01/28/2025
2:00 PM ET

Ottawa Update
Robert Near, Prospectus Associates

Finance Minister Chrystia Freeland has announced her resignation, setting off a chain of events that culminated in Prime Minister Justin Trudeau announcing his intention to resign. Trudeau will officially resign once the Liberal party has chosen a new leader, which is scheduled for March 9.

The Liberal party has six leadership candidates and of the six, Mark Carney, former Bank of Canada and Bank of England Governor is in the lead. Regardless, the new leader will face significant challenges as they will have to reconvene Parliament within a matter of weeks of being appointed.

Adding to uncertainty Trudeau has paused Parliament until March 24. Further uncertainties include threats from the U.S. with President Trump announcing 25% tariffs on all Canadian imports. The Trump administration has directed Cabinet members to assess the trade and report back by April 1.

Member Questions

Q: If Carney wins the leadership race but does not have a seat in Parliament how and when would he become Prime Minister? Would he first need to be elected, or can he be appointed without a seat.

A: If Carney wins the leadership position but does not have a seat, he can still be appointed PM if Trudeau follows through with his resignation. It is tradition for the PM to have a seat in Parliament, however, it is not legally required. A Liberal Member of Parliament would likely have to step down so Carney can run in the by-election.

Q: According to the Globe and Mail and other papers it has been announced that the Liberal party proposed a “pandemic-style bailouts”. With Parliament on pause, how would this legislation be introduced?

A: Parliament must be reconvened to do so, and another party would have to support this proposal.

Tax Discussion
Michael Friedman, McMillan LLP

We have entered uncharted territory with the new capital gains inclusion rate announcements. The legislation was proposed to apply retroactively, however, there has been a considerable delay in time and implementation due to Parliament being prorogued.

The last Federal budget announced the government’s intention to increase the capital gains inclusion rate. However, many argue capital gains should be treated differently than income. Capital gains accrue over a long period of time, and the real value of that capital gain is eroded by inflation. Leading to discussions that there should be an inclusion rate that reflects the real value that is not a dollar-for-dollar gain.

Some speculate the government increased the inclusion rate to 2/3rds for corporations and trusts hoping to find additional sources of revenue. The capital gains inclusion increase was indicated to generate roughly 7 billion dollars of additional tax revenue according to the Finance Department.

The proposed capital gains increase was never part of a formal bill. In the past the Canada Revenue Agency (CRA) has administered tax measures based on these notices, assuming they were enacted. However, with Parliament now prorogued, uncertainty remains. It can be assumed that the CRA will hold off on enforcement rather than assuming the proposal will become a law.

Canadian Regulatory Updates

Victoria Paris, PMAC

Gavin Inkster, PMAC

CSA Staff Notice and Consultation on Use of AI in Capital Markets

In early December the CSA published guidance and issued a consultation about the use of AI systems in capital markets. In its guidance, the CSA identified five “overarching themes” relating to the use of AI:

1. **Technology and securities regulation.** The CSA notes that securities laws are generally technology-neutral and therefore apply to the activity undertaken by a market participant, not to the technology used in the activity. This means that AI systems will be treated differently depending on their function.
2. **Governance and oversight.** The CSA recommends that market participants adopt AI-focused governance practices that can mitigate the unique risks and challenges posed by AI. This could include having a “human-in-the-loop” tasked with monitoring a given AI system to ensure it operates as intended.
3. **Explainability.** The CSA states that market participants should implement AI systems with high levels of explainability, meaning that the system’s reasoning is clear and comprehensible. The CSA discourages AI systems that engage “black box” processes that cannot be understood. The CSA has sought to emphasize that capital markets function on transparency and disclosure, and AI systems should align with these principles.
4. **Disclosure.** The CSA encourages market participants to be transparent about their use of AI. Market participants should provide robust disclosure to allow investors to make informed decisions, including transparency regarding how AI is used.
5. **Conflicts of interest**. The CSA recognizes that AI systems can create new considerations related to conflicts of interest. Market participants must ensure the outputs of their AI systems do not result in decisions which favor their interests over those of their clients or investors.

The consultation closes on March 31, 2025.

Member Questions:

Q: Will anyone on this call respond separately?

A: Most firms will not respond independently; rather, they will participate in the PMAC working group.

CSA proposes amendments to Multilateral Instrument 13-102 System Fees

The CSA proposed in November to increase system fees for SEDAR+ and the National Registration Database (NRD) over a five-year period starting in late 2025. The CSA is proposing a 60% increase in November 2025, followed by an annual 3% increase in each of the following four years. The proposed system fee increase will be less than $2,500 for 95% of filing and registrant organizations and less than $1,000 for 85% of filing and registrant organizations, in the first year.

The CSA is inviting comments on this proposal, with the comment period ending on February 19, 2025.

Member Comment: It is frustrating to see the fee increase, especially with such little detail as to why this is happening. As the increase is a small amount, I do not believe anyone will question or challenge it.

International & Other Developments

Canadian Sustainability Standards Board publishes Canadian Sustainability Disclosure Standard (CSDS) 1 General Requirements for Disclosure of Sustainability-related Financial

The Canadian Sustainability Standards Board has published CSDS 1, the General Requirements for Disclosure of Sustainability-related Financial Information, and CSDS 2, Climate-related Disclosures.

These are now part of the CPA Canada Handbook – Sustainability, which is available for free until March 31, 2025. The CSSB essentially mirrored the IFRS S1 and IFRS S2 as it had proposed, but provided some additional transition relief:

- two years for the start of aligned reporting, which will be required within the first six months after the second and third year-ends, respectively;
- three years for the quantitative aspects of scenario analysis data reporting (not qualitative aspects);
- and, an additional year of transition relief for Scope 3 green-house gas emissions reporting.

Competition Bureau Canada – *Competition Act* Greenwashing Guidelines Consultation

At the end of December, the Competition Bureau released draft enforcement guidelines regarding the environmental claims section of the legislation. As we have previously discussed, the Act was amended to provide that environmental claims must be supported by an “adequate and proper” test and that claims of environmental benefits of a business or activity of a business must be supported by an “internationally recognized methodology”.

It is not clear from the guidance whether investment funds and private equity issuers may rely on environmental disclosures by underlying issuers to satisfy their obligations.

The guidance does exclude representations made to investors and shareholders in the context of securities filings, which will not be subject to the provisions. However, it is not clear whether marketing or other voluntary statements to investors would be excluded.

The new guidance is open for consultation until February 28.