CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 25-402

Consultation on the Self-Regulatory Organization Framework

June 25, 2020

1. Introduction

On December 12, 2019, the Canadian Securities Administrators (**CSA**) issued a news release (**News Release**)[1] announcing that it would undertake a review of the regulatory framework for the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**).

The idea to review the regulatory framework for self-regulatory organizations (**SROs**) in Canada is not new, and the merits and timing of such a review have been considered many times by the CSA, as well as recently in public forums. The current SRO regulatory framework has been in place for almost twenty years, and in that time, the delivery of financial services and products has continued to evolve. In response to the evolution of the industry and submissions formulated by a group of industry participants, the CSA believes that it is appropriate to revisit the current structure of the SRO regulatory framework and to seek comments from all stakeholders at this time.

While the CSA conducts this review, it is not intended to have a disruptive impact on the SROs' ability to perform their regulatory operations, or on the activity of their dealer members to service the investing public.

Since the issuance of the News Release, the CSA staff met with a wide variety of stakeholder groups to informally discuss the benefits, challenges and issues of the current SRO regulatory framework. The CSA is publishing this consultation paper (**Consultation Paper**) for a 120-day comment period to seek input from all industry representatives and stakeholders, investor advocates, and the public. The CSA is asking for general feedback on how innovation and the evolution of the financial services industry has impacted the current regulatory framework, as well as specific comments on the issues and targeted outcomes set out in the Consultation Paper.

The comment period will end on October 23, 2020.

[1] https://www.securities-administrators.ca/aboutcsa.aspx?id=1853

2. Self-Regulatory Organization Regulatory Framework in Canada and Internationally

An SRO is an entity created for the purpose of regulating the operations and the standards of practice and business conduct of its members and their representatives with a view to promote investor protection and the public interest. In Canada, provincial and territorial securities regulators (**Securities Regulators**), operating together as the CSA, have a long history of utilizing SROs as part of their regulatory framework. The securities industry SROs operate under the authority and supervision of the CSA.

The current SRO regulatory framework in Canada requires investment dealers to be members of IIROC and mutual fund dealers to be members of the MFDA, except in Québec where mutual fund dealers are directly regulated by the Autorité des marchés financiers (**AMF**).[2]

While each SRO performs the primary oversight of investment (IIROC) and mutual fund (MFDA) dealers, as applicable, both IIROC and MFDA members remain subject to regulation by the CSA and must comply with national rules, such as National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), as well as applicable provincial and territorial securities legislation. To avoid duplication of regulation, IIROC and MFDA dealers are exempt from compliance with certain sections of NI 31-103 in cases where the dealers comply with the corresponding requirements under IIROC or MFDA rules.

The Regulatory Landscape

i) The Investment Industry Regulation Organization of Canada

IIROC is the national SRO which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC is recognized as an SRO by the CSA (**IIROC Recognizing Regulators**)[3] pursuant to applicable legislation. IIROC's head office is in Toronto with regional offices in Montréal, Calgary and Vancouver. Additional information about IIROC's governance structure, enforcement practices and more, including statistical charts, can be found in Appendix A.

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[2] In Québec, mutual fund dealers with operations and clients only within that province are directly supervised by the AMF, but those operating and/or advising clients also in other Canadian jurisdictions must be members of the MFDA. Registered individuals in the category of mutual fund representatives must also be members of the Chambre de la sécurité financière (**CSF**), a statutory SRO under the direct supervision of the AMF with responsibilities of maintaining discipline and overseeing the training and ethics of its members. The MFDA has entered into a Co-operative Agreement with the AMF and the CSF to facilitate information sharing and supervision of MFDA members with operations in that province.

[3] IIROC is recognized by the Alberta Securities Commission (ASC), the AMF, the British Columbia Securities Commission (BCSC), the Financial and Consumer Affairs Authority of Saskatchewan (FCAA), the Financial and Consumer Services Commission of New Brunswick (FCNB), the Manitoba Securities Commission (MSC), the Nova Scotia Securities Commission (NSSC), the Office of the Superintendent of Securities Service Newfoundland and Labrador (NL), the Ontario Securities Commission (OSC), the Prince Edward Island Office of the Superintendent of Securities Office (PEI), the Northwest Territories Office of the Superintendent of Securities, the Nunavut Securities Office, and the Office of the Yukon Superintendent of Securities.

Development and history of IIROC

The Investment Dealers Association of Canada

The Investment Dealers Association of Canada (**IDA**) was founded in 1916 as the Bond Dealers Section of the Toronto Board of Trade. The IDA evolved into a national SRO for investment dealers. Over the years, Securities Regulators issued orders under their respective legislation to formally recognize the IDA as an SRO. All investment dealers were required by provincial and territorial securities law to be members of a recognized SRO.

The IDA initially had a dual self-regulatory and trade association mandate. In 2006, the Investment Industry Association of Canada was organized and took on the trade association advocacy and member activities. As a result, the sole function of the IDA was the regulation of its members and their registered employees, which was carried out by monitoring and enforcing compliance with IDA rules.

Market Regulation Services Inc.

Market Regulation Services Inc. (**RS**) was formed in 2002 to provide independent regulation services to Canadian marketplaces and was subsequently recognized as an SRO by some Securities Regulators. The Toronto Stock Exchange and TSX Venture Exchange then chose to outsource to RS, through regulation services agreements, the surveillance, trade desk compliance, investigation and enforcement functions they had historically conducted in-house. The RS mandate was to develop, administer, monitor and enforce marketplace rules applicable to trading practices.

Creation of IIROC

IIROC was created in 2008 through the combination of the IDA and RS into a single organization. At the time, the creation of this new SRO was viewed as a fundamental step to ensuring strong, streamlined, expert self-regulation of Canada's capital markets.

IIROC carries out its regulatory responsibilities by overseeing trading activity on Canadian debt and equity marketplaces, and through setting and enforcing market integrity rules and dealer member rules regarding the proficiency, business and financial conduct of its member firms and their registered representatives. The CSA has also selected IIROC to act as the information processor on trading in Canadian corporate debt securities.[4]

IIROC members also sponsor the Canadian Investor Protection Fund (**CIPF**), an investor protection fund authorized to provide coverage within prescribed limits to eligible clients in case of an IIROC member's insolvency.

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[4] Amendments to National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), in force as at August 31, 2020, subject to Ministerial approval, prescribe mandatory post-trade transparency of trades in government debt securities. IIROC's role as information processor will be expanded to include transactions in government debt securities.

IIROC does not perform any trade association functions for its member firms or individual representatives.

ii) The Mutual Fund Dealers Association of Canada

The MFDA is an SRO responsible for the oversight of mutual fund dealers in Canada, except, as already noted, in Québec. The MFDA is recognized as an SRO by the CSA (**MFDA Recognizing Regulators**)[5] pursuant to applicable legislation. The MFDA head office is in Toronto, with regional offices in Calgary and Vancouver. Additional information about the MFDA's governance structure, enforcement practices, statistical charts and more can be found in Appendix B.

Development and history of the MFDA

The MFDA was established in mid-1998 at the initiative of the CSA[6] in response to the rapid growth of mutual funds from $40 billion to $400 billion in Canada in the late 1980s. At the time, there was a concern that the business and regulatory risks associated with dealers that restricted their business largely to the distribution of mutual funds differed significantly from those with market intermediaries (such as investment dealers) that distributed and advised in a wide range of financial products and services (including equities, securities underwriting and providing margin). The CSA determined that the mutual fund industry and investors would benefit from a separate and distinct self-regulatory structure to accommodate for those differences.

MFDA dealer members also contribute to the MFDA Investor Protection Corporation (**MFDA IPC**), an investor protection fund established by the MFDA to provide coverage within prescribed limits to eligible clients in case of a MFDA dealer member's insolvency.

The MFDA does not perform any trade association functions for its member firms or individual representatives.

iii) Oversight of SROs in Canada

IIROC and the MFDA are formally recognized as SROs through their respective recognition orders,[7] which are largely harmonized between each jurisdiction. The recognition orders set out the authority of each SRO to carry out certain regulatory functions including: regulating dealer members, establishing and administering its rules and policies, ensuring compliance by dealer members with SRO rules and performing investigation and enforcement functions. In the case of IIROC, this includes monitoring trading activity, providing services to marketplace members and registration functions.

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[5] The MFDA is recognized by the ASC, BCSC, FCAA, FCNB, MSC, NSSC, OSC, and PEI.

[6] The CSA initiated discussions with the IDA and the Investment Funds Institute of Canada. The result of these efforts was the establishment of the MFDA as an SRO for mutual fund dealers.

[7] https://www.iiroc.ca/about-iiroc/governance-bylaws; https://mfda.ca/about/sro-recognition

The recognition orders also set out terms and conditions each SRO must comply with in carrying out their regulatory functions. The terms and conditions of recognition require each SRO to operate on a not-for-profit basis and continue to meet set criteria such as:

- ensuring an effective governance structure
- regulating to serve the public interest in protecting (i) investors and (ii) in the case of IIROC, market integrity
- effectively identifying and managing conflicts of interest
- operating on a cost-recovery basis
- maintaining capacity to effectively (i) perform its regulatory functions and (ii) establish and maintain rules and
- complying with ongoing reporting requirements to the applicable recognizing regulators.

The CSA's oversight is coordinated through separate memoranda of understanding (**MoUs**) for IIROC and the MFDA.[8] The objective of each MoU is to coordinate the CSA's oversight of the SRO's performance of its self-regulatory activities and services, and to ensure it is acting in accordance with its public interest mandate, specifically by complying with the terms and conditions of recognition.

Each MoU provides for a separate oversight committee comprised of staff from the IIROC and MFDA Recognizing Regulators. For purposes of efficiency and to reduce burden on the SROs, a principal regulator is assigned to lead and coordinate the CSA's oversight of each SRO. Each MoU sets out a coordinated oversight program which includes: annual risk assessments, oversight reviews, review and approval of rule proposals, review of various periodic reports and information filed by the SROs, and discussion of ongoing issues with the SROs, among other oversight activities.

iv) Other Registration Categories Regulated Directly by the CSA

CSA members are responsible for the direct regulation and oversight of registrants in the category of exempt market dealer (**EMD**), portfolio manager (**PM**), scholarship plan dealer (**SPD**)[9] and investment fund manager (**IFM**). For a complete description of these categories, please refer to Part 7 of the Companion Policy to NI 31-103.[10] Appendix C also contains statistical information on various registration categories.

The CSA carries out oversight of directly regulated registrants on a harmonized basis through the application of consistent requirements set out under securities laws. Regulated firms must have effective compliance systems, meet certain business conduct requirements, and are subject to financial reporting, working capital, insurance and bonding requirements. The

[8] https://www.iiroc.ca/about/governance/Documents/MemorandumOfUnderstanding_en.pdf; https://www.bcsc.bc.ca/Securities_Law/Policies/PolicyBCN/PDF/MFDA_Memorandum_of_Understanding_JRRP__October_10_2013/

[9] In Québec, registered individuals in the SPD category must also be members of the CSF.

[10] https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-103CP__CP___December_4__2017/

registration requirements and ongoing requirements of registration for both firms and individuals are set out in NI 31-103.[11]

The CSA accomplishes its oversight by activities such as conducting on-site and desk reviews of firms, monitoring capital requirements, participating in "sweep reviews" of targeted issues, and providing guidance through staff notices and outreach. Compliance practices are aligned across Canada to the extent possible by using common examination programs and harmonizing compliance initiatives related to monitoring the activities of regulated firms.

If an individual or firm is not complying with applicable securities laws and the matter is not satisfactorily resolved, a number of actions are possible including the imposition of terms and conditions on a registration, or where appropriate, enforcement actions.

EMDs and their registered dealing representatives may act as a dealer or underwriter for any securities that are distributed to investors in reliance on a prospectus exemption, including securities of a reporting issuer.[12] EMDs are not permitted to act as a dealer or underwriter in a distribution that is being made under a prospectus. Purchasers of securities of issuers that are not reporting issuers may not have the benefit of ongoing information about the security that they are buying or the company selling it, and there may be limited resale opportunities. An EMD is not permitted to participate in the resale of securities that are freely tradeable, if the securities are listed, quoted or traded on a marketplace.

SPDs and their registered dealing representatives may only act as a dealer in respect of a security of a scholarship plan, an educational plan or an educational trust. An SPD typically pools contributions from numerous investors who purchase scholarship plan units through a group registered education savings plan. An IFM affiliated with the SPD typically manages the pooled funds. The units in the pool represent the investor's share of the plan. SPDs are required to provide scholarship plan investors with a plan summary that provides key information highlighting the benefits and risks of the plan.

PMs and their advising representatives provide advice to clients, and typically manage investment portfolios on a discretionary basis on behalf of their clients and based on each client's investment profile. PMs manage investment portfolios on behalf of individual clients, investment funds, foundations, pensions and other institutional clients.

IFMs direct the business, operations or affairs of an investment fund. They organize the fund and are responsible for its management and administration. IFMs do not have individual registrants other than an ultimate designated person and a chief compliance officer.

The CSA can also place restrictions on a dealer or adviser category of registration. For example, a restricted dealer may be limited to specific activities or be allowed to carry on a limited trading business. Similarly, a restricted portfolio manager might be limited to advising in respect of a specific sector, such as oil and gas issuers. CSA registrants can also be registered in more than one category of registration depending on their business activities.

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[11] https://www.bcsc.bc.ca/Securities_Law/Policies/Policy3/PDF/31-103__NI___June_12__2019/
[12] https://www.bcsc.bc.ca/Securities_Law/Policies/Policy4/PDF/45-106__NI___October_5__2018/

v) Selected International Regulatory Models

United States (U.S.) - Financial Industry Regulatory Authority (FINRA)

SROs have formed part of securities regulation in the U.S. since 1939 when the National Association of Securities Dealers (**NASD**) was created in response to the Great Depression through the *Maloney Act of 1938*. In 2007, the NASD merged with the self-regulatory function of the New York Stock Exchange (the NYSE Regulation, Inc.) to become FINRA which regulates the largest number of securities firms and their brokers in the U.S. today.[13] Additional information about FINRA's governance structure, enforcement practices and more can be found in Appendix D.

For FINRA specifically, and its predecessor, the NASD, the rationale in the U.S. for self regulation was to find a balance that was mutually beneficial to the government and securities industry.

Though other models have been considered by the U.S. Securities and Exchange Commission (**SEC**), including repatriation of FINRA's functions, the SEC has generally concluded that an SRO would best serve the U.S. markets. The SEC considered multiple SROs to be less favourable because of the increased risk of regulatory capture, where the SRO struggles to act in the public interest or effectively enforce their rules due to funding concerns or other influence from their members. Additionally, the SEC determined that a multiple SRO structure could contribute to market fragmentation.[14]

There are some registrants in the U.S. that are not required to be members of an SRO.

The U.K. Financial Conduct Authority (FCA)

Unlike the U.S., the United Kingdom (**U.K.**) has moved away from an SRO model by recently establishing two statutory regulators: the FCA, which is the conduct regulator for financial services firms and markets in the U.K., and the Prudential Regulation Authority (**PRA**), which acts as the prudential regulator for large investment firms, among others. Additional information about the FCA's governance structure, enforcement practices and more can be found in Appendix E.

Originally, securities regulation in the U.K. was performed by three separate SROs: the Securities and Futures Authority, the Investment Management Regulatory Organization, and the Personal Investment Authority. This was viewed as overly burdensome by industry and parliament, resulting in duplicative costs and regulatory fragmentation. Consequently, the *Financial Services and Markets Act 2000* dissolved these SROs, with a single statutory regulator, the Financial Services Authority (**FSA**), taking their place from 2001 – 2013.

The FSA was abolished by the *Financial Services Act 2012*[15] in favour of the FCA and the PRA due to failures identified during the Great Recession of 2008 - 2009. Since its

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[13] https://www.sec.gov/news/press/2007/2007-151.htm

[14] https://www.sec.gov/rules/concept/34-50700.htm

[15] http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted

establishment in 2013, the FCA has been tasked with monitoring conduct, supervising trading infrastructures, and operating the U.K. listing regime,[16] while the PRA is tasked with enforcing rules related to sufficient capital and the related risk controls.[17]

3. Informal Consultation Process

Stakeholders Consulted

As noted in the introduction, in late 2019 and early 2020, the CSA completed informal consultations with a wide variety of stakeholder groups in order to solicit views regarding the current SRO regulatory framework. In response to the News Release, CSA staff met with a variety of stakeholders, including those who made a request.

The stakeholder groups included SROs, investor protection funds, groups representing various registrant categories, investment industry associations, and investor advocacy groups.

The objective of the informal consultations was to solicit feedback from stakeholders on the benefits, strengths and challenges of the current SRO regulatory framework as well as to identify opportunities for improvement. The feedback from these informal consultations informed the drafting of this Consultation Paper.

Consultation Questions

The following questions were used to facilitate the informal consultations:

1. What are the benefits of the current SRO regulatory framework?
2. What are the challenges of the current SRO regulatory framework?
3. Overall, how efficient and how effective is the current SRO regulatory framework in Canada?
4. Is the status quo viable in the shorter (under 5 years) or longer (5 years +) terms?
5. What are the key developments in the industry (i.e. innovation, technology, advice, products, consolidation, etc.) since the advent of the two SRO structure and the impact these have had on the current SRO regulatory framework?
6. Is the convergence of registration categories a significant issue? Are there other registration issues that need to be addressed?
7. If there are issues with the current SRO regulatory framework, what options are available to resolve or manage issues?
   a) What are the pros and cons of each?
   b) What could be the unintended consequences and the likelihood that they could be realized?
   c) How could these unintended consequences be mitigated?
8. If not already expressed, what is the ideal solution for the Canadian SRO regulatory framework?

[16] https://www.fca.org.uk/about/sector-overview
[17] https://www.bankofengland.co.uk/prudential-regulation

Common Themes

Stakeholders were largely supportive of the informal consultation process. Industry groups and associations, as well as investor advocates all expressed a desire for change to the current regulatory framework given changes that have occurred in the business environment, client needs and expectations, and registrant demographics. Some stakeholders generally prefaced this desire for change with an equal desire for a realistic and achievable plan, potentially considered in several phases.

Although many of the stakeholders commended the SROs' specialized expertise and the benefits of their national scope and reach, they also expressed concerns respecting the current structure. Specifically, stakeholders expressed concern that duplicative costs and a lack of common oversight standards have resulted in multiple compliance teams and differing interpretations of similar rules. Operationally, using different platforms and back-office services have also contributed to higher costs. From an investor standpoint, layers of regulation have contributed to investor confusion as clients are unable to access a broad range of products from one representative or are unsure where to turn to if an issue arises. Lastly, certain stakeholders considered this project an opportunity to enhance the SROs' governance structures to clearly focus on their public interest mandate and strengthen complaint resolution mechanisms.

