a collapse of the IPO market in Quebec.

For more information, contact Annie Sinigagliese ([asinigagliese@iiac.ca](mailto:asinigagliese@iiac.ca)).

The IIAC will be collaborating with other private sector participants and government entities on this agenda.

# GOVERNMENT & TAX ISSUES

## FINANCIAL PLANNING IN ONTARIO/ BRITISH COLUMBIA

On June 10, 2016, the IIAC submitted a comment letter to the Ontario Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives. The IIAC outlined its support for additional clarity and standardization for the provision and supervision of financial planning in the industry, as it is important for consumers that financial planners satisfy minimum proficiency levels regardless of the regulatory channel within which they work. The IIAC also welcomed the recommendation that firms and individuals providing financial planning through other existing regulatory frameworks be allowed to have their activities regulated by their existing regulator to avoid regulatory duplication. However, the IIAC has concerns with a number of recommendations, including those related to implementing a statutory best interest duty and prohibitions on referral arrangements.

The IIAC has stressed the need for the harmonization of financial planning standards not only in Ontario, but across Canada to ensure maximum effectiveness and efficiency. The BC Government is examining the issue of financial planning, and the IIAC met with government representatives to discuss its position, as outlined above.

For more information, contact Michelle Alexander ([malexander@iiac.ca](mailto:malexander@iiac.ca)).

The IIAC awaits next steps from both the Ontario Expert Committee and the BC Government regarding financial planning initiatives in both provinces.

## ANTI-MONEY LAUNDERING REGULATIONS

In August 2015, the IIAC provided comments to Finance Canada regarding its proposed amendments to the Proceeds of Crime and Terrorist Financing Regulations. The IIAC was pleased that the Regulations were amended to provide broader and more flexible sources that firms can use to verify the identity of clients, allowing such methods as a credit card statement or utility bill, thereby reducing the administrative burden on firms.

In June 2016, the IIAC became an active member of the federal government's new Advisory Committee on Money Laundering and Terrorist Financing. Through the Committee, the IIAC continues to encourage Finance Canada to implement amendments that have been discussed in the past, most notably regarding the removal of the \$75 million asset requirement for public corporations and an exemption from the authorized signing officer verification of foreign bodies.

In March 2017, the IIAC's Anti-Money Laundering Committee participated in FINTRAC's regulatory consultation with the securities sector. The meeting served as the final consultation on guidance regarding the Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and the regulatory amendments coming into force on June 17, 2017. Questions raised by IIAC members relating to new methods of identifying clients, including the use of technology, new risk assessment considerations and identification of beneficial owners were shared as part of the discussion.

For more information, contact Michelle Alexander ([malexander@iiac.ca](mailto:malexander@iiac.ca)).

The IIAC awaits proposed guidance being developed by FINTRAC.

The IIAC will continue to participate on Finance Canada's Advisory Committee and accompanying Working Groups, as well as in future consultations related to additional regulatory amendments.

## IIROC'S PROPOSED EXPANDED DEBT TRANSPARENCY SERVICE AND NEW DEBT INFORMATION PROCESSOR FEE MODEL

In December 2016, IIROC signalled its intent to launch an expanded debt transparency service that will make its dealers' corporate bond trade data available to customers, for a fee, via bulk download. In its January 2017 response, the IIAC raised several concerns regarding this initiative, given its limited public benefit and unnecessary cost burden for dealers coping with difficult business conditions. The IIAC questions whether such a service is needed as more timely and comprehensive alternatives are already available through the private sector.

IIROC proposes that its dealer members fully cover the costs of operating the SRO's debt transparency service. The IIAC objected on the grounds that the users and beneficiaries of the service extend well beyond the dealer community. Furthermore, the proposal ignores the material costs already incurred by IIAC members to establish the systems and processes for submitting to IIROC the debt transactions that underpin the transparency service.

For more information, contact Jack Rando ([jrando@iiac.ca](mailto:jrando@iiac.ca)).

The IIAC will monitor action taken by IIROC and will respond accordingly.

## TAX REPORTING ON LINKED NOTES

The 2016 Federal Budget introduced new tax measures on Linked Notes as well as new tax reporting obligations for investment dealers transacting in these instruments. Finance Canada proposed implementing the new measures effective October 2016; however, the IIAC, in collaboration with other industry associations, successfully convinced Finance to delay implementation of the regulations until 2017 to allow additional time for firms and service providers to develop the necessary systems and procedures to fulfill their tax reporting obligations on Linked Notes for the 2017 tax year.

