

November 12, 2020

VIA EMAIL

Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, Ontario
M2N 6L9

Dear Sirs/Mesdames:

Re: Draft Guidance – High Risk Offerings issued under the *Co-operative Corporations Act* (the “Draft Guidance”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Draft Guidance.

We understand that the Draft Guidance will result in certain co-operatives (“co-ops”) being required to provide enhanced disclosure to clients when selling securities in an offering considered by FSRA to be high-risk. If the enhanced disclosure is not included in the requisite offering statement, FSRA will not issue a receipt as required under the *Co-operative Corporations Act*. The Draft Guidance, in effect, sets out FSRA’s expectations for “full, true and plain disclosure of all material facts relating to the securities proposed to be issued”.

We support FSRA’s objectives to promote high standards of business conduct for co-ops and to help investors make more informed investment decisions. It is important that investors are provided with enough detail about the securities being offered to assess them appropriately.

We note that the proposed definition of a “high-risk offering” may capture a large number of offerings made by co-ops, as it includes any offering by a co-op that appears to be intended as an investment vehicle (resulting in a potential misalignment between members and investors), one that markets the securities to non-accredited investors, or an offering that sets an expectation of financial appreciation or promises a return of principal. Given the breadth of the definition, and the fact that even other persons who

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 177,600 CFA charterholders worldwide in 165 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

participate economically in a co-op and buy its products and services may benefit from enhanced disclosure found in the offering statement, we query why the enhanced disclosure cannot be made a requirement for all co-op securities offerings. The enhanced disclosure relates mainly to the financial condition of the co-op as well as financial market risks, which should be of interest to all purchasers of its securities.

Given the high-risk nature of these securities, we believe it would also be beneficial if prospective purchasers were required to sign a risk acknowledgement statement prior to purchase, similar to Form 45-106F4 *Risk Acknowledgement*.

Many securities offerings under common prospectus exemptions must be reported to the relevant securities commissions within a specified timeframe after the distribution. As these co-op offerings are presumably not reported to the securities regulators, if FSRA is not already receiving the information, it may wish to consider mandating a form for reporting high-risk offerings which could provide information such as the frequency and amount of the distributions being made under an offering statement. The form could be similar to some of the information that would otherwise be obtained through Form 45-106F1 *Report of Exempt Distribution*.

Considering the limited availability of public information, we are interested in learning further background information on any specific issues that have been a historical cause for concern with respect to offerings by co-ops. If there have been investor protection issues, it would be helpful to publish the concerns and solutions (potentially in the form of investor alerts) to inform investors on how better to protect themselves, particularly to the extent that securities of a co-op are sold to them by someone trustworthy within their affinity community. We generally support harmonization of prospectus and dealer registration exemptions across the country and between regulatory structures and regulators wherever possible. To the extent that co-ops are subject to requirements that differ from offerings subject to securities law under National Instrument 45-106 *Prospectus Exemptions* and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, it would be helpful to better understand the rationale for such differences, and the resulting potential for regulatory arbitrage and/or investor harm.

Investors, particularly retail investors, should be educated on the differences in their rights and remedies when buying securities from a co-op. It is also important to avoid the possibility of regulatory arbitrage between different offering regimes, which is not in the public interest nor the interests of issuers attempting to raise capital. Going forward, it might be possible to form a working group involving other regulators to discuss some of these issues and a harmonized approach to securities offerings where the legislative framework permits distributions of securities outside the scope of securities legislation and related regulatory requirements.



Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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