Though many stakeholders provided suggestions to resolve the challenges with the current regulatory framework, there was no consensus or overall theme noted for solutions, largely due to differing perspectives of the stakeholders.

4. Benefits and Strengths Identified during the Informal Consultations

During the informal consultations, stakeholders identified various benefits and strengths of the current SRO regulatory framework.

National scope of SROs

Numerous stakeholders, including some investment industry associations and investor advocates, agreed that the national structure of an SRO is important in light of the provincial and territorial regulation of the securities industry in Canada. They stated that national SROs[18] provide for a more uniform level of regulation and supervision across the country with one set of rules applicable to all SRO members.[19]

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[18] As previously noted in section 2 of this Consultation Paper, the current SRO regulatory framework in Canada requires investment dealers to be dealer members of IIROC. Mutual fund dealers are required to be members of the MFDA, except in Québec where registered firms are directly regulated by the AMF. See footnote 2 for details. Furthermore, with respect to the CSA recognition, while IIROC is recognized by all 10 provinces & 3 territories, MFDA is only recognized by AB, BC, MB, NB, NS, ON, PEI, SK.

[19] As previously noted in section 2 of this Consultation Paper, while IIROC and the MFDA respectively perform the primary oversight of investment dealers and mutual fund dealers, both IIROC and MFDA dealer members remain subject to regulation by the CSA and must comply with applicable securities legislation, such as NI 31-103. IIROC/MFDA dealers are only exempt from compliance with certain sections of NI 31-103 in cases where

An investments industry association noted that the national structure of the SROs is also important for providing a single point of cooperation with foreign regulatory authorities, such as FINRA, which has a close working relationship with IIROC.

Specialized industry expertise of SROs

Numerous stakeholders commented that SROs' specialized expertise and proximity to the industry enables them to develop appropriate rules, and as needed, propose amendments to those rules in response to changes in the industry. In addition to each SRO having equal numbers of industry and independent board members, both IIROC and the MFDA have industry advisory committees[20] that serve as a forum for advising the SROs on regulatory and policy initiatives, industry trends and practices, as well as voicing industry concerns directly to the regulators. Furthermore, it was noted that SRO staff have developed specialized skills and expertise in their roles, assisting them in delivering oversight of the industry.

Benefits of a two SRO framework

Fit for purpose regulation

Some stakeholders noted that a two SRO model might be well-suited to address the unique aspects of IIROC and MFDA membership whose business models and risks are typically quite different. For example, IIROC dealers are able to offer clients the ability to trade securities and other investment products on margin, or engage in institutional or proprietary trading, which generally results in more complex risks than MFDA dealers who service primarily retail clients and facilitate the trading of fully paid mutual funds. In addition, some IIROC dealer members engage in the business of securities underwriting, and some MFDA dealer members are dually licensed as EMDs or insurance brokers. Historically, IIROC and the MFDA have been able to accommodate these differences through customized rule-making and regulation.

Investor access to two SRO protection funds

As noted in section 2 above, there are two separate member-sponsored investor protection funds in Canada that protect investor assets held by dealer member firms within prescribed limits in the event that the firms become insolvent. IIROC dealer members sponsor CIPF[21], and MFDA dealer members contribute to the MFDA IPC.[22] Some stakeholders commented that this structure is beneficial for investors with accounts at both IIROC and MFDA dealer member firms, as such investors may have access to coverage by both protection funds.

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they comply with the corresponding requirements under IIROC or MFDA rules (see Part 9 of NI 31-103 for a complete list of exemptions).

[20] Currently, IIROC has six advisory committees: National Advisory Committee; Conduct, Compliance and Legal Advisory Section (CCLS); Proficiency Committee; Financial and Operations Advisory Section (FOAS); Fixed Income Advisory Committee; and Market Rules Advisory Committee (MRAC).
The MFDA has the Policy Advisory Committee comprised of officers and senior employees of MFDA dealer members and Chairs of the MFDA Regional Councils.

[21] http://cipf.ca/

[22] http://mfda.ca/mfda-investor-protection-corporation/mfda-ipc-coverage/

Marketplace surveillance

In the current SRO regulatory framework, the debt and equity marketplaces in Canada have outsourced their responsibility for monitoring trading activity to IIROC. As part of its mandate, IIROC conducts market surveillance and trading review analysis for these markets to ensure that trading is carried out in accordance with Universal Market Integrity Rules (**UMIR**) and applicable jurisdictional securities law. Several stakeholders noted that, overall, marketplace surveillance by IIROC works well.

5. Issues Identified During the Informal Consultations

During the informal consultations, stakeholders were asked to provide their perspective on key issues with the current SRO regulatory framework. The issues stakeholders identified generally fell into three broad categories:

Issues At-a-Glance

Structural inefficiencies

1. Duplicative operating costs for dual platform dealers
2. Product-based regulation
3. Regulatory inefficiencies
4. Structural inflexibility

Investor confidence

5. Investor confusion
6. Public confidence in the regulatory framework

Market surveillance

7. Separation of market surveillance from statutory regulators

6. Issues, Targeted Outcomes and Public Consultation

The issues raised by stakeholders have been summarized in this section, and as noted, grouped under the following three categories: structural inefficiencies, investor confidence, and market surveillance. Additionally, these were further subcategorized into seven distinct issues, as informed by those consultations. For each issue, the CSA has noted a targeted regulatory outcome. As this section contains the results of the informal consultations, the views expressed by stakeholders may not necessarily represent the views of the CSA.

In providing comments, some stakeholders referenced various publicly accessible documents to support their views. A collection of those documents is listed in Appendix F. The views, opinions or conclusions expressed in those documents do not necessarily represent the views of the CSA.

General Consultation Questions:

A. The CSA is seeking general comments from the public on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed in section 4 that should be considered. In addition, please identify if there is any other supporting qualitative or quantitative information that could be used to evidence each issue and/or quantify the impact of the issues noted in the Consultation Paper.

B. Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.

C. Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.

D. With respect to Appendix F, are there other documents or quantitative information / data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Dual platform dealers are entities with affiliated firms that are registered with each of IIROC and the MFDA in order to service different segments of the investing public. As at December 31, 2019, there were 169 active IIROC dealer members and 88 active MFDA dealer members, of which 25 were dual platform dealers.

Stakeholders indicated that dual platform dealers experience higher operating costs and difficulty in realizing economies of scale. Higher operating costs affect the ability of the dual platform dealers to minimize costs for investors and enhance innovation in the delivery of products and services.

An SRO, an investor protection fund, and two investment industry associations expressed concerns about duplicative costs for dual platform dealers, and that these costs are ultimately borne by investors. Examples of increased operating costs for dual platform dealers include:

i) Separate compliance functions

Dual platform dealers typically maintain separate compliance and supervisory functions. The need to maintain separate compliance and supervisory staff for each platform is the result of differences in requirements and nuances for each registration category, which make it difficult for dealer supervisory staff to effectively monitor for both SRO requirements. In some instances, compliance staff may be required to register with both SROs in order to perform their roles. As the business in each platform continues to grow, compliance and supervision costs grow without the opportunity to capitalize on economies of scale.

ii) Information technology systems

As dual platform dealers are subject to two different sets of rules, their compliance systems and the underlying internal controls are typically different and necessitate separate information technology (**IT**) back-office systems. Consequently, the associated costs with system upgrades or enhancements are duplicated across both platforms. These upgrades may be required in order to respond to cybersecurity needs or to deliver an enhanced client experience to remain competitive. The prevalence and frequency of these IT changes are expected to increase over time.

iii) Non-regulatory costs

Dual platform dealers, operating as distinct entities may also maintain other separate administrative departments such as financial reporting, legal services, and human resources (**HR**). The impact of these duplicative costs can be significant, impacting their ability to adapt to an increasingly competitive industry.

iv) Multiple fees

Dual platform dealers incur both IIROC and MFDA membership fees and contribute via quarterly assessments to the respective investor protection funds. Stakeholders indicated that these costs are duplicative and may not be indicative of a corresponding increase in regulatory value[23]. Furthermore, stakeholders noted the incremental cost of maintaining financial institution bond coverage for separate dealers is a regulatory burden.

Targeted Outcome for Consideration

A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.

[23] This concern is further described in Issue 3: Regulatory Inefficiencies.

Consultation Questions on Duplicative Operating Costs for Dual Platform Dealers

Question 1.1: What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients.
b) Describe instances whereby those duplicative costs are necessary and warranted.
c) How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?

Question 1.2: Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

Issue 2: Product-Based Regulation

Stakeholders noted that there are different rules, or different interpretations of similar rules between each SRO, and also between the SROs in general and the CSA with respect to similar products and services. Stakeholders noted that the products and services offered to clients by different registration categories appear to be converging. Stakeholders also noted that these issues have created an unlevel playing field and opportunities for registrants to take advantage of the differences in rules and interpretations between each SRO and between the SROs and the CSA.

i) Converging registration categories

Many stakeholders including the SROs, the investor advocacy groups, an investor protection fund, and several investment industry associations noted that registrants in different registration categories are providing similar products and services to similar clients but are overseen by different entities (i.e. the SROs and the CSA) and subject to different rules. Specifically, two investment industry associations felt that there is a lack of rule harmonization among each of the SROs and with the CSA, and although regulatory initiatives like the client

focused reforms are intended to harmonize registration-related rules, the application and interpretation of those rules across the SROs and the CSA may nevertheless be materially different. For example, the same two investment industry associations noted that the SROs apply similar regulatory requirements (e.g. know-your-client (**KYC**) and suitability requirements) differently with respect to the same products. They noted that IIROC's rules are more principles-based while the MFDA tends to be more prescriptive. Also, they asserted that a dealer distributing mutual funds may encounter a different level of compliance oversight depending on whether they are a mutual fund dealer or an investment dealer because the SROs evaluate the risks associated with the distribution of retail mutual funds differently.

Two investment industry associations also noted different approaches across the SROs with respect to other significant issues including how client securities are registered (e.g. in client name vs. nominee name) and the permissibility of directed commissions.[24] In addition, an investment industry association and an SRO expressed concerns that there is investor confusion regarding the different registration categories, and that client preferences for "one-stop financial solutions" have evolved beyond the current registration categories. These concerns are described in more detail in Issue 5: Investor Confusion. Possibly due to the concerns cited above, one investor advocacy group noted that the current SRO regulatory framework has not succeeded in promoting the majority of mutual and eligible investment funds to be distributed by one registration category, and under the oversight of one SRO, as originally intended.

ii) Regulatory arbitrage

Two investment industry associations stated that inconsistent application of rules and approaches to compliance between the SROs, and between the SROs and the CSA, create an unlevel playing field and opportunities for registrants to take advantage of these differences.

For the purposes of this Consultation Paper, an activity where registrants can exploit differences in regulatory frameworks to their advantage, in ways that the Securities Regulators did not intend, is referred to as "regulatory arbitrage".

Stakeholders provided some examples of potential regulatory arbitrage where different registration categories are subject to different rules and different oversight. For example:

- mutual funds can be sold by mutual fund dealers, investment dealers, and exempt market dealers,[25]
- exempt market securities can be sold by exempt market dealers, mutual fund dealers,[26] and investment dealers, and
- discretionary portfolio management services can be provided by both investment dealers and portfolio managers.

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[24] Directed commissions refer to the ability to have commissions paid to personal corporations.

[25] If sold under an exemption to the prospectus requirement.

[26] If the mutual fund dealer is also registered in the category of exempt market dealer.

The same product or service offered by multiple registration categories creates many opportunities for regulatory arbitrage, which can result in inconsistent treatment for registrants engaging in similar activity, and different experiences for investors trying to access similar products and services.

Targeted Outcome for Consideration

A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.

Consultation Questions on Product-Based Regulation

Question 2.1: What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories?
b) Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services?
c) What role should the types of products distributed and a representative's proficiency have in setting registration categories?
d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?

Question 2.2: Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

Issue 3: Regulatory Inefficiencies

Stakeholders noted that there is inefficient access to certain products and services for some registration categories. Stakeholders also noted inefficiencies and duplicative costs for the CSA in overseeing two SROs, and duplicative fixed costs and overhead at the SROs.

i) Product access by registrants

The SROs and an investment industry association stated that mutual fund dealers are not able to easily distribute exchange traded funds (**ETFs**) because they have limited access to the necessary back-office and clearing systems servicing primarily investment dealers. These stakeholders stated that although mutual fund dealers can use cumbersome workarounds to service clients (including referring the investor to another dealer, entering into a service arrangement with an IIROC dealer or advising the client to purchase an investment fund that wraps ETFs), these are typically more costly for the investor and, consequently, inefficient alternatives. One investment industry association noted that the barrier to distributing ETFs had more to do with the cost and complexity of integrating different back-office systems between dealers.

ii) Regulatory costs and other inefficiencies

One SRO noted that the current regulatory framework, with multiple registration categories, makes it difficult for any one regulator (i.e. an SRO, a statutory regulator, or the CSA collectively) to identify or effectively resolve issues that span multiple registration categories. Coupled with similar investment products available outside the securities industry to the same clients (e.g. insurance segregated funds), from a regulatory perspective, it is difficult and costly to determine if patterns exist that would warrant regulatory intervention.

An SRO and an investment industry association noted the regulatory burden and inefficiencies associated with the CSA's oversight of two SROs.[27] They noted potential redundancies associated with two SROs that oversee similar dealer activity. For example, there may be duplicative costs related to non-regulatory functions such as HR, IT, and administration. Another SRO noted that the degree of overlap in issues and initiatives among the CSA and the SROs results in more time and resources required for coordination, rather than for regulatory action, resulting in regulatory inefficiencies.

Targeted Outcome for Consideration

A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.

[27] See section 2 for a summary of the CSA process for overseeing the SROs.

Consultation Questions on Regulatory Inefficiencies

Question 3.1: What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.
b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.
c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

Question 3.2: Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

Issue 4: Structural Inflexibility

Stakeholders noted that evolving business models are limited by the current regulatory framework. Stakeholders also noted that structural inflexibility is creating challenges for dealers to accommodate changing investor preferences, as well as limiting investor access to a broader range of products and services from a single registrant. Lastly, stakeholders noted that the current regulatory framework limits opportunities for professional advancement.

i) Business models

Most stakeholders noted that evolving business models are limited by the current regulatory structure. For example, two investment industry associations noted that the current regulatory structure is creating succession planning challenges for mutual fund dealers and their representatives due to the limited product shelf they can offer to clients. Specifically, these stakeholders noted that many mutual fund dealer representatives who are in the earlier stages of their careers want to provide their clients with access to a broader range of products but are only able to do so by transferring to an investment dealer. As a result, more experienced mutual fund dealer representatives are limited in available options for succession planning for their

business. In addition, investment dealers are limited in their ability to grow their business by attracting mutual fund dealer representatives due to the additional proficiency requirements.

The SROs noted that the regulatory framework has not evolved to accommodate the changing scope of advice sought by clients. Specifically, one SRO noted that the complexity of the current regulatory framework affects the ability of its members to launch and grow new business models to meet evolving client needs.

An SRO and an investment industry association noted that the inability for representatives of investment dealers to direct their commissions to be paid to personal corporations creates an unlevel playing field and, in some circumstances, discourages some representatives of mutual fund dealers from transferring their registration and client accounts to investment dealers.

Furthermore, one investment industry association stated, in respect of the IIROC proficiency upgrade rule requirement[28] that requires an individual to be qualified within 270 days of approval as a representative on the IIROC platform, that: (i) the requirement is a burdensome barrier, and (ii) the 270 days to upgrade seems like an artificial time period. That stakeholder also noted that these issues were creating barriers to the ability of investment dealers to attract representatives from mutual fund dealers.

An SRO noted that the current regulatory structure prohibits mutual fund dealers from trading for clients on a limited discretionary basis[29] which has prevented mutual fund dealers from creating certain business models.

ii) Investor preferences

An investment industry association noted that many investors are demanding more transparency and control in the wealth management process, and the ability to move seamlessly between different types of services without having to transfer back and forth across business lines and open new accounts. For example, they noted that under the current regulatory framework, investors need to create and manage separate accounts across different lines of business at the same financial institution in order to access both dedicated full-service and order-execution-only services.

In addition, two investment industry associations indicated that there are several barriers to transferring accounts within a dual platform dealer, including:

- the need to re-paper the client account (e.g. by re-collecting KYC information), and
- loss of historical performance data for client securities and accounts transferred from one of the dual platform dealers to its affiliate (as the SROs consider the holdings transferred to be in a new account).

iii) Access to advice

One investor advocacy group and an investment industry association expressed concern about how the current regulatory framework is affecting clients' access to a broader range of products

[28] IIROC Dealer Member Rule 18.7
[29] MFDA Rule 2.3.1(b)

and services. For example, investment dealers are able to provide clients with access to a broader range of products and services than mutual fund dealers; however, a client's access to an investment dealer may depend on the market value of that client's investment account. An investor advocacy group also noted that clients located in smaller geographic centers and rural communities have difficulty accessing a broad range of products and services because the dealers located in those areas are predominantly mutual fund dealers. This means that geography as well as the size of a client's investment account may have a direct impact on access to different products and services.

An investment industry association also noted that there is a significant increase in technology costs associated with a firm switching from a mutual fund dealer to an investment dealer, which causes some mutual fund dealers not to switch and has the effect of reducing access to a broader range of products and services for some clients.

iv) Technological advancements

An SRO indicated that with technological advancements and changing investor preferences and expectations (e.g. offering holistic investment advice through robo-advice, online investing services or hybrid human/digital advisory models, etc.), the current regulatory framework has not provided sufficient flexibility for industry to adapt to changing investor needs.

v) Professional advancement

One investment industry association noted that the existing higher IIROC proficiency standard makes the transition from mutual fund dealer to investment dealer representative challenging. That same stakeholder noted that as representatives become more experienced and deal with larger client accounts, the 270 days is too short a time period to actually upgrade proficiency, and therefore artificially limits access to a broader range of services and products (e.g. ETFs) needed to meet clients' changing investment needs and preferences.

Targeted Outcome for Consideration

A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.

Consultation Questions on Structural Inflexibility

Question 4.1: What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) How does the current regulatory framework either limit or facilitate the efficient evolution of business?
b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancements, and how this has impacted the client experience.
c) Describe factors that limit investors' access to a broad range of products and services.
d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?
e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?