For more information, contact Jack Rando ([jrando@iiac.ca](mailto:jrando@iiac.ca)).

Working on implementation.

## 'ADVANTAGE' RULES FOR INVESTMENT MANAGEMENT FEES ON REGISTERED PLANS

CRA considers the increase in value of property held in a registered plan that indirectly results from investment management fees being paid outside of the plan to constitute an "advantage" as set out in the *Income Tax Act*. At the November 2016 Canadian Tax Foundation Conference, CRA representatives indicated that registered plan holders should pay investment management fees charged to those plans out of the plan's assets to avoid adverse tax consequences.

Under the "advantage rules", CRA may charge a 100 per cent penalty tax on fees paid by an investor that are deemed to be an advantage. CRA will allow a transitional period for the industry to adapt and will not assess tax in respect of such fees paid outside a registered plan before January 2018 (provided that such payments do not relate to services to be provided after 2017).

For more information, contact Jack Rando ([jrando@iiac.ca](mailto:jrando@iiac.ca)).

The IIAC is participating in industry discussions with the CRA to determine which fee arrangements will be affected by this policy. CRA has committed to release a folio with more details in early 2017.

## TFSA DEBIT-BALANCES

The IIAC had brought to CRA's attention concerns about how certain "administrative/procedural" overdrafts in Tax Free Savings Accounts (TFSAs) (such as through settlement mismatches or automated fee charges where there is insufficient cash in the account to cover the fee) were being viewed by the CRA as a "borrowing" by the annuitant, putting the TFSA offside with the terms of its use and exposing the account holder to potential penalties. The IIAC indicated that these unintended and incidental short-term overdrafts are not meant to enhance TFSA values through the use of leverage, and requested that the CRA consider appropriate administrative relief in these cases to avoid adverse tax consequences to the annuitant.

In response to the IIAC's arguments, the CRA granted administrative relief to avoid adverse tax consequences and the de-registration of TFSA accounts. Although the IIAC's concerns were in the context of TFSAs, the *Income Tax Act* imposes borrowing restrictions on RRSPs, RRIFs, RDSPs and RESPs similar to those imposed on TFSAs. The CRA administrative position applies to all five registered plans.

For more information, contact Jack Rando ([jrando@iiac.ca](mailto:jrando@iiac.ca)).



## HIGH-VALUE TFSAS AND SMALL BORROWINGS

The IIAC continues to work on a high-value TFSA matter that leaves dealers exposed to considerable risk of loss. In a February 2015 letter to Finance Canada, the IIAC requested an amendment to the *Income Tax Act* that ensures TFSA trustees (including IIAC member firms) not be held liable for any shortfall in taxes should funds within a TFSA be insufficient to cover off any liability stemming from the account being found to have carried on as a business.

For more information, contact Jack Rando ([jrando@iiac.ca](mailto:jrando@iiac.ca)).

The IIAC continues to monitor developments.

## U.S. TAX REPORTING AND WITHHOLDING – FATCA

In June 2014, the Canadian government passed legislation (Part XVIII of the Income Tax Act) and published detailed guidance to implement the intergovernmental agreement (IGA) with the United States to facilitate the provisions of the Foreign Account Tax Compliance Act (FATCA) in Canada. All Reporting Canadian financial institutions (which will include all IIROC-registered investment dealers) should have registered and obtained a Global Intermediary Identification Number (GIIN) by December 31, 2014. The first FATCA/Part XVIII reporting to the CRA occurred on May 1, 2015. Due diligence on all pre-existing accounts to identify U.S. reportable persons should have been completed by all Reporting Canadian FIs by June 30, 2016. In December 2016, the CRA released significant revisions to the Part XVIII guidance in response to industry dialogue, and to better align with the OECD Common Reporting Standard (CRS) requirements. The IIAC U.S. Tax Committee reviewed these revisions and provided additional comments to the CRA in January 2017.

For more information, contact Andrea Taylor ([ataylor@iiac.ca](mailto:ataylor@iiac.ca)).

The IIAC will monitor CRA's response to comments submitted and will reply accordingly.