Question 4.2: Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

Issue 5: Investor Confusion

Several stakeholders expressed concern that investors are generally confused by the current regulatory structure; specifically, the inability to access similar investment products and services from a single source, the complaint process, investor protection fund coverage, and multiple registration categories and titles.

i) Regulatory overlap

Several stakeholders stated that the current regulatory framework is complex and/or fragmented. They indicated that investors are confused by the number of regulatory organizations and the role or jurisdiction these organizations are responsible for respecting securities regulation in Canada. Investors struggle to distinguish between the roles of an SRO and the Securities Regulators, as well as the services and products provided by IIROC and

MFDA dealer members.[30] Furthermore, an investment industry association noted that a separate regime for mutual fund dealers in Québec[31] further adds to the complex nature of the regulatory framework. These overlapping regulatory environments may increase investor confusion and contribute to differing views regarding the SROs' roles and their relationships with the Securities Regulators.

Specifically, two SROs and an investment industry association indicated that investors may not be able to discern between the products and services provided by an IIROC dealer and an MFDA dealer:

- IIROC and the MFDA perform similar types of member regulation, but for different entities and, for the most part, different investment products. IIROC regulates investment dealers and all types of trading (including stocks, bonds and mutual funds), whereas the MFDA regulates mutual fund dealers and trading limited primarily to mutual funds. Investors may not realize that other products or services are only available in another registration category and that their representative may not be able to provide access. Thus, investors may have limited access to products and services unless they are directed to another category of registrant.
- Some firms with affiliated IIROC and MFDA members operate in the same location where clients may purchase securities from IIROC or MFDA representatives. However, the client is not necessarily aware that the same, or other, investment products or services may be available from an affiliate firm, each of which is subject to a separate and distinct regulatory regime.

From the investors' perspective, their IIROC dealer and MFDA dealer provide the same service or product offering, which may not always be the case. As their net worth and investment knowledge grows, many investors naturally progress from investing in mutual funds to ETFs to other products and services that are not offered by an MFDA dealer. To facilitate this growth, the investor may be required to change firms or representatives, resulting in confusion and unnecessary inconvenience.

ii) Complaint resolution

Many stakeholders noted that investors have difficulty understanding and accessing the complaint process to pursue recourse caused by misconduct. Specifically, they raised concerns regarding where to direct complaints, how to file a complaint and from which regulatory body or organization to seek redress. While investors can rely on many avenues of recourse in the current securities regulatory framework, they may not be able to efficiently access them or may choose not to access them. The avenues of recourse available to investors include:

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[30] Refer to section 2 of this Consultation Paper for a brief history of IIROC and the MFDA, the CSA's oversight of SROs, and other registration categories regulated directly by the CSA.

[31] As noted in section 2 of this Consultation Paper, mutual fund dealers are required to be members of the MFDA, except in Québec where registered firms are directly regulated by the AMF and registered individuals must also be members of the CSF. See footnote 2 for details.

- the internal complaint resolution process of the entity from which they purchased the security (e.g. customer service group and internal ombudsman),
- the independent dispute resolution services of the Ombudsman for Banking Services and Investments (**OBSI**)[32] notwithstanding that such decisions are not legally binding and are subject to compensation limits,
- making a complaint directly with the applicable SRO,
- an arbitration mechanism, or
- litigation.

Additionally, in Québec, the AMF also processes complaints filed by consumers and provides them with access to dispute resolution services.

iii) Investor protection fund coverage

Some stakeholders noted that differences in the availability of investor protection fund coverage among registration categories, and the types of investments and losses that are covered, creates confusion for investors.

As noted, CIPF and the MFDA IPC are the approved investor protection funds for investors of IIROC and MFDA dealer members, respectively.[33] There are no approved investor protection funds for investors of other registration categories that are regulated directly by the CSA; however, portfolio managers can enter into a service arrangement to custody client assets at IIROC dealer members which may result in CIPF coverage.[34]

Both investor protection funds expressed concern that investors are confused and unsure of the coverage, if any, provided upon the insolvency of an SRO dealer member. They further noted that investors are uncertain as to the types of eligible claims covered by investor protection funds and may mistakenly believe that market losses qualify for coverage.

Specifically, one investor protection fund referred to an example where investors dealing with the insolvency of an SRO dealer member and several affiliates with similar names, some regulated by the CSA, faced confusion regarding coverage due to complexities in the regulatory framework and lack of proper disclosure. Investors were confused about the availability of coverage and ultimately discovered that no coverage was available under any investor protection fund.

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[32] MFDA and IIROC dealers must become members of the OBSI and offer OBSI's services to investors with certain types of disputes with a firm.

[33] Refer to section 2 and Appendices A and B of this Consultation Paper for further details on investor protection programs.

[34] The IIROC dealer member typically holds an investor's cash and securities in an account over which a portfolio manager has discretionary trading authority and executes and settles the investor's trades in the account based on instructions from the portfolio manager. The investor is thus a client of both the portfolio manager and the dealer member. See the following 2016 CSA staff notice, online: https://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20161117_31-347_portfolio-managers-service-arrangements.pdf

While both the SROs require members to inform their clients regarding the protection fund coverage available to them, there is no corresponding obligation for other categories of registrants to inform their clients about the lack of direct coverage prior to opening a new account. Accordingly, it appears that investment decisions regarding coverage may not be made based on complete and accurate information, resulting in investor confusion in the event of a registrant's insolvency.

iv) Multiple registration categories and titles

Two investor advocacy groups stated that there is investor confusion regarding the different rules for different registration categories[35] and the number and variety of business titles used by representatives in various registration categories. This confusion contributes to investors not understanding that investment choice is limited based on a registration category. It also contributes to investors having expectations of registrants that are not aligned with the duties and qualifications of that category of registrant. For example, clients may not view registered firms and the representatives that they deal with as salespeople. Instead, they may see a relationship with a trusted financial advisor designed to deliver the products and services they need. This can result in client suitability issues and unnecessary efforts to find the appropriate distribution channel and service provider for the desired investments.

Targeted Outcome for Consideration

A regulatory framework that is easily understood by investors and provides appropriate investor protection.

Consultation Questions on Investor Confusion

Question 5.1: What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?
b) Describe the difficulties clients face in easily navigating complaint resolution processes.

[35] Refer to section 2 and Appendices A and B of this Consultation Paper for information on IIROC and the MFDA registration, and other registration categories regulated directly by the CSA.

c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.

Question 5.2: Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

Issue 6: Public Confidence in the Regulatory Framework

Stakeholders noted concerns regarding a possible lack of public confidence in the current SRO regulatory framework. Some stakeholders stated that the SRO governance structure does not adequately support the SROs' public interest mandate due to an industry-focused board of directors and lack of a formal mechanism to incorporate investor feedback. In addition, these stakeholders expressed concern regarding regulatory capture and ineffective SRO compliance and enforcement practices contributing to the erosion of public confidence in the SROs' ability to deliver on their public interest mandate.

i) Public interest mandate

Investor advocacy groups stated that the SRO boards of directors are mainly composed of current and former securities industry participants. They are concerned that independent directors[36] with close ties to industry limit the ability of the SROs to carry out their regulatory responsibilities and public interest mandates, as set out in their recognition orders, due to their potential bias.[37] Two investor advocacy groups expressed concern that independent directors' possible bias in board decision making, or undue influence of specific industry stakeholder interests, may occur due to the following governance structure elements:

- rules and procedures on the composition of the SROs' board of directors, committees and councils,
- cooling off periods (which require a former industry member to have left industry for as little as one year before the candidate can be considered independent for the purposes of each SRO board) and term limits, and
- the definition of an independent director.[38]

Stakeholders indicated that if a public interest mandate is not actualized by an appropriate governance structure that manages conflicts of interest and ensures different stakeholders are

[36] IIROC uses the term "independent directors" and the MFDA uses the term "public directors" to refer to independent directors. For the purpose of this Consultation Paper, the term independent directors refers to both "independent directors" and "public directors".

[37] Refer to section 2 of this Consultation Paper for details on IIROC and MFDA recognition.

[38] Refer to section 2 of this Consultation Paper and Appendices A and B for details on IIROC and MFDA governance. Please refer to specific sections on governance and district/regional councils.

fairly represented, there is a risk that a loss of confidence can occur in the SRO's ability to meet its public interest mandate.

ii) Formal investor advocacy mechanisms

Investor advocacy groups raised concerns that the lack of formal SRO mechanisms to facilitate investor consultation impedes the appropriate representation and consideration of investor concerns. Specifically, they noted a shortage of independent voices on SRO committees and councils, and a perception of unwillingness of one SRO to engage in regulatory policy discussions that raise investor concerns. In addition, these investor advocacy groups noted that the SROs' reliance on direct input through quantitative online surveys conducted by independent research firms to gauge the public's views on regulatory initiatives and/or other public interest matters, is no substitute for appropriately funded and resourced SRO investor advisory panels (of which there are currently none) which could be more effective in shaping the development of SRO rules, policies and other similar instruments.[39] Without full engagement between SROs and investor representatives, it may be difficult for an SRO to identify the interests of the public and thereby fulfill its public interest mandate effectively.

iii) Regulatory capture

In this Consultation Paper, "regulatory capture" refers to a regulatory agency that may become dominated by the industries or interests they are charged with regulating. The result is that an agency, charged with acting in the public interest, instead acts in ways that benefit the industry it is supposed to be regulating. Factors that cause regulatory capture include a regulator being subject to excessive levels of influence from industry stakeholders, a regulator not having sufficient tools and resources to obtain accurate information from industry or to deter industry wrongdoing, or regulatory incentives being skewed toward industry stakeholder interests.

An investor advocacy group stated that the inherent conflict between the SROs' obligation to their members and their public interest mandates may not be manageable under their current governance structures and may result in the erosion of public confidence. Specifically, they expressed concern about regulatory capture occurring when SRO actions are inappropriately influenced by industry stakeholder interests. By contrast, two investment industry associations stated that SROs need to be more responsive to industry, with one noting that its inability to directly access an SRO's board of directors runs contrary to the concept of 'self'-regulation.

iv) SRO compliance and enforcement concerns

Investor advocacy groups expressed general concern regarding the lack of transparency and the robustness of the SRO regulatory compliance and enforcement practices. They stated that slow regulatory reforms undermine the improvement of conduct standards, and that the following factors worsen enforcement outcomes:

[39] Refer to Appendix A and B of this Consultation Paper for how IIROC and the MFDA seek and consider stakeholder input into the development of their rules, policies and other similar instruments.

- modest sanctions that are primarily designed as a deterrence tool (instead of delivering investor restitution),
- governance shortcomings, such as those noted in sub-issue i) above,
- SRO rules regarding complaint handling that lead to relatively low levels of complaints reaching litigation.

Specifically, two investor advocacy groups noted instances where SROs levied sanctions against representatives only, even when dealer member supervision and compliance deficiencies were also apparent. They expressed concern regarding a lack of transparency in notices of disciplinary actions, decisions and settlements regarding findings of potential culpability of dealer members and senior management. They concluded that this approach leaves the perception that SROs are more concerned about protecting member firms rather than the investing public, and accordingly, do not assist in effectively deterring misconduct, thereby not preserving public confidence, consumer protection and market integrity.

Two investment industry associations also raised concerns about one SRO taking a punitive approach to its enforcement proceedings, in contrast to another SRO which they viewed as more focused on remediation. One of these stakeholders noted the presence of inconsistencies among SRO sanctions for the same type of infraction or instance of non-compliance.

v) CSA oversight of SROs

Several stakeholders expressed concern that the current regulatory structure does not result in the SROs being sufficiently accountable to the CSA.[40] The following are examples of concerns raised by stakeholders:

- the CSA does not appoint or have veto over SRO board members or key executive staff, nor does the CSA have a seat on the board,
- the SRO rule exemption process is not designed to ensure SRO accountability to the CSA, and
- the CSA SRO oversight reviews leave a perception that the reviews focus mainly on technical issues.

Two investment industry associations representing registrants directly regulated by the CSA raised concerns that SROs are inherently conflicted, have compliance programs that are suited to larger firms and are not sustainable for small dealers due to the regulatory burden and related costs.

Targeted Outcome for Consideration

A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.

[40] Refer to section 2 of this Consultation Paper for details on the oversight of SROs in Canada.

Consultation Questions on Public Confidence in the Regulatory Framework

Question 6.1: What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe changes that could improve public confidence in the regulatory framework.
b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved.
c) Describe instances of how investor advocacy could be improved.
d) Describe instances of regulatory capture in the current regulatory framework.
e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

Question 6.2: Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

IIROC was established through the combination of RS and the IDA and continues to carry out the functions of both its predecessors to this day. Accordingly, in addition to carrying out the oversight functions respecting investment dealers, IIROC also carries out the prior RS market surveillance functions, including supervision of member compliance with UMIR. Pursuant to the recognition orders with IIROC Recognizing Regulators, IIROC conducts surveillance of trading activity on Canadian debt and equity marketplaces. Any marketplace that retains IIROC as its regulation services provider to regulate equity trading activity is a marketplace member. All firms operating as alternative trading systems must become dealer members, in addition to being marketplace members.

Marketplace operations are regulated by the applicable Securities Regulators,[41] which require IIROC to provide information necessary for investigations into possible market misconduct.[42] IIROC coordinates surveillance capabilities with other jurisdictions as a member of the Intermarket Surveillance Group.[43] To enhance transparency in fixed income markets, the CSA selected IIROC to be the information processor for trading in Canadian corporate debt securities.[44]

Stakeholders raised concerns about possible information gaps and fragmented market visibility resulting from market surveillance functions being separated from Securities Regulators.

i) Regulatory fragmentation and systemic risk

The MFDA expressed concerns regarding the ability of statutory regulators to effectively monitor systemic risk and inform market structure policy without sufficient expertise and direct access and control over market data.

ii) Member vs market regulation functions

An investor protection fund raised a question about the integration of member and market surveillance in an SRO and the potential for conflicts that could possibly arise between the obligations respecting the disruption to markets and maintaining market integrity versus exposure to the investing public.

iii) Inefficient structure

The MFDA also questioned the appropriateness of the current market surveillance structure and whether the CSA ought to play a larger role. The SRO noted that IIROC and the CSA enforcement processes might be less effective, inefficient, and more costly as a result of the duplication of surveillance and data analysis efforts between IIROC and the CSA.

Targeted Outcome for Consideration

An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk.

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[41] If recognized, a marketplace must conduct itself in accordance with the requirements outlined in NI 21-101, National Instrument 23-101 *Trading Rules,* and any terms and conditions of recognition/registration or exemption.

[42] The CSA is implementing in 2020 a Market Analytics Platform (MAP) which will serve as a data repository with analytic tools to enhance enforcement effectiveness, including insider trading and market manipulation investigations. The platform is intended to also expedite focused policy research and aid in investigating more sophisticated and complex cases.

[43] The Intermarket Surveillance Group is comprised of over 30 exchanges around the world and its mandate is to promote effective, cooperative market surveillance among international exchanges.

[44] In this role, IIROC publishes information on corporate bond trading on its dedicated Corporate Bond Information website. Amendments to NI 21-101, in force as at August 31, 2020, subject to Ministerial approval, prescribe mandatory post-trade transparency of trades in government debt securities. IIROC's role as information processor will be expanded to include transactions in government debt securities.

Consultation Questions on the Separation of Market Surveillance from Statutory Regulators (CSA)

Question 7.1: What is your view on the separation of market surveillance from statutory regulators, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addressing the question above, please consider and respond to the following, as applicable:

a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concerns?
b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.

Question 7.2: Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

7. Public Consultation Process and Next Steps

Public Consultation Process, Including Deadline for Comments

The CSA invites participants to provide input. You may submit written comments in electronic form (preferred) or in hard copy. **Please submit your comments in writing on or before October 23, 2020.** If you are not sending your comments by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office

Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please send your comments only to the addresses below. Your comments will be forwarded to the other CSA member jurisdictions.

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Certain CSA jurisdictions require publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the ASC at www.albertasecurities.com, the AMF at www.lautorite.qc.ca and the OSC at www.osc.gov.on.ca. Please do not include personal information directly in comments to be published and state on whose behalf you are making the submission.

Questions

If you have any comments or questions, please contact any of the CSA staff listed below.

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Next Steps

The issues and CSA targeted outcomes in this Consultation Paper likely affect key stakeholders of the Canadian financial services industry. Upon the completion of the 120-day comment period, the CSA staff will review all public comments submitted. The CSA expects to gather a great amount of information from the consultation process, which will be used to inform our approach going forward. The outcome of the consultation process will result in a paper with a CSA proposed option whereby the CSA would seek further public comment.

Appendix A - About IIROC

Governance

The IIROC Board of Directors consists of 15 members, with one position held by the president and CEO and the remaining positions split evenly among independent and industry directors. The industry directors are further subcategorized with five representing dealer members and two representing marketplace members. Directors are limited to four consecutive terms. Each term is two years in duration.[45]

District Councils

There are ten IIROC District Councils (**District Council**) representing all provinces and territories. Each is comprised of 20 members with renewable terms of up to two years each. Members are nominated by dealer members of the region and appointed by the District Council Nominating Committee and must be an officer or an employee of a dealer member. The District Council is responsible for regional approvals and membership matters, in addition to providing a local perspective to national policy issues. The District Council also identifies appropriate individuals for consideration on Enforcement Hearing Committees. The District Council meetings are held on a monthly basis with special meetings scheduled as necessary.

The Canadian Investor Protection Fund

IIROC rules require dealer members to become members of and to contribute to CIPF, which has been approved by the Securities Regulators to provide limited protection within prescribed limits if property held by an IIROC dealer member on behalf of an eligible client is not returned to the client following the firm's insolvency.[46] Missing property can include: cash, securities, futures contracts, segregated insurance funds. Coverage for an individual client is limited to $1M per account type.[47]

CIPF Statistics as at December 31, 2019

Source of Funding	Amount Available
General Fund	$514M
Excess Insurance	$440M
Lines of Credit	$125M
Total	**$1,079M**

(Source: 2019 CIPF Annual Audited Financial Statements)

[45] https://www.iiroc.ca/about/Pages/Board-of-Directors.aspx

[46] http://cipf.ca/

[47] For a detailed description of all types of coverage, including coverage for corporations, partnerships, trusts and other types of customers, visit: http://cipf.ca/Public/CIPFCoverage/WhatAretheCoverageLimits.aspx

Dispute Resolution Process / Enforcement

IIROC assesses complaints made against its dealer member firms and their registered employees, conducts investigations, and imposes disciplinary penalties where there have been breaches of IIROC rules. Minor violations may be dealt with through the issuance of cautionary letters. Other violations are addressed through disciplinary proceedings before IIROC hearings panels who have the authority to impose sanctions. Penalties can include fines, conditions on current approval, suspensions, bans and other remedies deemed appropriate.

Registered firms that are members of IIROC must also ensure that an independent dispute resolution or mediation service is made available at the firm's expense to resolve complaints made by clients about the trading or advising activity of the firm or its representatives. Firms outside Québec must take reasonable steps to ensure that the OBSI is the service made available.

Rulemaking

IIROC policy staff draft rule proposals and amendments. Proposals require Board of Director approvals, publication for comment and CSA approval, following which the final rules notice is published.[48]

Registration and Proficiency

Registration as an investment dealer is a prerequisite for membership in IIROC. An investment dealer may act as a dealer or an underwriter in respect of any security. Dealer members may elect to contract their back office, clearing and settlement operations, to another IIROC dealer member, which is known as an introducing/carrying broker arrangement. There are four types of such arrangements where the introducer takes on increasingly more responsibility for capital and compliance when moving from Type 1 to Type 4.

Individual registration categories include: investment dealer dealing representative, ultimate designated person, chief compliance officer, and permitted individuals of the firm. In Manitoba, Ontario and Québec, there are other individual registration categories for individuals trading in futures, options or derivatives. In certain jurisdictions, the registration function is delegated to IIROC while in other jurisdictions, it is retained by the CSA member.

IIROC has categories[49] for individuals where at least one category must be selected; examples include: executive, director, supervisor, and more. There is also an approval category of portfolio management for those registered representatives that have been designated and approved for the purpose of managing the investment portfolio of an investment dealer's clients through discretionary authority granted by clients. For registered representatives and investment representatives at least one product-type speciality must be selected among securities, options, futures contracts and options, mutual funds only, and non-trading.

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[48] https://www.iiroc.ca/industry/policy/Pages/default.aspx

[49] Guide to IIROC Categories: https://www.iiroc.ca/industry/registrationmembership/Documents/GuideCategories_en.pdf

The National Registration Database (**NRD**), the CSA owned and operated database, is used to manage registration information for individuals, including initial applications for registration and any subsequent updates to this information. Individual applicants must meet the initial proficiency requirements by demonstrating that they have the applicable education, training and experience required for their category of individual registration, as outlined in the IIROC proficiency requirements for registered individuals.[50]

The proficiency requirement for registered representatives is the completion of the Canadian Securities Course, the Conduct and Practices Handbook course and a 90-day training programme during which time the individual has been employed with a dealer member on a full-time basis. These individuals are allowed to sell securities, including mutual funds. Lastly, IIROC has continuing education requirements for its registered individuals.[51]

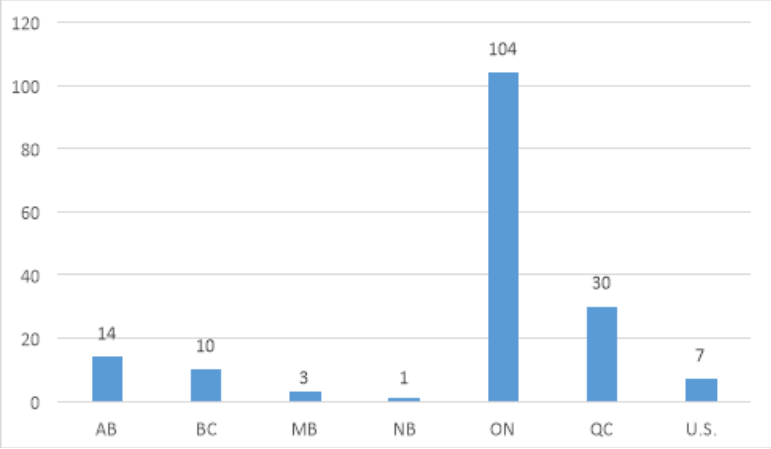
Summary of Key Information

i) IIROC Dealer Member Firm Statistics

As at December 31	2019	2018	2015	2010
Assets Under Management	$3.0T	$2.7T	$2.2T	$1.4T
Approved Persons	28,937	29,685	28,330	27,431
Active Member Firms	169	166	182	211

(Source: IIROC)

ii) IIROC Dealer Member Firms by Head Office Location as at December 31, 2019



(Source: IIROC)

[50] IIROC Rule 2900: Proficiency and Education: https://www.iiroc.ca/RuleBook/MemberRules/RulesCollated_en.pdf

[51] Guidance on IIROC's Continuing Education Program: https://www.iiroc.ca/Documents/2019/25c13375-8c35-4b5f-8e2b-4faf00599c12_en.pdf

Appendix B - About the MFDA

Governance

The MFDA Board of Directors consists of six public directors, six industry directors, and the president and CEO. The Governance Committee of the MFDA Board of Directors nominates directors, and MFDA dealer members vote for their preferred candidate while the board maintains ultimate discretion on who to elect.[52]

Regional Councils

There are four MFDA Regional Councils (**Regional Councils**) representing eight provinces, split into four geographical regions: Atlantic, Central, Prairie, and Pacific. Each is comprised of 4 – 20 appointed and elected members, with elected members serving terms of up to two years. Appointed members are elected for terms of up to three years and consist of both industry representatives and public representatives with an appointment committee used to select both. Industry representatives are required to have prior securities experience but cannot hold a current position or association with a dealer member. Public representatives require a legal background and other set criteria. Responsibilities of the Regional Councils includes consideration of policy matters, both national and regional, ad hoc board requests, and hearing panel participation. The Regional Council meetings are scheduled as necessary and are not held at regular intervals.

MFDA Investor Protection Corporation

MFDA rules require MFDA dealer members to contribute to the MFDA IPC. Coverage for clients of MFDA dealer member firms, outside of Québec, respecting non-returned client assets held by a dealer member in the event of its insolvency is up to $1 million for each of the client's general and separate accounts.

MFDA IPC Statistics as at June 30, 2019

Source of Funding	Amount Available
General Fund	$48M
Excess Insurance	$20M
Lines of Credit	$30M
Total	**$98M**

(Source: 2019 MFDA IPC Annual Audited Financial Statements)

[52] https://mfda.ca/about/board-of-directors/

Dispute Resolution Process / Enforcement

The MFDA assesses complaints made against its dealer members and their registered individuals as well as conducts investigations and imposes disciplinary penalties for breaches of the MFDA's by-laws, rules or policies. Violations may be dealt with through administrative resolutions including cautionary or warning letters. Violations may also be addressed through disciplinary proceedings carried out by MFDA enforcement counsel before hearing panels of the MFDA Regional Councils. Hearing panels are responsible for determining whether any misconduct occurred and if so, whether any penalties should be imposed. Penalties may include fines, suspension, termination and other remedial sanctions.

Registered firms that are members of the MFDA must also ensure that an independent dispute resolution or mediation service is made available at the firm's expense to resolve complaints made by clients about the trading or advising activity of the firm or its representatives. Firms outside Québec must take reasonable steps to ensure that the OBSI is the service made available.

Rulemaking

The MFDA rulemaking process includes: discussion papers, Policy Advisory Committee comments, Regulatory Issue Committee comments, Board of Director approvals, CSA reviews, public comment periods, MFDA responses to comments, CSA approvals, MFDA member approvals, and bulletin issues for final rules.[53]

Registration and proficiency

When a mutual fund dealer applies to become a member of the MFDA, it must, at the same time, apply to the Securities Regulators in every jurisdiction in which it intends to operate to become registered as a mutual fund dealer. Mutual fund dealers may only act as a dealer in respect of any security of a mutual fund or an investment fund that is a labour sponsored investment fund corporation or labour sponsored venture capital corporation under legislation of a jurisdiction of Canada.

The MFDA has four dealer levels for membership:

> **Level 1**: A dealer that does not hold client cash, securities or other property and introduces all of its accounts to a carrying dealer, which has joint compliance responsibilities;
>
> **Level 2:** A dealer that does not hold client cash, securities or other property. Dealers at this level operate in a client name environment and do not use a trust account to hold client cash;
>
> **Level 3:** A dealer that holds client cash in a trust account but does not hold client securities or other property. Dealers at this level operate in a client name environment and use a trust account to hold client cash; and

[53] https://mfda.ca/policy-and-regulation/

Level 4: A dealer that acts as a carrying dealer, or any other dealer not covered by Level 1, 2, or 3 (i.e. a dealer that holds client securities or other property in nominee name accounts or in physical storage).

The MFDA also has individual registration for mutual fund dealer dealing representatives, ultimate designated person, chief compliance officer, branch manager, alternate branch manager, and permitted individuals of the firm. Similar to IIROC, the CSA's NRD database is used to manage applications for individual registrants and to access fitness for registration information for MFDA individuals.

Proficiency for mutual fund dealer dealing representatives includes the passing of either the Canadian Investment Funds Course Exam, the Canadian Securities Course Exam or the Investment Funds in Canada Course Exam, or further proficiency of having obtained the CFA Charter.

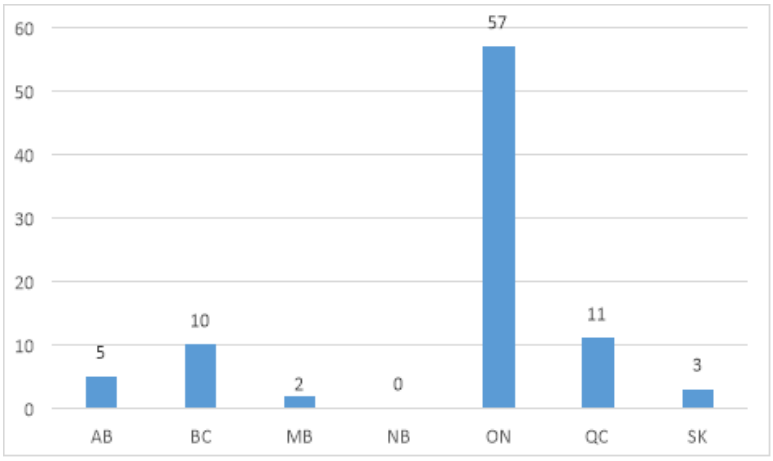
Summary of Key Information

i) MFDA Dealer Member Firm Statistics

As at December 31	2019	2018	2015	2010
Assets Under Administration	$584B	$517B	$605B	$271B
Approved Persons	78,251	80,017	83,000	73,000
Active Member Firms	88	90	103	139

(Source: MFDA)

ii) MFDA Dealer Member Firms by Head Office Location as at December 31, 2019



(Source: MFDA)

Appendix C - Non-SRO Registered Firm and Individuals in Canada

Category	Number of Firms	Number of Individuals
EMD	240 – firms registered as EMDs, only	1,140
PM	330 – includes firms registered as EMDs	1,500
IFM	520 – includes firms also registered as PMs and EMDs	4,140
SPD	6	2,446
Québec MFDs	19 – Mutual fund dealers registered only in Québec	682
Other	42	143

(Source: CSA records, 2020)

Appendix D – About FINRA

FINRA's Mandate, Delegation of Power and Funding

The *Securities Exchange Act of 1934* and its subsequent amendments (including the *Maloney Act*) set the foundation for self-regulation in the U.S. and provides FINRA with its formal recognition and registration with the SEC.[54] FINRA is predominantly funded through member annual fees and fines. They enforce rules for all registered broker-dealer firms and registered brokers in the U.S., perform compliance examinations, provide investor education, and foster market transparency. The scope of their responsibility and authority includes regulation, surveillance, examination, and discipline.

Board of Governance

FINRA is governed by a board of 24 members who are elected for 3-year terms through a Nominating and Governance Committee.[55] One position is held by the FINRA CEO and 13 positions are held by public members. The remaining 10 positions are for industry members and are further subcategorized by firm size.

Dispute Resolution Processes

The FINRA Ombudsman operates independently from FINRA management, reporting directly to the Audit Committee of the Board of Governance. The FINRA Ombudsman manages complaints regarding FINRA operations, enforcement, and other FINRA activities.[56]

The FINRA Investor Complaint Program is used to investigate allegations against brokerage firms and their employees. The Enforcement Department files a complaint with the Office of Hearing Officers when disciplinary action is necessary.[57] The resulting sanctions could include fines, suspensions, or barring from the industry.[58] Arbitration and mediation is used by FINRA for dispute resolution proceedings and may also result in financial restitution to investors.[59]

The Securities Investor Protection Corporation

The Securities Investor Protection Corporation (**SIPC**) provides limited coverage to investors in the event of brokerage insolvency and also includes coverage from unauthorized trading or theft from their securities accounts. The coverage is limited to $500k per customer, including

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[54] https://www.sec.gov/rules/concept/34-50700.htm
[55] https://www.finra.org/about/governance/finra-board-governors
[56] https://www.finra.org/about/office-ombudsman/ombudsman-frequently-asked-questions
[57] https://www.finra.org/rules-guidance/adjudication-decisions
[58] https://www.finra.org/investors/have-problem/file-complaint
[59] https://www.finra.org/investors/have-problem/legitimate-avenues-recovery-investment-losses

up to $250k for cash. SIPC coverage includes: notes, stocks, bonds, mutual funds, other investment company shares, and other registered securities.[60]

Investor Advocacy

Advisory committees are used to inform and provide feedback for FINRA rule proposals, regulatory initiatives, and industry issues. There are 14 such committees at FINRA, including the Investor Issues Committee which advises FINRA from the investor perspective, including both retail and institutional investors. Rule reviews and regulatory initiatives are reviewed by the Investor Issues Committee prior to presentation to the FINRA Board.[61]

Rulemaking Process

FINRA has been consolidating the NASD Rules and NYSE Rules since the two entities merged in 2007. Conversion spreadsheets are maintained by FINRA for member firms to use as a reference during the transition process. The FINRA Rule Consolidation will harmonize existing rules while giving consideration to the rapidly evolving industry.[62]

Typically, the rulemaking process consists of 10 steps: new rule proposal, internal review, presentation to committees, submission to board, regulatory notice process, filing with SEC, SEC notice of proposal in the Federal Register, response to comments, SEC approval, regulatory notices.[63]

Registration and Proficiency

There are four registration categories:

Broker-dealers: includes full services and discount brokerages;

Capital acquisition brokers: advise on capital raising and corporate restructuring, act as placement agents for sale of unregistered securities to institutional investors;

Funding portals: crowdfunding intermediaries; and

Individual registration: branch salespeople, branch managers, department supervisors, partners, officers, and directors. A central registration depository is used to manage the individual registrants, including their employment history, disciplinary history and qualifications. Qualification exams are specific to particular securities activities. Successful completion of these exams allows the registrant to perform permitted activities specific to their competency level. For example, a Series 6 representative can sell only mutual funds, variable annuities, and similar products,

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[60] https://www.finra.org/investors/have-problem/your-rights-under-sipc-protection

[61] https://www.finra.org/about/governance/advisory-committees#iic

[62] https://www.finra.org/rules-guidance/rulebook-consolidation

[63] https://www.finra.org/rules-guidance/rulemaking-process

while a Series 7 representative can sell a broader selection of products. A continuing education program is also maintained by FINRA.

Appendix E – About the FCA

The FCA's Mandate, Delegation of Power and Funding

Established during 2013 by Parliament of the U.K., the FCA is an independent body that strives to protect consumers while promoting market integrity and effective competition and is funded directly by industry, predominantly through statutory fees paid by authorized firms and recognized investment exchanges.[64] The FCA is responsible for regulating standards of conduct, supervision of trading infrastructures, prudential regulation (for firms not regulated by the PRA) and reviewing and approving the issues of securities for the following sectors: general insurance, investment management, pensions and retirement income, retail banking sector, retail investments, retail lending sector, and wholesale financial markets.[65]

Board of Governance

The FCA is governed by the chair and a board of 10 members, consisting of three executive and seven non-executive members, appointed for three year terms, who are appointed by Her Majesty's Treasury based on recommendations from the Nominations Committee, with the exception of two non-executive members who are jointly appointed by the Secretary of State for Business, Innovation and Skills, and the Treasury.[66]

Dispute Resolution Processes

The FCA has enforcement powers which can include fines, suspensions, warnings, and termination.[67] Complainants may apply for compensation for any losses at the conclusion of a trial,[68] while the Financial Services Compensation Scheme may provide compensation in instances where the firm has been declared 'in default'.[69] Both the FCA and PRA maintain a handbook of rules for their regulated firms to comply with and perform supervision as part of their continuing oversight of firms and individuals. The FCA utilizes a complaint scheme for instances of unprofessionalism, bias, carelessness or unreasonable delay. It does not manage complaints against individual firms, instead those complaints are made to the Financial Ombudsman Service or the courts.[70]

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[64] https://www.fca.org.uk/publication/corporate/our-mission-2017.pdf#page=7

[65] https://www.fca.org.uk/about/sector-overview

[66] https://www.fca.org.uk/about/fca-board and https://www.fca.org.uk/publication/corporate/fca-corporate-governance.pdf

[67] https://www.fca.org.uk/about/enforcement

[68] https://www.fca.org.uk/consumers/rights-victims

[69] https://www.fca.org.uk/consumers/claim-compensation-firm-fails

[70] https://www.fca.org.uk/consumers/how-complain

Investor Advocacy

Four independent statutory panels advise the FCA on policy development and the identification of market risks.[71] The Financial Services Consumer Panel, one of the four statutory panels, represents the interests of consumers during policy development.[72] This panel is independent from the FCA and thus permitted to publish their views and opinions on the FCA's activities. Panel members are often nominated by trade associations and have a variety of financial services backgrounds.

Rulemaking Process

The FCA publishes the Quarterly Consultation Paper for minor changes to the FCA Handbook while individual consultation papers are used for proposed changes which are more substantive. The FCA issues a Policy Statement following the consultation period, including the new or revised Handbook Rule. Finalised Guidance, including feedback from the consultation, is published following the Policy Statement.[73]

Authorization, Registration, and Proficiency

The FCA regulates all financial services activities and consumer credit in the U.K.[74] FCA authorization and/or registration is required by any firm or individual offering financial services, investment products or regulated activities such as loans, financing, and consumer credit.[75] Individual training and competence is based on job responsibilities, with the FCA specifying the qualifications necessary to perform a specific activity and firms' monitoring for compliance.[76]

The FCA regulates the following: banks, building societies and credit unions, claims management companies, consumer credit firms, electronic money and payment institutions, financial advisors, fintech and innovative businesses, general insurers and insurance intermediaries, investment managers, life insurers and pension providers, mortgage lenders and intermediaries, mutual societies, sole advisors, and wealth managers.

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[71] https://www.fca.org.uk/about/uk-regulators-government-other-bodies/statutory-panels
[72] https://www.fs-cp.org.uk/consumer-panel/what-panel
[73] https://www.fca.org.uk/what-we-publish
[74] https://www.gov.uk/registration-with-the-financial-conduct-authority
[75] https://www.fca.org.uk/firms/authorisation/when-required
and https://www.fca.org.uk/firms/authorisation/how-to-apply/activities
[76] https://www.fca.org.uk/firms/training-competence

Appendix F – Table of References

In the course of the informal consultation, stakeholders referenced various publicly accessible documents to support their views. Examples of those documents are listed below. The views, opinions or conclusions expressed in these documents do not necessarily represent the views of the CSA.