## U.S. TAX WITHHOLDING – QI RELATED ISSUES

On December 30, 2016, the IRS released Revenue Procedure 2017-15, which contains the final version of the revised Qualified Intermediary (QI) Agreement. The Agreement and its preamble contain a number of provisions addressing the concerns raised by the IIAC in its written submissions to the IRS throughout 2016. These provisions will:

- Grant Qualified Derivatives Dealers (QDDs) additional time to implement and comply with new section 871 (m) computations.
- Reduce confusion by providing important clarification for QIs and QDDs regarding certain section 871 (m) transactions.
- Reduce the risk of over-taxation on QIs, QDDs and their clients.
- Specific information on the changes made by the IRS and their benefits to IIAC member firms is available here.

The revised Agreement contains a number of other important clarifications and changes. The IRS has activated the new Qualified Intermediary Application and Account Management System, through which QIs can renew their existing QI Agreements and apply for QDD status. QIs must renew their agreements (and if applicable, apply for QDD status) using this system prior to March 31, 2017 for the renewed agreement to have an effective date of January 1, 2017. On March 6, 2017, the IIAC wrote to the IRS requesting a three-month extension of the deadline to apply for/renew QI/QDD status, given the challenges QI have had in using the system and the unanticipated volume of information being requested by the IRS for QI renewal.

For more information, contact Andrea Taylor ([ataylor@iiac.ca](mailto:ataylor@iiac.ca)).

The IRS is requesting comments on the proposed regulations by April 10, 2017. The IIAC U.S. Tax Committee will respond.

## U.S. TAX WITHHOLDING – SECTION 302 / 304 DTC WITHHOLDING

In 2008, the IRS proposed regulatory changes to the Internal Revenue Code section 302 rules, which recommended amended procedures for certain distributions on redemptions of U.S. stock held by non-U.S. resident shareholders which may be subject to U.S. withholding tax. The procedures would have involved the U.S. payor (and not the QI) placing 30 per cent of the proceeds into escrow, pending receipt of a certification from the account holder (within 60 days), as proceeds from sale or as dividends. Despite the fact that the regulations were never finalized by the IRS, the Depository Trust Company (DTC) notified all of its Canadian QI participants that these procedures would be implemented by DTC beginning January 1, 2016. The IIAC made a written submission to the IRS in December 2016, asking it to consider alternative arrangements that would be less disruptive and costly for Canadian QIs and their clients. The IIAC also worked with members to develop Sections 302 and 304 Certification forms and FAQs for advisors, and continues to compile an industry list of Sections 302 and 304 transactions.

For more information, contact Andrea Taylor ([ataylor@iiac.ca](mailto:ataylor@iiac.ca)).

The IIAC will follow up with the IRS on its written submission.

The IIAC Section 302 Working Group is providing a forum for members to discuss upcoming section 302 and 304 transactions.

## U.S. TAX WITHHOLDING – SECTION 871(M)

Internal Revenue Code section 871(m) treats dividend equivalent payments on certain financial products that reference underlying U.S. securities—such as options, swaps, futures and others—as U.S.-source dividends for U.S. withholding tax purposes. Starting January 1, 2017, Canadian financial institutions that are Qualified Derivatives Dealers, including some IIAC member firms, are required to withhold tax on certain dividend equivalent payments received by clients holding the affected products.

In December 2015, and again in June 2016, the IIAC provided comments to the IRS, raising significant concerns about delayed regulation, and a lack of guidance with respect to the newly proposed “Qualified Derivatives Dealer” program, the applicability of the regulations to exchange-traded options, and the requirements for combining transactions. Given the lack of guidance, the IIAC recommended in a number of letters to Treasury and the IRS that the general implementation deadline for section 871(m) be delayed to January 1, 2018. Otherwise, there could be significant negative implications for global capital markets, as financial institutions choose not to enter into transactions with unknown tax consequences. In December 2016, the IRS agreed to delay implementation for all non-delta-one contracts until January 1, 2018, and confirmed that implementation during the 2017 and 2018 calendar years would be on a “good faith efforts” basis. On January 19, 2017 the IRS issued final and temporary regulations containing additional guidance for the implementation of section 871(m). These regulations are effective as of January 19, 2017.

The amendments contain a number of technical clarifications, including the adoption of the IIAC’s recommendation to determine the “delta” of an option listed on a regulated exchange at the close of business on the business day before the date of issuance. This confirmation by the IRS will facilitate the application of the delta test with respect to these contracts, which would have been extremely difficult for dealers, if not impossible, under the previous version of the regulations.

For more information, contact Andrea Taylor ([ataylor@iiac.ca](mailto:ataylor@iiac.ca)).

The IIAC will provide comment to the IRS on its proposed regulations for the implementation of section 871(m) by April 24, 2017.

## U.S. TAX WITHHOLDING – SECTION 305(C)

In 2015, the IRS announced its intentions to audit and enforce the requirements of Internal Revenue Code section 305(c), which deems a holder of rights or convertible securities in a corporation (such as warrants, rights or convertible debt) to have received a taxable distribution upon the occurrence of a conversion rate adjustment (CRA) that increases the number of shares that the holder would receive upon a conversion or exercise of the instrument.

In April 2016, the IRS published draft regulations for industry review and comment which provide additional clarity around (i) who is deemed to be a withholding agent with respect to section 305(c) distributions; (ii) when such deemed distributions and obligations to withhold arise; and (iii) the method of calculating the amount of the deemed distribution.

The IIAC provided a written submission to the IRS in July 2016, pointing out that identifying these transactions and building systems to withhold and report would be a significant undertaking for the entire industry, and would require adequate time for implementation. The IIAC also recommended that the IRS consider placing more responsibility on issuers to post the information that withholding agents and QIs require to carry out withholding and reporting on a publicly available repository (which could potentially be facilitated by the IRS, or using an existing system, such as EDGAR). Without this change, withholding agents and QIs would be required to continuously search for information manually, or engage an outside service provider, at considerable expense.

For more information, contact Andrea Taylor ([ataylor@iiac.ca](mailto:ataylor@iiac.ca)).

The IIAC awaits further regulatory guidance from the IRS in 2017.

## OECD COMMON REPORTING STANDARD (CRS)

In the summer of 2014, the OECD published a final version of the framework for a Common Reporting Standard (CRS), which would require multilateral information sharing of non-resident tax information (similar to FATCA) among all countries that adopt the CRS and implement local legislation to implement the Standard. Canada has committed to implementing the CRS as of July 1, 2017 and will begin sharing information with other jurisdictions in 2018.

In December 2016, the Canadian government passed the implementing legislation (now “Part XIX” of the Income Tax Act), and the Canada Revenue Agency (CRA) published comprehensive guidance for FIs, along with certification forms and general information for individual and entity clients. Most notably, IIAC efforts to have TFSAs excluded from the scope of CRS due diligence and reporting were successful, as they are now listed as “excluded accounts” in the tabled version of the Canadian legislation.

For more information, contact Andrea Taylor ([ataylor@iiac.ca](mailto:ataylor@iiac.ca)).

The IIAC OECD CRS Working Group will monitor implementation issues and provide additional feedback and recommendations to the CRA as necessary.

## REVENU QUÉBEC – WITHHOLDING TAX

Taxes are withheld by financial institutions when clients withdraw funds from their registered accounts. For withdrawals made between December 22 and December 31, Revenu Québec (RQ) requires firms to remit payment of taxes withheld by the third business day of January. The Canada Revenue Agency (CRA), meanwhile, requires this remittance by January 15. Firms that miss either of these deadlines are assessed heavy penalties and face interest charges. Logistical barriers make it difficult for firms to ensure all withholding taxes are paid to RQ by its due date.

On January 31, 2017, the IIAC and IFIC wrote to the Ministère des Finances du Québec to request that RQ’s deadline be extended to January 15 to align with the CRA deadline, and to lessen the risk of late remittances.

For more information, please contact Annie Sinigagliese ([asinigagliese@iiac.ca](mailto:asinigagliese@iiac.ca)).

The IIAC will continue to monitor developments.

# OPERATIONAL ASSISTANCE

## **BEST PRACTICES, TOOLS AND TEMPLATES**

The IIAC offers a variety of materials to help member firms operate efficiently and effectively in an ever-changing regulatory environment. We also develop best practices on new or complex processes and provide templates and samples that leverage our members' collective expertise. Access is reserved for IIAC members.

## **INDUSTRY DATA**

Our Member firms have access to a cross-section of industry data.