The documents listed below are cross-referenced to the issue in section 6 in respect of which the document was raised or considered.

In addition, IIROC and the MFDA have published their own separate position papers on the SRO regulatory framework. Those publications are available on their respective websites.

Issue 5 – Investor Confusion

1. OSC Staff Notice 31-715

   https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf

2. IIROC Notice 15-0210

   https://www.iiroc.ca/Documents/2015/d483c130-adad-4e86-8f0f-735050fe7fdc_en.pdf

3. MFDA Bulletin #0658-C

   https://mfda.ca/wp-content/uploads/Bulletin0658-C.pdf

4. IIROC Notice 13-005: Use of Business Titles and Financial Designations

   https://www.iiroc.ca/Documents/2013/4e2e7417-7b4b-43d6-a47a-e14a9d7cb7f8_en.pdf

5. FAIR Canada's Submission to CSA on the Proposed Scope of the Review of Self-Regulatory Organizations

   https://faircanada.ca/submissions/submission-to-csa-on-the-proposed-scope-of-the-review-of-self-regulatory-organizations/

Issue 6 – Public Confidence in the Regulatory Framework

6. IOSCO Publication: Credible Deterrence in the Enforcement of Securities Regulation

   https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf

7. IIROC Rule 2500B: Client Complaint Handling

   https://www.iiroc.ca/Rulebook/MemberRules/Rule02500B_en.pdf

[redacted]

From: hello@dwgood.com
Sent: [redacted]
To:
Subject: SRO Framework response
Attachments: Statement_780681_Dec-2019.pdf

EXTERNAL EMAIL

Dear Sirs/Madam:

I understand the deadline to respond to the consultation paper has come and gone but I thought I should respond. Having been licensed as a representative since 1981 and as a mutual funds dealer firm since 1996 I have a tenured history that may offer some insight into a smaller dealer. The primary reason I did not respond to the consultation paper is also the very reason that I find it difficult to function under the MFDA framework – I am too busy and the amount and varying tasks are at times overwhelming. I am asked to be an expert on everything and this is daunting so I "pick my battles".

I have attached a statement from my RRSP to illustrate that I have the ability to process complex data and simplify it to achieve what I want. In this case making money. [redacted] does not go back very far ([redacted]) but to give you a some context my total RRSP deposits since I began contributing has been $[redacted] as I have not generated earned income for many years from my mutual fund dealer corporation D.W. Good Investment Company. I also went through a divorce proceeding in [redacted] and had to transfer close to half of my RRSP to my spouse at the time and also set up a RRIF for $[redacted] from my RRSP a couple of years ago. So having a current RRSP of close to $[redacted] means something. Investments outside of my RRSP have generated similar results.

What I would like to say is that I was better off as a small dealer operating under the ASC before the SRO bodies came into existence and would prefer to be overseen solely by them again.

I hope this find you well,

Dan Good
President
D.W. Investment Co. Ltd.

CFA Societies Canada

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October 28, 2020

VIA EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

The Secretary
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
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E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework (the "Consultation Paper")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following comments on the Consultation

[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

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Paper. We believe the questions raised in the Consultation Paper are important and timely. In reviewing the Paper, we note and agree with many of the concerns raised by stakeholders in the CSA's informal consultation process.

Before moving to responses to the specific questions raised in the Consultation Paper, we believe a statement of our 'first principles' in consideration of this subject matter is worthwhile, along with their application to the future of self-regulation in the securities industry in Canada.

1. Accountability to the Public Interest

   While the public interest is already addressed in both IIROC's and the MFDA's governance statements (mission, vision, values, etc.), we believe that this is an evolutionary inclusion rather than a core design principle being consistently applied to their structures and their delivery of securities regulation. Vestiges of their historical and primary accountability to industry remain influential, and this must be addressed more directly to move forward. Adopting accountability to the public interest as a design principle demands changes to the governance structures of self-regulatory organizations ("SROs") in Canada, starting with requirements for a majority independent Board, a Chair that is an independent director, and cascading structural requirements to other governance bodies such as district/regional councils and other decision-making committees to prioritize the public interest.

2. Transparency

   Public trust is essential to the effective functioning of any self-regulatory body, and it withers in the absence of transparency. While we acknowledge the recent improvements in transparency within certain SRO structures, we remain concerned that material regulatory decision-making powers still reside in cloistered industry-only bodies such as district/regional councils, and that this has material cultural effects on the broader industry. We strongly suggest revision of the decision-making powers, transparency obligations and composition of these bodies, such that confidence can be had that decisions are being made in the public interest without undue influence of industry. Additional transparency around enforcement proceedings is also warranted, such as representative penalty guidelines, the impact of precedents, and ameliorating circumstances being more clearly outlined in decision documents. The public trust is degraded when offenders are sanctioned in ways that are inexplicable on the basis of an objective reading of the facts published. There should also be confidence that systemic and root causes for common compliance and enforcement issues are being routinely investigated and addressed, rather than treated serially and symptomatically. Transparency around identified issues and their investigation is essential to maintaining this confidence.

3. Professionalism

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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.

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We believe that professionalism, competency, and quality of advice should be explicit goals for action on the SRO framework. Proficiency artifices designed around deteriorating barriers between product silos and registration categories serve no greater purpose and must be eliminated. We believe that an overriding culture of encouraging professionalism and competency beyond minimum requirements for registration must be established and fostered. The groundwork for a more meaningful, uniform, and less perfunctory continuing education program must be established for financial advice, focusing not on the specifics of products or practice management, but on continued development of the skills necessary to deliver competent, effective, professional and ethically-grounded financial advice to Canadians.

4. Regulatory Efficiency

   At the heart of the argument for self-regulation is regulatory efficiency. To this end, we believe the case has been soundly made for SRO consolidation, particularly if it serves as an opportunity to reflect on and entrench the public interest and other design principles moving forward. We believe the case for consolidation of other regulatory categories into the SRO framework has not been made. While we can see potential merits of the application of a rules-driven SRO approach to the scholarship plan dealer (“SPD”) registration category, we believe it deserves more study by the CSA, as we believe this study may lead to questioning the continued existence of this registration category altogether. Continuing to the portfolio manager (“PM”) and exempt-market dealer (“EMD”) registration categories, we’ve seen no evidence that integration into a rules-driven SRO regulatory framework would either be straightforward or have clear benefits to any stakeholder group. We believe it would be intensely disruptive to industry, have unclear benefits to investors and the public, and only serves as an effective distraction from the clear benefits of consolidation of the existing SROs. Further, we believe that the principles-based framework applied to these registration categories by the CSA functions well in practice and is adaptive to the wide variety of business models under these categories, as opposed to the more homogenous business models currently under SRO supervision (or in the SPD registration category).

5. Market Integrity

   We believe that the current SRO-led market surveillance function works well and should not be a foundational basis for SRO reform. While we can see room for potential improvements and better integration with market-oversight groups within the CSA (and would encourage the same), we don’t believe that the CSA is well-equipped from a structural or functional perspective to take on market surveillance, and believe that such a transition could be disruptive to market confidence and the effectiveness of key surveillance activities. We would encourage and look forward to participating in a future parallel dialogue on potential avenues for more effective coordination and integration between IIROC (or a successor SRO) and the related CSA functions in this area.

6. Investor Protection

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We believe the cause of investor protection is best served in this debate by solving for the principles we've outlined above – namely accountability to the public interest, transparency, and professionalism. SRO governance and decisioning that is transparent, accountable, and not unduly influenced by industry considerations serves this cause. Registrants that are more competent, proficient, and ethically-minded inherently lead to fewer investor protection issues. A compliance and enforcement culture and paradigm that is designed, implemented, and consistently applied to inspire public confidence is also a critical element for investor protection. We believe that if properly executed, there is a generational opportunity in front of us to pull together the best of what already exists within certain areas of the SRO landscape and perform a cultural reset of registrant expectations and enforcement that serves the cause of investor protection.

General Consultation Questions

A. The CSA is seeking general comments from the public on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed in section 4 that should be considered. In addition, please identify if there is any other supporting qualitative or quantitative information that could be used to evidence each issue and/or quantify the impact of the issues noted in the Consultation Paper.

We believe confidence and trust of the public is critical to the effective functioning of our markets, and thus a credible and transparent SRO framework is essential. While there are further details to be considered and proposed by the CSA, we support the general premise of a merger between the existing SROs. Given the current regulatory structure and information presented, we do not support any proposal that would bring registrants such as EMDs, investment fund managers ("IFMs"), PMs or SPDs into the purview of SRO regulation. We believe additional analysis and evidence is required to support consolidation beyond registration categories currently under SRO oversight and would be curious about what analysis would yield for the SPD registration category.

In the PM registration category, several Canadian jurisdictions impose a statutory fiduciary duty on registrants when managing the investment portfolio of a client through discretionary authority. As CFA charterholders, we uphold our Code of Ethics and Standards of Professional Conduct, which requires us to put the interests of our clients ahead of our own. We query whether the impact of these standards of investor protection could be diminished, contrary to the public interest, if a single SRO were to absorb regulation of a wider array of registration categories. It is imperative to point out that many portfolio managers have arrangements with IIROC dealer members to act as custodians (and thus their clients may already have access to investor protection funds in the event of the bankruptcy of such a dealer when acting as custodian). For this and other reasons, we believe the systemic risk posed by portfolio managers is not as acute as by other registrants. Further, we're not aware of widespread instances (other than isolated instances of outright fraud and/or misappropriation of funds) where the insolvency of a portfolio management firm led to major investor losses, because of the segregation of client assets from that of the firm that is implicit in the business model of the registration category.

The efficacy of the portfolio management segment's higher standards is evidenced by OBSI's latest annual report, where portfolio managers do not generate many investor complaints based on their advisory activities. In its 2019 report, OBSI indicated that of the 388 cases opened during its most recent fiscal year, only 14 were from the portfolio manager registration category (with 1 additional case from a restricted portfolio manager). This is notably low relative to the 200 IIROC cases and 138 cases involving MFDA members [2]. Unless there is evidence to the contrary that portfolio managers should be regulated by an SRO, we are opposed to such a disruptive, burdensome, and potentially duplicative change to our regulatory structure that in our view doesn't yield clear investor or public benefits.

We generally question the appropriateness of the rules-based regulatory approach of an SRO to the multitude of business models that exist within the exempt market dealer and portfolio manager registration categories. We're particularly concerned with respect to portfolio managers (many of whom also carry investment fund manager registrations) as to the fit of this more prescriptive regulatory approach given the high conduct standards already imposed on the often-related PM and IFM registration categories. To apply these prescriptive rules to the wide variety of business models and sizes of businesses present in the PM and EMD categories appears to us to be both burdensome and unworkable.

B. Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.

With respect to the governance structure of the future SRO, we would strongly support a requirement to have a majority of independent directors as well as an independent Chair. Some SRO directors should also be required to have relevant experience with respect to investor protection issues, as has already been proposed and implemented by IIROC. In addition, a cooling-off period prior to being considered independent should be required and an examination should occur with respect to the appropriate term limit length for all directors. Governance improvements and transparency (as previously highlighted) in decision-making SRO committees and district/regional councils could also be materially improved. Wider measures could also be taken to enhance the governance structure of SROs, including, as suggested in a position paper released by CFA Institute entitled "Self-Regulation in the Securities Markets – Transitions and New Possibilities"[3] , ensuring that SROs are subject to the same transparency and public reporting requirements imposed on primary or statutory regulators. Complaints about the SRO by SRO members could be handled by way of a member escalation process within the current CSA framework.

We note that it is currently difficult for investors to gain information similar to the IIROC AdvisorReport on their advisors from either the CSA or the MFDA site. It would be

[2] *OBSI's 2019 annual report*, online: Ombudsman for Banking Services and Investments <https://www.obsi.ca/Modules/News>.

[3] *Self-Regulation in the Securities Markets – Transitions and New Possibilities*, online: CFA Institute <https://www.cfainstitute.org/-/media/documents/article/position-paper/self-regulation-in-securities-markets-transitions-new-possibilities >

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preferable to make similar information available for all registrants in a consolidated and comparable way.

C. Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.

We believe that the investor-focused targeted outcomes should be regarded as primary, with particular focus on the targeted outcome that demands "… a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes." All recommendations and action resulting from this process should be evaluated on the basis of this litmus test.

D. With respect to Appendix F, are there other documents or quantitative information / data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.

We are not aware of material additional information for consideration.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Question 1.1: What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients. b) Describe instances whereby those duplicative costs are necessary and warranted. c) How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?

We do not believe there is a significant benefit to a continuing regulatory framework that results in duplicative operating costs, many of which are ultimately borne by the end investor. Costs should be minimized to the extent possible without prejudicing investor protection and effective compliance or enforcement. We believe product innovation and investor access to new (and often lower-cost) products should not be artificially impeded by the registration category of the firm or registrant they face. We believe that much of the compliance and operational oversight associated with dual platform dealers is duplicative, not of public/investor benefit, and could be quickly eliminated through SRO consolidation, with the focus of compliance systems turned towards more productive and investor-centric ends.

Question 1.2: Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

We agree that the targeted outcome is appropriately described. We believe in regulatory efficiency as a guiding principle.

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Issue 2: Product-Based Regulation

Question 2.1: What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories? b) Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services? c) What role should the types of products distributed and a representative's proficiency have in setting registration categories? d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?

We increasingly question the appropriateness of product-based regulation generally, as we continue to see clear barriers between product types deteriorate as financial products and services innovate to respond to investor needs. In lieu of product-based regulation, we advocate for a model where regulation is based on scope and quality of advice, and corresponding business models. Investors should have confidence that their needs are being served with homogenous regulatory expectations regardless of the product or service that is recommended or sold.

We would not support any changes that would result in lower proficiency requirements for registrants providing investment advice. We are also concerned about investor confusion that can arise from discretionary portfolio management from an IIROC registrant, and believe that regulatory expectations and application should be harmonized between the IIROC and CSA platforms in this area. We believe harmonization of registration categories (such as for PMs and APMs) should be accelerated to minimize investor confusion. We're also supportive of accelerated policy action on title reform for securities registrants.

As noted elsewhere in the Consultation Paper, the IIROC proficiency upgrade rule requires that an individual formerly registered with an MFDA firm be qualified within 270 days of approval as a representative on the IIROC platform. While we understand that a proficiency gap will exist between basic individual registration categories after any merger between the MFDA and IIROC, we believe that this gap should be rectified for legacy registration categories within a reasonable period of any reorganization. We would advocate for a reframing of minimum requirements focused on skills, competency, and professionalism, with less regard to the specific scope of products sold by a given registrant.

Question 2.2: Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

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We believe the targeted outcome is appropriately described, and best achieved through a merger of existing SROs, followed by a principles-based and progressive integration of rules and registration categories.

Issue 3: Regulatory Inefficiencies

Question 3.1: What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations. b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories. c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

We understand and agree with the concerns underlying this issue. We believe (as stated previously) that investor interests are not well-served by drawing artificial barriers in regulation between product categories that serve the same investor needs. We believe investors are best served when they can have confidence that their needs are being served with generally homogenous regulatory expectations regardless of the product or service that is recommended, provided, or sold.

We are concerned with specific instances of regulatory inconsistency and understand that rules relating to borrowing funds to invest in securities may be interpreted and implemented differently under SRO and CSA rules. Pursuant to section 13.13(1) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, there is a prescribed written risk statement that must be provided to clients if a registrant recommends that a client use borrowed money to finance any part of a purchase of a security, and similar disclosure is required under IIROC Dealer Member Rule 29.26 and MFDA Rule 2.6. Despite the prescriptive disclosure requirements, and a requirement that borrowing is a factor to be considered in making suitability determinations, we have been led to believe that compliance standards differ in the application of these standards between regulators.

We remain concerned with the different regulatory framework currently applicable to the sale of insurance products that serve similar investor needs to securities-regulated products, namely segregated funds. Particularly given the dual registrations of many insurance salespersons with a securities regulator or an SRO, we're concerned about the inconsistent application of regulatory standards by product type, which confuses investors/clients and degrades the public trust in advice. While we understand the insurance guarantee and term are supposed differentiators, segregated fund products can be extremely similar in effect, features, and appearance to structured products and funds sold under the securities regime. To compound the confusion, they are often offered by the same advisor. The securities regulatory regime has been more progressive on disclosure and operating requirements for these products, and the

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insurance regulations have not kept up. Consistent regulation would result in regulatory efficiencies, cost savings and consistent fair treatment of clients and negate regulatory arbitrage opportunities. It would also bolster public confidence in the advice they're receiving holistically.

We also believe it is important to continue to examine referral arrangements between dealers regulated by an SRO and CSA registrants, to ensure that clients know to whom they are speaking, and each party's respective obligations are clearly defined. We believe rules should be harmonized and consistently applied across regulatory platforms.

Question 3.2: Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

We believe the targeted outcome is described appropriately and agree with its direction. We believe the outcome is best achieved through a merger of existing SROs and a pointed focus on harmonization of regulatory expectations between different regulators to inspire greater public confidence that the advice that investors receive is subject to consistent, appropriate, and rigorous regulatory requirements.

Issue 4: Structural Inflexibility

Question 4.1: What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) How does the current regulatory framework either limit or facilitate the efficient evolution of business? b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancements, and how this has impacted the client experience. c) Describe factors that limit investors' access to a broad range of products and services. d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities? e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?

We believe this issue is appropriately identified and presents a broad impediment to the pursuit of professionalism, improving competency, and high standards of investment advice across the investment industry. We believe the proficiency upgrade requirement is an artificial barrier for registrants looking to upskill and offer a wider variety of products to their clients. These registrants are often disincentivized by the dealer platform switching costs, costs of renewing proficiency courses, and the differences in allowable compensation and tax-planning structures between the SRO platforms. We believe that registrants should be holistically encouraged to pursue a higher standard of minimum competency, continuing skills development,

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professionalism, and the delivery of ethically-centered advice to clients as part of the path forward.

Question 4.2: Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

We agree with the description of the targeted outcome, but choose to interpret its direction as demanding a progressive proficiency framework for registrants into the future, focused on minimum proficiency standards that are responsive to innovation, building professionalism, and ensuring that skills development is encouraged towards the delivery of high-quality and ethically-centered investment advice regardless of registrant category.

Issue 5: Investor Confusion

Question 5.1: What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion? b) Describe the difficulties clients face in easily navigating complaint resolution processes. c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.

Investors (particularly retail investors) should not be expected to understand the multitude of registration and regulatory acronyms utilized by the industry, nor the nuanced differences in the scope and function of all the existing registration categories across platforms. Harmonization of regulatory expectations and simplification of structures such that investors can have holistic confidence in the advice they're receiving should be a primary goal of revising the SRO framework.

As noted in the Consultation Paper, the potential for confusion is particularly acute with respect to redress mechanisms available to investors. We believe in the power of a singular empowered dispute resolution body, and clear and investor-friendly expectations on all securities registrants as to the progress of disputes and complaints through internal resolution structures to the external dispute resolution body. We believe that this process should be homogenous to investors regardless of the registrant they face. We also believe that an ombudsperson should be empowered to investigate and opine on potential solutions to systemic issues identified through investor complaints and disputes.

Question 5.2: Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

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We believe that this targeted outcome is described appropriately and should function as an overriding litmus test for any recommendation that comes from this consultation and process. We believe that this outcome is best achieved through continued pursuit of regulatory harmonization, increased and consistent standards for investment advice, and simplification of the regulatory landscape starting with a merger of the existing SROs, with material investor-minded improvements to the SRO structure aligned with the 'first principles' we've outlined above.

Issue 6: Public Confidence in the Regulatory Framework

Question 6.1: What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Describe changes that could improve public confidence in the regulatory framework. b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved. c) Describe instances of how investor advocacy could be improved. d) Describe instances of regulatory capture in the current regulatory framework. e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

We've extensively covered answers to these questions already (see 'first principles' above), and believe that developments need to be made to governance and the enforcement and compliance processes at the SROs in order for this SRO review to be judged as successful. To the extent product-focused regulation continues, changes that would improve public confidence in the regulatory framework involve further work explaining to investors the collaborative nature of Canada's regulatory agencies, and work to further harmonize requirements wherever possible towards consistent standards of advice and disclosure on the basis of the investor faced and advice offered rather than the product sold or recommended. It's critical that regulators be accountable to the public interest, and this demands evolution of the SRO framework.

As noted above, we have concerns with respect to the patchwork of investor redress mechanisms. We query whether it remains appropriate for both of the SROs to be members of the Joint Regulators Committee.

Question 6.2: Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

We believe the targeted outcome is appropriately described, and believe this outcome is clear in demanding substantive and urgent change from the CSA through SRO consolidation and material changes to the SRO framework aligned with the 'first principles' outlined earlier.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

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Question 7.1: What is your view on the separation of market surveillance from statutory regulators, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concerns? b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.

We would refer you to our prior principles-based comment on this topic. While the separation of market surveillance from statutory regulators may not be ideal from a theoretical perspective in the eyes of some stakeholders, we believe the current system functions well, are not aware of any serious issues with respect to the current market surveillance function, and believe wholesale change could be disruptive without clear investor or public benefits. In order to separate market surveillance and bring it back to the purview of the CSA, we imagine it would be necessary for the CSA to expend much time and cost to set up the necessary technology and build necessary expertise, particularly with respect to real time surveillance. In lieu of such an extensive change, we would recommend, to the extent there are concerns with existing surveillance mechanisms, incremental improvements be made. For example, a revamped SRO with a continued market surveillance mandate could be provided with broader powers to examine records of additional market participants, and additional avenues for operational integration with related functional groups at the CSA could be explored or encouraged, particularly to better ameliorate systemic risk concerns.

Question 7.2: Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

We believe the targeted outcome for issue 7 is well-described, though don't necessarily connect the targeted outcome as stated with a wholesale shift in responsibility for market surveillance, as we believe the current system functions well. We would encourage greater strategic and operational integration between the current market surveillance regulatory function and related functions at the CSA, particularly to address systemic risk concerns.

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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*

The Canadian Advocacy Council of CFA Societies Canada

October 23, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs/Mesdames:

Re: Request for Comment - CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

The Private Capital Markets Association of Canada ("**PCMA"**) is pleased to provide our comments in connection with the Canadian Securities Administrators ("CSA") Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework* (the "**Consultation**") as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

General Comments

From a registrant demographic perspective, the PCMA primarily represents exempt market dealers ("**EMDs**"), as well as certain investment fund managers ("**IFMs**") and portfolio managers ("**PMs**") where these firms participate in the private capital markets. Currently, firms registered in these categories ("**Non-SRO Firms**") do not fall under the jurisdiction of either of the existing self-regulatory organizations ("**SROs**"); the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Mutual Fund Dealers Association of Canada ("**MFDA**").

As many PCMA constituent members are not regulated by one of the SROs, we will limit commentary on the efficacy of the existing SRO regulatory framework and comment primarily on the possibility of Non-SRO Firms being integrated into any new SRO regulatory framework.

There has been significant industry discussion relating to the merging of current SROs and the potential integration of Non-SRO Firms like EMDs into any resultant SRO. Part of this discussion

included a recent proposal from the Capital Markets Modernization Taskforce and the PCMAs comments is available at: https://cdn.ymaws.com/www.pcmacanada.com/resource/resmgr/comment_letters/2020/200911_-_ontario_modernizati.pdf.

The PCMA is strongly opposed to any inclusion of EMDs in the SRO Regulatory Framework.

The PCMA embraced the EMD category when it was created. Over the last decade CSA members have gained extensive knowledge about EMDs and other constituents of the private capital markets. Both the Ontario Securities Commission and Alberta Securities Commission have spent countless hours on their respective committees dedicated to EMD operations with the PCMA having continuously had one or more representative on these committees. There have been positive results from these efforts most notably the understanding that one size regulation does not fit all and that EMDs are different in many ways from investment dealers and mutual fund dealers.

The primary concern our members have with the idea of being integrated into a convergence of the existing SROs is the ability and willingness of IIROC and the MFDA to accommodate Non-SRO Firms, in particular EMDs. This concerns stems from both IIROC and the MFDAs historic bias towards prospectus exempt products as well as the industry trend of the consolidation of smaller dealers into larger dealers, which may be attributable, at least in part, to the regulatory environment of SROs.

In contrast to the above, despite the vast scope of both National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"), the CSA and the private capital markets have provided an environment where smaller dealers are able to survive and in some cases thrive. As small firms make up the vast majority of EMD registrants, it would be destructive to move regulation of them to the same group or groups that have already led to the lessening of competition in Canadian financial markets.

Of the combined 257 IIROC and MFDA registered firms there are 107,188 registered individuals averaging out to 417 individuals per firm.[1] EMDs average 5 individuals per firm (240 registered firms with 1,140 individual registrants).[2] These numbers speak to the huge variance between the sizes of firms in each respective category and why having the same SRO governing all would ultimately lead EMDs to the same fate as many small IIROC and MFDA members have already experienced. IIROC and MFDA registrants, as well as regulators like to speak to "leveling the playing field." How can a 5-person firm be expected to implement the same compliance systems and regime as a 417-person firm?

The continuing shuttering of small and mid-sized firms has had rippling effects on the Canadian economy as these firms, often being small businesses themselves are the only ones that will undertake the raising of capital for the small business community.

[1] Consultation Appendix A and Appendix B
[2] Consultation Appendix C

The SRO model is being abandoned around the world due to the inherent conflicts of interest. Even the National Association of Securities Dealers (NASD), now Financial Industry Regulatory Authority (FINRA) had to recreate itself to address the concerns raised by the United States Securities Exchange Commission (SEC). It is now considered a private regulator rather than an SRO. The United Kingdom, Hong Kong, Singapore, Australia and others have all stepped away from the SRO model due to the conflicts of interest. Given the global regulatory shift away from SROs, the PCMA is wondering why the CSA would consider expanding the scope or restructuring of the existing SROs.

Notwithstanding the above, there are attributes of the SRO model which would be beneficial to the members of the PCMA. The regulatory regime in relation to the private capital markets is the least harmonized in Canada. Harmonizing the regulatory approach to registration and compliance across Canada would reduce some of the uncertainty faced by EMDs, especially those registered in multiple jurisdictions, as well as the harmonization of regulations, in particular NI 45-106. We believe it is fully within the capabilities of the CSA members to create an uniform level of regulation and application of supervision across the country with one set of rules applicable to all EMDs as is enjoyed by SRO members while allowing truly unique jurisdictional matters to be addressed at the local level.

The CSA should seek to rely on its existing structures and strive for better collaboration and standardization between provincial and territorial securities regulators across the country before seeking to abandon its cultivated expertise over Non-SRO Firms and instead outsource this responsibility to an SRO that has to rebuild these skillsets from the ground up.

Closing Remarks

The PCMA would like to thank to the CSA for soliciting feedback from various stakeholders.

* * * *

We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

PCMA COMMENT LETTER COMMITTEE MEMBERS

"*Craig Skauge*"	"*Nadine Milne*"
PCMA Vice Chair & Executive Committee Member	Co-Chair of the PCMA Compliance Committee

CC: Tommy Baltzis, PCMA Chair
PCMA Board of Directors

October 23, 2020

National Advisory Committee Comments

CSA Consultation Paper 25-402 *on the Self-Regulatory Organization Framework*

Addressed to:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o:

The Secretary
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
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The National Advisory Committee ("NAC") of the Investment Industry Regulatory Organization of Canada ("IIROC") wishes to thank you for the opportunity to submit its comments regarding CSA Consultation Paper 25-402 – *Consultation on the Self-Regulatory Organization Framework* ("the Consultation").

NAC is comprised of one representative of each District Council (DC) in Canada. We meet 5 to 6 times per year and report directly to the IIROC Board of Directors. NAC's mandate is as follows:

1. NAC seeks to solicit, review, coordinate and build consensus from IIROC District Councils' responses to regulatory proposals;
2. NAC assumes an advocacy role consistent with investor protection to promote self-regulation by acting as ambassadors to the financial industry at large;
3. NAC identifies and advises IIROC staff about industry trends that assist IIROC in being proactive in dealing with emerging issues and meeting regulatory obligations;
4. NAC aims to develop and harmonize a national approach to dealing with regulatory issues with respect to which the District Councils have a decision-making role.

We proceed with a public-interest mandate, therefore, we provide information to IIROC that is in the best interest of the clients. It is also within our mandate that we provide our response to the Consultation as an independent advisory committee of IIROC, following a fulsome collaboration with each committee member in their respective regions.

The Consultation was reviewed with great interest and the committee agreed unanimously that all stakeholders would benefit from: i) an explanation of the benefits of the self-regulation regime; ii) our views on investor confusion evident within the field; and iii) the financial impact of the regulatory framework.

We would like to begin by stating that, ideally our industry would be governed by a single national self-regulator, including all securities registrants. We believe that the distinction of regulatory platforms, as introduced by *National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations* were certainly accurately designed in 2009 considering the distribution channels at the time, however 11 years later, the industry has evolved overall, as have client needs.

We understand that the Consultation currently focuses specifically on IIROC and the MFDA, which we agree is an appropriate first step.

Self-regulation

Our specific role in the self-regulation regime starts with our election of District Councils throughout Canada. District Council members are elected and represented by IIROC members in their respective regions.

Each District Council acts as a local committee, whose mandate includes both:

- A regulatory role, in relation to regional approval and membership matters; and
- An advisory role, with respect to regional issues and the provision of regional perspectives on national issues.

As District Council members, we have the following regulatory responsibilities:

1. *Registration*: Approval of individual applications, imposing terms and conditions, revoking or suspending approvals, providing exemption from proficiency and continuing education requirements, and hearing/deciding on appeals for proficiency related items from the District Council's Registration Sub-Committee (PLR9209).
2. *Membership*: Recommendation of new membership applications for submission to the IIROC Board of Directors, and approval of ownership-related transactions for IIROC members.
3. *Enforcement*: Nomination of residents from respective districts to the Hearing Committee, for appointment by the Corporate Governance Committee.

We also play an important role by advising IIROC staff on membership and policy matters.

Items to be discussed on a national level are brought forward to NAC by the representative of each District Council. NAC meets regularly with IIROC management to discuss these items which are subsequently brought forward to the IIROC Board of Directors by the Chair of NAC.

NAC members support the regulatory framework of SRO as the benefits and advantages are evident, particularly IIROC's ability to consider our concerns and exercise flexibility in resolving them. To that end, we are supportive not only of the SRO regime but, also of a single SRO regulating all retail-facing securities dealers and mutual fund dealers. We see significant potential benefits for clients.

We believe the benefits include:

1. Prevention: Preventing potential loss of performance and client account history by re-papering accounts during client transitions. We see an SRO that allows for one cohesive rulebook, allowing the client to receive a continuum of products and services and to add new products and services without the need to re-paper their accounts during their transition.
2. Consistency: Each distribution channel utilizing consistent client forms, statements and account opening procedures. A consistent application of the rules will benefit all stakeholders and will result in improved Investor Confidence.
3. Centralization: Client complaints have a consistent resolution process and a centralized investor protection fund.

Investor confusion

Investor confusion was also thoroughly discussed in our meetings over the past few years. We were pleased that the Consultation addressed specific questions regarding this issue.

The complexity comes from the fact that the securities industry has different channels of distribution, and over time, product offerings converge tremendously between these channels. This creates confusion for clients as they may not understand and may not be able to distinguish

product offerings and their origin, nor how their advisor is regulated. Clients may also be under the assumption that all advisors are regulated through the same channels, have the same educational qualifications and follow the same set of compliance and compensation rules and regulations. Consequently, it is difficult for clients to identify the appropriate regulator to contact should they have questions or concerns.

In recent years, it has been established that a wide range of "professional" titles are used by dealing representatives in our industry which has resulted in additional client confusion. The CSA has attempted to address the topic of misleading titles in their Client-Focused Reforms. We believe that further progress is needed in this regard. We believe that having a single SRO as opposed to two would provide the opportunity to create a level playing field with respect to the titles used by dealing representatives in their interaction with retail clients, thereby reducing overall investor confusion.

Operating costs

Operating cost savings which stem from a single SRO are significant (Deloitte estimated $1-2 million per dual platform provider per annum for 10 years). In addition, we feel that having a single SRO in place would save significant time and efforts for the regulators and industry staff members. Removing duplicative costs from the system will ultimately lead to a more competitive landscape, which will ultimately translate into lower costs for investors which is in line with the industry's over-arching goal of improving investor outcomes.

A consistent approach to regulation is likely achievable only through a single SRO. Consistency is important in operating business models and serving clients. Consistency will become even more important over time with new, more complex rules becoming effective.

Next Steps

We believe that a logical next step is the two current SRO's coming together to work on a new and improved SRO. This should be initiated by the respective Boards of each organization with a view to evolving the new SRO framework to address the changing landscape of the Canadian financial services industry. The result must be a new entity with a reconstituted Board. As such, the new SRO would have the perspective of a new, forward-looking organization, seeking to optimize regulation to benefit clients with expanding needs within the context of an evolving industry.

Yours truly,

Christopher J. Enright
Chair, National Advisory Committee

IFB CISF Independent Financial Brokers of Canada
740-30 Eglinton Avenue West, Mississauga, ON L5R 3E7

October 23, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan
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Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs & Mesdames:

Subject: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on the CSA's consultation paper to examine a framework for the self-regulatory organizations.

IFB is a national, professional association whose members are licensed financial advisors and planners. Many IFB members are regulated by either the Mutual Fund Dealers Association (MFDA) or the Investment Industry Regulatory Organization of Canada (IIROC). Most are also

life insurance licensees, and as such are regulated by their provincial insurance regulator(s). Some are exempt market or scholarship plan registrants and are regulated by their provincial securities commission(s).

The current fragmented approach to securities regulation has led to a complex system of licensing, market oversight, compliance, and regulatory costs. The CSA identified widespread support to change the current system and to find more effective solutions that will enhance investor protection and confidence in our capital markets, while reducing costs, regulatory burden, and impediments to innovation[1]. We agree.

IFB supports the continuation of a self-regulatory regime for investments, albeit in a renewed entity. However, it is incumbent on regulators, industry, and other stakeholders to ensure that the process begins and is implemented in a timely way and not encumbered by years of continuing debate.

To put our comments into context, IFB members are self-employed individuals who generally own small to medium sized financial services practices in their local community. They provide personalized advice and planning to families, individuals, and businesses across Canada, often over many years, and even generations. IFB does not represent employees of financial firms/institutions or career agents of life insurance companies.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers
Targeted Outcome: A regulatory framework that minimizes redundancies that do not provide corresponding value.
As an Association representing licensed financial professionals, IFB's interest in how a future SRO might be structured is centered on how it will affect our members and their clients. As mentioned, the majority of IFB members are currently regulated by the MFDA, and their provincial insurance regulator(s). What is paramount to them is how they can continue to advise clients of moderate means at a cost that is not prohibitive to their financial practice or their clients. In this respect, under any newly formed SRO – whether by merger or rethink – they need assurance that there will be a level playing field between mutual fund dealers and IIROC firms to the extent that existing mutual fund firms (and by extension, their advisors) will not be pushed out of the investment industry due to an increase in cost or regulatory burden. The potential impact of any unlevel playing field will be far greater on smaller, independent mutual fund firms and their advisors, than on large integrated firms (like bank-owned investment firms) who will experience greater reduction in duplicative costs (as they operate on both platforms).

It has become clear that a combination of mergers, acquisitions and firms moving to the IIROC platform has reduced the number of firms that want to exclusively serve the restricted mutual

[1] CSA Consultation Paper 25-402, Consultation on the Self-Regulatory Organization Framework. Page 9.

fund market. Despite this, it is also clear that many Canadians of moderate means rely on mutual funds as an accessible investment vehicle to participate in the capital markets.

Choice in how they access advice, and continued access to advice, for individuals and families with smaller investment accounts through an independent firm should be a factor the CSA is mindful of when considering how best to proceed with any transition away from the current SRO regime.

Indeed, IIROC acknowledges this in its submission to this CSA consultation:
We support the importance of a range of different business models by size, geography and specialization serving clients of all sizes and means across the country in rural and urban communities. In support of investor protection, we will collectively need to avert taking steps that could leave any group of investors unserved, or unprofitable to serve. Careful analysis will be required to avoid unintended consequences which might impact smaller, regional and specialized business models. This should include ensuring a framework which supports ongoing innovation and new entrants and the provision of a wider selection of products and services for investors. Based on our experience, we strongly support a focus on the importance of small and independent dealers who provide access and choice to investors across the country regardless of where they live or the amount of their investments.[2] This perspective and support from IIROC is important assurance for the smaller dealers, and advisors like IFB members. We will look for similar assurance from the CSA as it moves toward a recommended approach.

i) Directed Commissions and 270 Rule

In a new SRO, consideration will have to be given to some rules that are unique to the MFDA, such as the ability to pay directed commissions to a personal corporation. Many IFB members are permitted as mutual fund registrants and life insurance licensees to direct their commissions to a personal corporation. The MFDA has permitted it for many years with no resulting investor protection issues. IIROC advisors do not have this option. Many advisors who are dual-licensed will need comfort that this arrangement will be continued under any new, merged SRO. Going forward, this may also present an opportunity to revisit the restriction in securities legislation which does not permit individual registrants to incorporate and receive commissions directly.