## **IIAC'S MEMBER OFFERS**

Our Partners look forward to assisting you and your employees to drive your business success and improve your bottom line through various benefit programs offered at preferred rates. For more information, contact Jack Rando ([jrando@iiac.ca](mailto:jrando@iiac.ca))

## **INFORMATION PERTAINING TO SMALL AND INDEPENDENT DEALERS (SAID)**

In our "Small Dealers" tab of our website, there are areas accessible only to Member firms where you will find publications, tools and committee meeting minutes specific to SAIDs. For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca))

## **CYBERSECURITY MICROSITE**

The IIAC's website has a section that provides information, tools and updates on cybersecurity. Access is reserved for IIAC members. For more information, contact Susan Copland ([scopland@iiac.ca](mailto:scopland@iiac.ca))

## **CLIENT RELATIONSHIP MODEL (CRM) MEMBER SUPPORT**

A wealth of information at your fingertips. Access is reserved for IIAC members. For more information, contact Adrian Walrath ([awalrath@iiac.ca](mailto:awalrath@iiac.ca))

## **IIAC TECHNOLOGY AND OPERATIONAL RISK COMMITTEES**

As firms look to leverage technology to improve operating efficiencies, reduce costs, facilitate compliance and mitigate risk, the importance of understanding emerging technology trends and how they might benefit Member firms has heightened greatly. Given technology's broad application, so too has the need for industry collaboration. To facilitate better understanding and collaboration, the IIAC established in early 2016 two Technology and Operational Risk Committees (one focused on Market Data, the other on Equity Infrastructure) to assist Member firms. The Committees and related working groups provide a forum for Member firms to discuss emerging trends and innovations. They provide an important industry voice on technology matters in discussions with regulators, exchanges, vendors and other market participants, as well as input and assistance to other IIAC Committees. Opportunities for technical collaboration between IIAC Member firms are also explored. For more information, contact Annie Sinigagliese (asinigagliese@iiac.ca)

## **FINTECH WORKING GROUP**

The mandate of the Working Group is to understand the nature of the FinTech space—including the business, developers, clients, products and existing and proposed regulation—and how it will impact member firms and other market participants (i.e. risks and opportunities). Some of the questions the Working Group will address include: Who are the new Fintech players IIAC member firms are competing against? How are these competitors interacting with their clients, and how will this change members' relationship with the clients? How can we ensure a level-playing field between member firms and FinTech companies? How will investors benefit from FinTech? What financial Apps are being created? How can our member firms benefit from FinTech? What are the barriers to entry, expansion, or adoption for IIAC member firms? What are the regulatory/compliance issues a firm will encounter in becoming more "tech"? What is the current regulatory framework for financial services? What role should regulators play (sandboxes, provincial committees, scope of involvement with the industry)? What does the future hold? For more information, contact Susan Copland (scopland@iiac.ca) or Annie Sinigagliese (asinigagliese@iiac.ca)

## **CYBERSECURITY VENDOR DUE DILIGENCE CHECKLIST**

The recent IIROC Cybersecurity survey identified lack of due diligence when working with third parties as an area that small dealers must address as part of their cybersecurity efforts. The IIAC has formed a working group comprised of IIAC member firms, industry vendors and IIROC representatives to develop a checklist to assist dealers in evaluating potential and existing vendors' cyber-security to ensure they understand the risks and measures that must be taken to protect their own systems when working with third parties. The working group is evaluating best practices and is expected to produce a checklist in spring 2017. For more information, contact Susan Copland (scopland@iiac.ca)

## **SMALL DEALER SALARY SURVEY**

As a follow-up to a similar survey conducted in 2012, the IIAC will be surveying small and mid-sized dealers in early 2017 to assess the current range of salaries paid for non-advisory roles within the sector. The results of the survey will be benchmarked against the 2012 results and provided to dealers that participate in the survey to ensure they have the latest competitive intelligence. For more information, contact Susan Copland (scopland@iiac.ca)

# PUBLICATIONS

## **IIAC NEWSLETTER**

On Monday mornings, the IIAC distributes an e-newsletter to subscribers, including industry participants, regulators, media and government officials. The newsletter contains the latest IIAC news and advocacy initiatives, as well as information on upcoming events and the previous week's media commentary. Register for free [here](#).