Rule 270 is another example, in that if mutual fund only registrants were to become part of an IIROC merger, and a restricted mutual fund license is to be retained, the Rule would need to be withdrawn. Reasons for keeping it in the past were the CSA's concern that abolishing it would permit mutual fund advisors to work at an IIROC firm without having to complete the proficiency upgrade, and since this might be attractive to IIROC firms, it could threaten the viability of the MFDA. Going forward under a single SRO, this would seem to be no longer a consideration.

[2] IIROC response to CSA SRO consultation, page 7.

ii) Financial Compensation Funds

Investor assets are protected in the event a securities or mutual fund firm becomes insolvent. MFDA investors are protected under the MFDA Investor Protection Corporation. IIROC investors have similar protection under the CIPF. Under a single SRO scenario would the assets in the MFDA IPC continue to be separate, or would they be merged with the IIROC CIFP? It also raises the question of what will happen in Quebec, (whose mutual fund advisors are not part of the MFDA) if those in the mutual fund industry become part of an IIROC firm, since IIROC is recognized in Quebec.

Issue 2: Product-Based Regulation

Targeted Outcome: A regulatory framework that minimizes opportunities for regulatory arbitrage, including consistent development and application of rules.

We agree with other stakeholders that have noted the differences in approaches to compliance oversight by the two SROs, with the MFDA generally taking a more prescriptive approach and IIROC being more principles-based. Under a single SRO model, the existing Rules can be harmonized and applied more consistently.

More importantly, there seems to be no economic basis to continue having two SROs for Canada's investment industry. This is particularly true given the decline in MFDA membership. In 2002, the MFDA had 220 dealer members; today, the number of dealer firms has dropped to 90, 25 of which are dual platform (IIROC/MFDA). This leaves only 65 firms that deal exclusively in mutual funds. Bearing in mind that the SROs are required to operate on a cost-recovery basis funded by its members, the situation would become financial untenable for the remaining mutual fund-only firms if the dual platform dealers exit the MFDA. Since 60% of mutual funds are sold through IIROC firms, and the Deloitte Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation, issued in July 2020, estimated that the cost savings for dual-platform firms over a 10-year time period to be between $380 million and $490 million such an exit seems likely.

Issue 3: Regulatory Inefficiencies

Targeted Outcome: A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.

Lengthy delays to implement change.

One of the advantages of any SRO regime is the expectation that, because it acquires a particular expertise about the businesses it regulates, it will produce more effective results and be able to detect problem areas or patterns more quickly.

However, we share the frustration of those who find that change in the financial field can be a lengthy process – often years in the making. For example, it is widely acknowledged that an important investor protection measure is that anyone licensed to advise on financial products be proficient. Their knowledge should be sufficient to understand the products they

recommend and the clients they are recommending them to. Continuing education is a recognized essential element to keeping one's professional knowledge current.

Yet in 2020, mutual fund advisors are not required to complete mandatory CE. Continuing education is a mandatory licensing requirement for IIROC advisors, life insurance advisors, holders of financial services designations, such as the CFP®, and for many other financial professionals. Currently, the MFDA oversees approximately 90,000 mutual fund advisors. While many of these advisors complete CE either as required for another license or designation/credential or voluntarily, it remains a gap in MFDA procedures that it has yet to implement a CE requirement. IFB first responded to the MFDA 's consultation on CE in 2014. Today – 6 years later – there is still no system in place, or implementation date despite large investments in a system to electronically track CE. There has been widespread industry support for a CE requirement for MFDA advisors from the beginning, and near universal calls that it be simply and quickly implemented by recognizing the CE requirements and many available educators already in the marketplace. Instead, the MFDA proceeded to pursue multiple consultations and a separate accreditation framework that has delayed its implementation, all under the CSA's watch. In contrast, Ontario's Financial Services Regulatory Authority issued a consultation paper in August 2020 on a Financial Planner/Financial Advisor titling restriction framework that it expects to put into place in 2021.

Issue 4: Structural Inflexibility

Targeted Outcome: A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.

i) A single SRO could improve outcomes for MFDA firms.

The phased-in approach to SRO consolidation would mean that MFDA-only advisors could access a wider range of products for clients, in a shorter time. This would be beneficial for both clients and the advisors with whom they often develop long-term relationships. Currently, if their investment needs change, clients may be forced to change firms or advisors - most often involving a move to an investment dealer, along with all the associated inconveniences like delays in transferring the account, and repapering to open new accounts. This is not only an inconvenience for investors, but they may be subject to higher fees or minimum asset requirements to access these investments. This is a barrier for investors that should be addressed.

Certainly, improving access to ETFs, which have appeal to many consumers, would be helpful to MFDA-only advisors. The current process to access ETFs is difficult, cumbersome, and costly and impairs their ability to offer them as an investment choice to clients. These clients, if they want to access ETFs, may be forced to do so with an OEO firm, thereby relinquishing their access to advice. A solution which makes ETFs more accessible for mutual fund clients would be welcome.

IFB has seen an increase in the use of technology by our members over the past number of years, and certainly as they work to maintain non-face-to-face communications with their

clients as a result of the pandemic. Some clients will prefer to continue this as a convenient way to conduct business that does not require travel to a physical office. The regulatory framework will need to accommodate such consumer preferences, while ensuring there is no reduction in investor protection.

Issue 5: Investor Confusion
Targeted Outcome: A regulatory framework that is easily understood by investors and provides appropriate investor protection.
A single SRO would reduce regulatory overlap and permit investors who begin their investing experience with a mutual fund, for example, to add investment products over time, as well as harmonize rules that create barriers for investors.

The current plethora of titles used by those in the investment industry contributes to confusion. Restricting titles has been on the CSA radar for years, and yet was not included in the first implementation of the CFRs. In previous CSA consultations, IFB along with many industry stakeholders and investor advocates have generally agreed that titles – particularly the use of corporate and other titles that can mislead consumers -- should be reduced to the advantage of investors. The CSA has undertaken to recommend changes to titles but has yet to do so.

The Client Focused Reforms will most certainly help to clarify for investors the services being provided and recommended.

Issue 6: Public Confidence in the Regulatory Framework
Targeted Outcome: A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.
IFB supports this outcome. There must be a clear, transparent public interest mandate, effective governance that reflects input from a wide variety of stakeholders, and robust enforcement and compliance. We note that IIROC has recently changed its Board structure to include investors, although the MFDA has not taken this step.

IFB has often advocated for more representation of investors and, equally importantly, advisors themselves. Firms do not speak for advisors. Advisors often have frustrations or see investor issues at ground level and have few mechanisms to bring them forward in a way that will not impair their relationship with their dealer or their SRO.

Concluding remarks
In addition to our comments above, we submit the following for the CSA's consideration.

Given the complexities involved in moving to a single SRO, IFB recommends that the CSA pursue a phased approach. This will allow business to continue within a merged entity while providing opportunities to look for ways to improve and streamline existing processes.

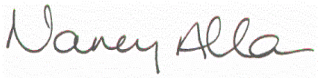
IFB recommends the CSA establish a stakeholder transition group. It will be important to include representation from a wide variety of stakeholders, including investors, advisors, and firms of all sizes and complexity.

IFB believes this presents opportunities to work more closely with other financial service regulators throughout the development of a single SRO and align the regulatory intent of treating consumers fairly without regard for the particular product being considered or the type of business model.

Regardless of the path chosen to move to a single SRO, there must be firm timelines. The industry and its customers should not have to wait for a solution that is years in the making. Delays will create uncertainty and impair confidence among the regulated and their clients. The investing public should be confident that the CSA is moving in a clear direction that will result in a regulatory system that will enhance their experience, not perpetrate the potential for regulatory arbitrage, or increase confusion.

We appreciate the opportunity to provide our views. Please contact the undersigned, or Susan Allemang, Director Policy & Regulatory Affairs (sallemang@ifbc.ca) should you have any questions or wish to discuss our comments further.

Yours truly,



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October 23, 2020

Alberta Securities Commission
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Nunavut Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
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Re: Canadian Securities Administrators (CSA) Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

We are writing on behalf of ATB Securities Inc. (ATB Wealth) and ATB Capital Markets Inc. with respect to the CSA consultation paper published on June 25, 2020 seeking input on the regulatory framework for self-regulatory organizations (SROs) in Canada.

Background on ATB Securities Inc. and ATB Capital Markets Inc.

IIROC Dealer Members ATB Securities Inc. and ATB Capital Markets Inc. are wholly-owned subsidiaries of ATB Financial. ATB Financial is a Crown corporation owned by the Province of Alberta.

ATB Securities Inc. operates under the trade name ATB Wealth with two other subsidiaries: ATB Investment Management Inc. (registered in the categories of Adviser - Portfolio Manager and Investment Fund Manager with the Alberta Securities Commission) and ATB Insurance Advisors Inc. ATB Securities Inc. ATB Securities Inc. had approximately $14.7 billion in assets under administration as of March 31, 2020.

ATB Capital Markets Inc. is a full service brokerage firm providing corporate financial services, equity underwriting, corporate and asset advisory, institutional research and sales and trading services.

General Comments

We commend the CSA for tackling the complex topic of the regulatory framework for registrants in Canada. The Canadian approach to securities regulation has tendencies towards fragmentation, and nowhere is that more evident than in a framework that includes two SROs and thirteen CSA jurisdictions that collectively oversee the activities of firms and individuals across several registration categories.

While the initial inclination might be to look at the impact of lessening regulatory fragmentation on firm costs and profits, we believe that the client lens is far more important in measuring the potential benefits of changes to the regulatory framework. A theme that weaves through our comments below is that the concept of investor protection (predominantly through compliance and enforcement) needs to be expanded to consider how regulatory change could improve client and investor outcomes in an industry that - finally - recognizes the importance of advice over product.

Issues & Consultation Questions

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

We are in agreement with the description of the issue as described in the consultation paper. However, we would note that this issue of duplicative costs is limited to a minority of firms and suggest that cost to those firms who elect to be dual platform should not be the dominant factor driving change to the SRO environment in Canada.

ATB Financial previously maintained an MFDA dealer as a complement to ATB Securities Inc. but the operations were consolidated in the Dealer Member several years ago in order to reduce the cost burden of operating under two regulatory regimes and simplify the operating model. We would

note that the transition of clients from the mutual fund dealer to the Dealer Member was not, itself, without cost or complexity but we believe that overall the objective of managing our operations and compliance costs was met.

ATB Securities Inc. and ATB Investment Management Inc. also experience similar duplicative operating costs, albeit between an SRO member and a firm directly regulated by the CSA. Our Private Investment Counsel (portfolio management) offering exists in the ASC-regulated environment and there is regular transitioning of clients between the discretionary segment and non-discretionary segment in the Dealer Member which requires re-papering of accounts. We have also found that, as described in the consultation paper, there are significant and largely insurmountable challenges in consolidating compliance and operating environments while still meeting or exceeding regulatory obligations.

We generally agree with the outcome as described in the paper. However, we suggest that the CSA also acknowledge that reducing costs to registrants is a desirable outcome that complements enhancing regulatory value. Financial stability of registrants not only ensures that clients continue to receive the service they deserve, but promotes investment investment in compliance.

Issue 2: Product-based Regulation

The consultation paper appears to capture the salient issues regarding product-based regulation, but perhaps does not emphasize enough the extent to which convergence is impacting the financial services industry.

Changed client behaviour, continued expansion of the population of active investors, and digitization has made it far more difficult to draw lines between products and service offerings. As a result, we believe that product-based regulation is becoming anachronistic in an industry that is also slowly shifting away from a transactional, “selling” model to one that favours advice appropriately targeted to the needs of clients.

Regulatory arbitrage is a consideration, but we note that arbitrage opportunities - or at least differences in interpretation - exist between CSA jurisdictions currently, not just between SROs, or between SROs and the CSA. One of the advantages we have as Dealer Members in working with IIROC is that we generally have confidence in a consistent viewpoint on compliance issues; we appreciate the regular acknowledgement of consultation with other offices to help ensure consistency. Unless or until there is a structure in place that ensures consistency in application of regulations applied by CSA members, strengthening the already-national SRO approach would appear to be a more effective approach to reducing regulatory arbitrage.

Issue 3: Regulatory Inefficiencies

We generally agree with the views in the paper. However, while the paper appears to acknowledge that the existing regulatory framework may cause inefficiencies amongst CSA members and the SROs, it does not address the impact regulatory inefficiencies has on registrants outside of the ETF product issue described in the paper.

We have not directly experienced differences in interpretation of regulations between our IIROC Dealer Member and direct CSA-regulated firms, largely because we have deliberately avoided a crossover of services such as allowing discretionary management in both platforms. To date, we have elected to avoid building parallel discretionary management platforms and compliance regimes to avoid the complexity of understanding and implementing two regulator's views of the compliance requirements associated with services that would be virtually identical.

As a result, advisors who "graduate" to a portfolio manager need to change firms (and potentially meet different interpretations of required investment management experience) and either leave their clients behind or repaper them as new accounts. Similarly, clients of the Dealer Member whose emerging needs fit better with discretionary management need to move to a different firm and advisor.

There may be no merit to a view that the CSA and IIROC would differ meaningfully in terms of this example or others. But, given the significant investment required to launch a new service we are not willing to take that risk at this time. To some extent, this circumstance is the opposite of regulatory arbitrage: rather than taking advantage of how different regulators apply the rules, we are avoiding changes to our business model because we are unclear that the difference in interpretation between regulators are not material.

Ultimately, regulatory inefficiency cannot lead to better compliance and investor protection. While the CSA should continue to develop the regulations, fewer - and clearer - interpretations support development of effective compliance regimes.

Issue 4: Structural Inflexibility

We think that the consultation paper has comprehensively described the impact of the current regulatory framework from a structural inflexibility perspective. We have touched on this briefly in respect of the first three issues identified in the paper, so would focus our comments here on the impact to clients whose interests need to be served first.

As noted in Issue 2, the current regulatory framework (particularly dual SROs) promotes a very product-focused approach. New clients - with fewer investable assets and less investing experience

- often start their investing journey by purchasing mutual funds through a mutual fund dealer. As time passes and assets grow, clients often transition to or add different investments to their portfolio which requires acquiring the services of an investment dealer or even a portfolio manager.

What is notable about this journey is that clients typically get advice at each stage only based on the products that the registrant with whom they are dealing might be able to offer. There is a built-in inhibition to recommending an investment strategy that includes securities that an advisor may not offer or may not be seen as core to the business of the firm. We feel that this does not serve clients well.

We are of the view that the industry is evolving to a model where clients receive advice first, and product second. There are many order-execution-only platforms available that allow clients to quickly and cheaply transact, so the differentiator for the advised platforms must be actual advice that matches product recommendations fully and completely to client circumstances. The current regulatory framework not only makes this challenging at the outset as early investors are funnelled into a highly limited product shelf environment, but it creates friction - cost and effort to move or open a new account with an advisor with broader product capabilities - that might prevent a client from seeking advice more relevant to their circumstances.

We would note that an IIROC Dealer Member can be appropriately structured so that the advice-delivery model and product strategy can be aligned to a broad range of client expectations and points in a client's investing lifecycle. This includes developing mechanisms to deliver advice either in or for rural areas that is not restricted by regulation (even if business rules and compliance oversight is applied to manage risk). If this can be successful, it begs the question: what is the purpose of maintaining a separate registration category of mutual fund dealer, and an SRO to oversee it?

Finally, while we agree generally with the outcome as described we believe that the concept "protecting investors" requires expansion. The notion of protecting investors is often used to imply that investors need to be protected from the firms and advisors with whom they are dealing. We would encourage the CSA to consider that protecting investors also should be inclusive of supporting the provision of quality advice to investors that is not driven by registration to sell a particular product.

Issue 5: Investor Confusion

We agree that investor confusion is an outcome of the fragmented regulatory framework, and believe that the paper identifies many of the relevant issues. Investor confusion is a significant detractor from trust in both the regulatory system and in the firm so we agree that addressing this issue is important.

The regulatory framework encountered by firms and clients is complex which makes "easily understandable" a challenging goal. Core regulatory principles are developed by the CRA as well as other regulators (FINTRAC, CRA, etc.), then re-interpreted into rules by an SRO, re-interpreted again and implemented as operational and compliance practices by each firm, and finally manifested as a package of new account and disclosure documents given to a client.

Even if clear as to their meaning, disclosure documents that address complaint handling or investor protection funds are unlikely to be a main point of focus for a client at the outset of the relationship with the firm or advisor. It is not that the disclosures are ignored, but these items only become relevant when there is a significant issue and it is highly likely that trust has broken down between the client and the advisor and / or firm. At that point, a firm is no longer in a position to educate the client.

CSA jurisdictions along with the SROs have done some work to educate investors, or at least ensure that clients are made aware of who the relevant regulator is and where they may be contacted. While changing the structure of the industry through SRO consolidation would certainly reduce some investor confusion, we would encourage both the CSA and SROs to expand outreach to investors to continue to reduce any investor confusion.

Issue 6: Public Confidence in the Regulatory Framework

We fully agree with the desirable outcome as described in the paper. However, while we understand the concerns about the public interest mandate and potential conflicts of interest and governance issues, we have not observed actual instances of the concerns raised as Dealer Members with IIROC.

We have found that the frequency and quality of trading, financial and operations and business conduct compliance examinations by IIROC are more than sufficient to create the perception that we are heavily regulated by the SRO. Investor complaints, even ones we thought to be somewhat spurious, were addressed with diligence by IIROC.
We believe that investor protection can be achieved without making a firm feel that it is the next enforcement case in the queue for the regulator. SROs should have very fulsome enforcement capabilities, but as much as they should focus on punishing wrongdoers they should be equally promoting practices that truly support existing and emerging needs of investors.

We believe that IIROC may appear to be captured by its Dealer Members in that it interacts with them frequently through the Board, District Councils and other formal mechanisms, and through one-on-one conversations. However, we feel that the ability to interact with IIROC is a strength of the SRO model in that those conversations can ultimately lead to effective implementation of rules which is clearly in the public interest.

As a Dealer Member we appreciate that IIROC considers the financial stability and the business realities facing firms in its rulemaking and application of a risk-based approach to regulation. We feel that IIROC recognizes that the strength of its members is a public interest consideration. Not only do strong firms grow and invest in new ways to meet clients needs, but they also have the means to invest in compliance regimes designed to protect investors; weak firms underinvest in compliance, and ultimately put clients at risk.