## **IIAC LETTER FROM THE PRESIDENT**

The IIAC *Letter from the President* is distributed monthly to CEOs, senior industry executives, regulators and financial media. The Letter is a distillation of topical financial and regulatory issues impacting the performance and well-being of the Canadian investment industry and domestic capital markets. Previous volumes of the *Letter* are available [here](#).

## **SECURITIES INDUSTRY SAVINGS-TO-INVESTMENT PROSPERITY CYCLE**

Provides a [snapshot](#) of the securities industry, and highlights graphically how the industry connects savers and investors to help generate economic activity and jobs. It is an excellent tool for members to use in their social media and advocacy efforts.

## **FIXED INCOME MARKET REGULATORY UPDATE**

This monthly publication sets out new developments in the regulation of fixed income markets in Canada, as well as highlights of major developments in the U.S., Europe and Asia. Past editions are available [here](#).

## **NORTH AMERICA CYBERSECURITY BRIEF**

The Financial Services Information Sharing and Analysis Center (FS-ISAC), the Investment Industry Association of Canada (IIAC), and the Securities Industry Financial Markets Association (SIFMA) are working together to provide member firms a monthly newsletter that highlights cybersecurity topics and emerging threats to the securities industry within North America. The information provided in the monthly newsletter is intended to increase the cybersecurity awareness of end users and help them behave in a more secure manner. Past editions of the newsletter are available [here](#).

## **RETAIL PUBLICATIONS**

IIAC has several retail publications of interest to our members. They are available [here](#).

### **THE ‘SECURITY’ IN THE SECURITIES INDUSTRY BROCHURE**

This [brochure](#) summarizes some of the major regulatory and structural elements unique to the Canadian securities industry that safeguard investors. It touches on the roles of IIROC, CIPF, securities commissions and the clearing agencies.

### **EQUITY CAPITAL MARKETS NEW ISSUE PRACTICES HANDBOOK (FORMERLY SYNDICATE PRACTICES HANDBOOK)**

The [Handbook](#) helps firms improve the efficiency of the underwriting process, especially in the execution of bought deals. It also provides member firms with a better understanding of their responsibilities in underwriting and selling newly issued securities to the public by providing a base-line reference point for syndicate managers to indicate possible differences from the normal practice.

### **DEBT MARKETS SYNDICATION BEST PRACTICES HANDBOOK**

The Debt Markets Syndication Best Practices [handbook](#) illustrates industry “best practices” in the syndication of corporate and provincial debt offerings. The document was prepared by a working group of industry professionals under the auspices of the IIAC.

### **PROTECTING SENIOR INVESTORS REPORT**

In 2014, the IIAC released a guidance report, *Canada’s Investment Industry: Protecting Senior Investors*, to share best practices investment dealer firms and advisors are using when working with senior clients. The report underscores how seriously the industry takes its responsibility to ensure senior investors are being served in an ethical, respectful and informed manner. It also calls attention to the important role firms and advisors play in protecting this client base.

# PROFILE-BUILDING INITIATIVES

## **IIAC INVESTMENT INDUSTRY HALL OF FAME**

The *IIAC Investment Industry Hall of Fame* honours excellence, integrity and leadership in Canada's investment industry. More information is available [here](#).

## **IIAC TOP UNDER 40 AWARD**

The *IIAC Top Under 40 Award* recognizes the new generation of talented young professionals whose drive, dedication, qualities and accomplishments have brought distinction to the investment industry. More information is available [here](#).

## **IIAC MEDIA COVERAGE**

Read more in [The IIAC in the News](#).

## **IIAC SOCIAL MEDIA**

Connect with us on [LinkedIn](#), [Twitter](#), [Facebook](#), [Google+](#), [YouTube](#) and [Flickr](#), and check out the [IIAC Blog](#).

## **SECURITIES INDUSTRY INFOGRAPHIC**

The [infographic](#) conveys the important contribution the industry makes to capital markets, the economy and communities across Canada. The infographic has proven useful and compelling in summarizing the characteristics of our industry to clients and others, creating content for news releases or marketing opportunities, and in distributing visual content on social media.

## **UPCOMING IIAC EVENTS AND PRESENTATIONS**

For a list of our upcoming events, click [here](#).

For a list of upcoming presentations by IIAC staff, click [here](#).