Finally, we would note that the strength of the SRO is critical in it being able to meet its public interest mandate. Like the firms it regulates, a strong SRO can invest in compliance and enforcement resources, and take a significant role in educating investors. Accordingly, we feel that SRO consolidation may have the strongest positive impact if it takes advantage of increased scale to increase activities that align closely to the public interest outcome.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

ATB Capital Markets has serious concerns with the MFDA's proposal to have the CSA assume control over the national market surveillance functions. In our view, we believe that IIROC has the expertise and knowledge under the current regulatory framework. In the event that the statutory regulators took over this function, we feel that it would be detrimental to the current functioning and integrity of the marketplace. This change would add significant costs and resources to realign a system that currently meets the mandate of protecting investors and strengthening market integrity while maintaining an efficient and competitive capital markets structure.

Further to the stakeholders' concerns about possible information gaps and fragmented market visibility resulting from market surveillance functions being separated from securities regulators, we disagree with the concern. We feel that the market surveillance and oversight of equity and debt trading under IIROC's purview is functioning well with the advantages of real-time equity and debt market surveillance and the use of real-time alerts. We believe that IIROC is currently doing a great job at protecting investors and strengthening confidence in the integrity of Canadian debt and equity markets under the UMIR Framework. It is our belief that IIROC has the required specialized industry expertise to continue the appropriate oversight of market surveillance.

Based on the foregoing, we disagree with the proposal that the current framework for market surveillance conducted by IIROC gives rise to conflicts of interest, information gaps or a fragmented market visibility. We disagree with the stakeholders who suggested that these conflicts of interest, information gaps or a fragmented market visibility would give rise to market vulnerability and increased systemic risk. The consultation paper denotes that the targeted outcome is an integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance. Further to our comments, we believe that IIROC already provides a timely, efficient access to market data and effective market surveillance with the existing real-time surveillance and alerts.

Summary

In closing, we believe that the CSA has largely identified the most important issues with the regulatory framework and the desired outcomes. On balance, we are of the view that there is a case for change to consolidate the SROs in order to reduce regulatory inefficiencies, reduce investor confusions, and create a strong, single SRO that is suitably armed to meet its public interest obligations. We are of the opinion that the SRO model has proven its value to firms and investors and feel that further development of the SRO structure is an important next step in strengthening securities regulation in Canada.

We appreciate the opportunity to provide you with our comments on the CSA Notice and Request for Comment. We look forward to our continued participation in any further consultation on this topic and would be pleased to discuss our input in greater detail with you. Should you have any questions or wish to discuss these comments, please contact the undersigned.

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Envoyé : 23 octobre 2020 22:45
À : Consultation-en-cours <Consultation-en-cours@lautorite.qc.ca>
Objet : Objet : 25-402 – Consultation sur le cadre réglementaire des organismes d'autoréglementation

Bonjour.

Je souhaite soumettre mon commentaire aux Autorités canadiennes en valeurs mobilières (ACVM) et à l'Autorité des marchés financiers.

Je suis un professionnel du secteur des valeurs mobilières et il m'apparaît que cette consultation a été lancée par et pour les grandes institutions bancaires canadiennes sans jamais tenir compte des milliers de professionnels qui conseillent le public.

Avec ce processus de consultation, il semble que les ACVM font le procès de l'autoréglementation dans son ensemble au Canada. Les OAR qui sont impliqués dans le processus sont basés en dehors de nos frontières et la question semble surtout toucher le reste du Canada (ROC)?

Mais, c'est en apparence, seulement!

Cette consultation nous affecte directement au Québec – mais tout cela s'est fait et se fait comme si on voulait tenir le Québec à l'écart de la discussion puisqu'on s'est arrangé pour que le sujet principal soit l'éventuelle fusion d'IIROC et du MFDA.

Faut-il rappeler de nouveau que le domaine des valeurs mobilières est un champ de compétences exclusivement provincial?

Les ACVM se servirait-il de cet exercice comme prétexte pour exclure du débat le Québec et pouvoir écarter d'emblée son expertise des 20 dernières années dans le domaine? Ont-elle l'intention d'ignorer l'opinion des quelque 30 000 intermédiaires en valeurs mobilières du Québec? Pourquoi le modèle d'encadrement des professionnels serait-il décidé dans le ROC par les seules grandes firmes de courtage qui ont pour la plupart leur siège social à Toronto?

Il y a par ailleurs lieu de s'interroger sur la façon de consulter des ACVM qui consiste à faire des pré-consultations avec une poignées d'intervenants. Ce sont ces mêmes dirigeants qui décident de l'orientation de la consultation et ont un à priori largement favorable aux grands groupes financiers qui contrôlent déjà les destinées des OAR*canadian*.

Coïncidence ou non, ce sont souvent ces mêmes joueurs qui réclamaient le démantèlement du modèle d'encadrement québécois, les mêmes qui voulaient l'abolition des chambres lors du PL 141 et lors des deux précédentes tentatives en 2007 et 2010 ceux qui voulaient remplacer la CSF par le MFDA.

Il s'agit d'une façon plutôt dangereuse de procéder. Cela menace la saine concurrence, menace l'autonomie professionnelle des conseillers québécois et menace surtout la protection des consommateurs du Québec.

Comment ne pas croire alors que le débat n'est pas faussé d'avance et que la question des économies d'échelles supposées ou de la simplification du système canadien des OAR cache aussi une nouvelle attaque contre le modèle d'autoréglementation québécois?

Le Québec, ses consommateurs, ses professionnels, ses régulateurs ont beaucoup à perdre là-dedans. Au terme de l'exercice annoncé, l'OAR fusionné sera contrôlé à Toronto. Ensuite, après avoir obtenu des délégations de pouvoirs de toutes les autres provinces, le Règlement 31-103 lui permettra de facto d'occuper le rôle de régulateur national en valeurs mobilières.

Ainsi, sur le plan réglementaire, le Québec souffrira d'une perte d'influence énorme. Sans compter les problèmes de cohérence et d'application des règles qui en découleront pour les cabinets québécois et leurs conseillers inscrits dans les disciplines de valeurs mobilières. Il s'agit encore une fois d'un cas typique d'harmonisation du ROC pour désharmoniser le Québec.

Comme des milliers de mes collègues professionnels, je crois qu'il faut bloquer toute tentative unilatérale de bouleverser notre environnement professionnel et éviter par la même occasion une perte d'influence réglementaire substantielle pour le Québec, son OAR en épargne collective, son industrie financière et son public. Nous devons être consultés en premier, le Québec doit faire respecter sa juridiction en matière de valeurs mobilières et nous devons nous opposer à toute menace de nos compétences et de notre autonomie professionnelle.

Je vous remercie de prendre mon commentaire en considération. Et je ne m'attends à rien d'autre que la discussion se poursuive au Québec pour le bénéfice des consommateurs et des conseillers d'ici comme il se doit.

Réal Charest, B.A.A., A.V.C., Pl. fin.

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Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs, Autorité des marchés financiers
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Dear Sirs/Mesdames:

RE: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

About Alternative Investment Management Association (AIMA)

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management. AIMA is a not-for-profit international educational and research body that represents practitioners in alternative investment funds, futures funds and currency fund management – whether managing money or providing a service such as prime brokerage, administration, legal or accounting.

AIMA's global membership comprises approximately 2,000 corporate members in more than 60 countries, including many leading investment managers, professional advisers and institutional investors and representing over $2 trillion in assets under management. AIMA Canada, established in 2003, has approximately 140 corporate members.

The objectives of AIMA are to provide an interactive and professional forum for our membership and act as a catalyst for the industry's future development; to provide leadership to the industry and be

its pre-eminent voice; and to develop sound practices, enhance industry transparency and education, and to liaise with the wider financial community, institutional investors, the media, regulators, governments and other policy makers.

The majority of AIMA Canada members are managers of alternative investment funds and fund of funds. Most are small businesses with fewer than 20 employees and $50 million or less in assets under management. The majority of assets under management are from high net worth investors and are typically invested in pooled funds managed by the member.

Investments in these pooled funds are sold under exemptions from the prospectus requirements, mainly the accredited investor and minimum amount investment exemptions. Manager members also have multiple registrations with the Canadian securities regulatory authorities: as Portfolio Managers, Investment Fund Managers, Commodity Trading Advisers and in many cases as Exempt Market Dealers. AIMA Canada's membership also includes accountancy and law firms with practices focused on the alternative investments sector.

For more information about AIMA Canada and AIMA, please visit our web sites at canada.aima.org and www.aima.org.

Comments

We are writing in response to **CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization (SRO) Framework**.

Overall, AIMA Canada supports the objective of reviewing the SRO framework and commends the Canadian Securities Administrators (CSA) on this initiative.

Further to our response on a similar topic in the recent Ontario Capital Markets Modernization Consultation, AIMA is supportive of a single SRO, responsible for the regulation of investment dealers and mutual fund dealers.

The governance and oversight of Canada's SROs are national issues and require a coordinated national solution. The CSA has demonstrated its capacity to operate as an effective quasi-national regulator over the last several years making significant strides in harmonizing securities legislation across all Canadian jurisdictions. Until such time as a viable national securities regulatory agency is in place, the CSA remains the best option to effect meaningful change in our capital markets. Ontario's capital markets are an integral element of Canada's economy and the OSC continues to play a central leadership role within the CSA. A unilateral amendment of the Recognition Orders could damage this leadership position.

We recommend that the OSC be directed to work with other CSA members to reform the governance and oversight of Canada's SROs, and work to towards a single SRO. The end result of a single SRO should bring lower costs, increased efficiencies, increased transparency and increased access to Canadian investors. This single SRO should have the appropriate technology, systems and infrastructure to handle all types of products, advisors and clients across Canada, in both small communities and large cities.

We support McMillan LLP's suggested SRO governance reforms, as highlighted in their comment letter for the Ontario Capital Markets Modernization Consultation. This would be implemented by the CSA including:

(i) consolidation of the operation and governance of the SROs within a single entity ("**Newco**") (discussed in further detail in our comments on Proposal 4 below);

(ii) determination of the optimal size of the Board of Newco;

(iii) a mechanism for the appointment of directors by CSA members and a resolution mechanism for the resolution of any disagreements concerning such appointments amongst CSA members;

(iv) a requirement that all directors of Newco be approved by the CSA;

(v) further development of the required criteria for a director of an SRO to be considered to be "independent", including a required "cooling off" period if a candidate has been previously employed by an SRO member.

(vi) a requirement that at least two-thirds of the Board of Newco be comprised of independent directors (including representatives of investor protection advocates);

(vii) a requirement that the Chair of the Board of Newco be independent;

(viii) the introduction of maximum term limits for directors; and a requirement that the Board approve the compensation of principal SRO executives in accordance with annual public interest and policy objectives developed and published by the CSA.

The CSA might consider establishing a standing committee responsible for the governance and oversight of SRO activities in Canada. We support McMillan LLP's suggestion that the SRO oversight committee should be comprised of permanent members from Ontario, Québec, Alberta and British Columbia, complemented by three rotating members (with three-year terms) from the remaining CSA jurisdictions. The SRO oversight committee would be empowered to establish sub-committees or working groups to address specific issues, as required, including ad hoc sub-committees or working groups headed by specific CSA members for matters having a specific local connection or importance.

The SRO oversight committee's responsibilities should include:

(i) development and publication of a three-year statement of policy and public interest objectives for Newco including long term recommendations of areas for the reduction of the regulatory burden and compliance costs of registrants;

(ii) development and publication of an annual statement of priorities for Newco in connection with the implementation of the three-year plan, including annual performance objectives for SRO executives upon which their compensation will be based;

(iii) approval of any significant new regulations or guidance developed by Newco or any material amendments to such regulations or guidance;

(iv) regular, as well as risk-based, oversight powers regarding the operations of Newco; and

(v) powers to review and resolve any complaints received from SRO members relating to the operation of Newco.

We do not support the creation of a separate ombudsperson for the review and resolution of SRO member complaints as we are of the view that this would only create an additional layer of regulatory oversight and costs. We believe that this role might be performed more effectively by an SRO Oversight Committee.

Furthermore, for the reasons set out below, we believe that the Newco should be primarily a prudential regulatory authority and do not support the extension of the scope of the Newco's regulatory authority to include portfolio managers, exempt market dealers or scholarship plan dealers.

As noted by McMillan LLP, as a result of the manner in which market participants have traditionally been regulated, significant knowledge and expertise has developed within:

(i) IIROC and the MDFA in relation to the oversight and regulation of investment dealers and mutual fund dealers (respectively); and

(ii) the OSC and individual members of the CSA in relation to the registration, oversight and regulation of portfolio managers, exempt market dealers and scholarship plan dealers.

Consolidation of the regulatory oversight for all of these categories of registrants in a single SRO entity would require a significant transfer of personnel with such knowledge and experience from CSA members to Newco and would likely result in jurisdictional disputes where registrant activities relate to a specific province or territory or multiple provinces or territories.

Many portfolio managers are also registered as investment fund managers in order to manage the investment funds that they advise and offer to investors in either a publicly offered investment fund or on a private placement basis (in which case they are also typically registered as an exempt market dealer in order to facilitate direct investments in the fund).

The consultation does not appear to contemplate that investment fund managers will be regulated by Newco. This would result in many portfolio managers being subject to regulation by both Newco and the applicable CSA member (or members) resulting in an additional, unneeded regulatory burden and increased costs for these registrants.

We agree with McMillan LLP's recommendation that:

(i) Newco be responsible for the prudential regulation of investment dealers, mutual fund dealers and national market surveillance matters; and

(ii) CSA members be responsible for the statutory registration function and regulatory oversight of all categories of registration (investment dealers, mutual fund dealers, portfolio managers, investment fund managers, exempt market dealers and scholarship plan dealers).

The prudential regulation authority of Newco would relate to matters including:

(i) minimum capital requirements,

(ii) liquidity requirements and

(iii) identification and control of risks (at both a macro and micro level).

A single SRO would remain subject to the oversight of the CSA in the manner we have proposed above.

A final solution to the SRO model in Canada should bring increased efficiencies (regulatory, operating, technological), increased consistency, increased transparency, reduced costs and an enhanced member experience, while maintaining or enhancing integrity, oversight and investor protection. It should also result in the fair access to advice and investment products for all Canadians in markets small and large.

We appreciate the opportunity to provide the CSA with our views on this initiative. Please do not hesitate to contact the members of AIMA set out below with any comments or questions that you might have. We would be pleased to meet with you to discuss our comments and concerns further.

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION CANADA

By:

Claire Van Wyk-Allan, AIMA Canada
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BY EMAIL

October 23, 2020

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Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs / Mesdames:

Re: iA Financial Group comments on CSA Consultation Paper 25-402 – *Consultation on the Self-Regulatory Organization Framework*

iA Financial Group appreciates this opportunity to submit comments on CSA Consultation Paper 25-402 – *Consultation on the Self-Regulatory Organization Framework* (the "**Consultation Paper**").

About iA Financial Group

iA Financial Group is one of the largest insurance and wealth management groups in Canada, with operations in the United States. Founded in 1892, it is one of Canada's largest public companies and is listed on the Toronto Stock Exchange.

The Wealth subsidiaries of iA Financial Group include the following:

- FundEX Investments Inc., a mutual fund dealer and exempt market dealer registered with l'Autorité des marchés financiers and a member of the Mutual Fund Dealers Association of Canada ("MFDA");

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- Investia Financial Services Inc., a mutual fund dealer and exempt market dealer registered with l'Autorité des marchés financiers and a member of the MFDA;
- Industrial Alliance Securities Inc., a full-service securities brokerage and a member of the Investment Industry Regulatory Organization of Canada ("IIROC");
- IA Clarington Investments Inc., an investment fund manager and exempt market dealer; and
- Forstrong Global Asset Management Inc., a discretionary portfolio management firm that uses exchange traded funds to build its clients' portfolios; and
- iA Investment Management Inc., a discretionary portfolio management firm providing services to permitted clients only.

The iA Wealth dealer companies focus on creating and preserving wealth for individual Canadians by working with independent advisors. We believe strongly in the critical role of the financial advisor and their delivery of advice to Canadian investors. To that end, our dealers offer an open and comprehensive product shelf to provide our advisors flexibility to create personalized advice solutions.

Comments

Benefits and Objectives

We support the role of SROs in the securities industry in Canada and acknowledge the benefits and strengths of the existing SRO regulatory framework identified in the Consultation Paper. In particular, we believe that the specialized industry expertise of the SROs and their proximity to the industry is beneficial to industry participants and to investors and that the national scope of SROs provides a more uniform level of regulation and supervision. Canada currently has 15 securities regulators tasked with surveillance of our capital markets. There is a unique opportunity in reviewing the current SRO framework to create a new consolidated SRO model that increases investor protection, creates efficiencies and eliminates duplication.

In considering a move to a new consolidated SRO model, making a broad assumption that the business model of one or the other of the existing entities meets all the desired outcomes or objectives of a new consolidated SRO model should be avoided. Instead, it is important to evaluate current successes, challenges and opportunities in order to deliver a new consolidated SRO model that maintains and enhances the current successes and achieves additional objectives. We believe that Canadians have benefited from the advice delivered within our current SRO structure. We support the opportunity for a new consolidated SRO model that seeks to incorporate the best of what the industry has to offer and stimulates innovation and development. There should be a concerted effort to reduce costs through scale and synergy, better fulfilling client needs while educating and increasing protection and confidence for our end clients, and reducing unnecessary costs of duplicative operations and compliance that are ultimately passed on to clients. The primary objectives of a new SRO model should include protecting investors, increasing investor access to advice and fostering opportunities to raise capital, facilitating operational efficiency for the new SRO as well as for industry participants, streamlining the regulatory burden on industry participants, and facilitating regulatory innovation. It is also critical that the new SRO model respects regional differences that exist.

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Issues and Challenges

Structural Inefficiencies

We recognize and acknowledge that the current SRO structure is not without its issues, and we echo the issues identified and summarized in the Consultation Paper. In particular, we recognize the structural inefficiencies of the current SRO structure, and the inefficiencies that are thereby created for industry participants. As a dual platform dealer, the regulatory burden and duplication of effort for our firm operating nationally is overwhelming. For example, the current structure and lack of common oversight standards has resulted in a need for multiple compliance teams and differing interpretations of similar rules between affiliated dealers. From an operational perspective, there are higher costs associated with the need to have different platforms and back-office services.

The same is true from a technology perspective. The importance of investing in technology in order to provide clients with a better digital experience is critical in today's business environment. Clients expect financial services firms to offer digital services on par with other industries. This technology investment is easily diluted when there is a requirement to implement multiple times to meet different regulatory requirements.

In the current SRO structure, it is difficult to find efficiencies given the need to maintain knowledge and respect the requirements of two different SROs. This lack of efficiency can lead to higher costs to clients, and to the inability to offer services to clients with smaller account sizes.

Costs of changes

In moving towards a new consolidated SRO model, we believe it is important to recognize the different needs of the various constituents. Any changes to the existing SRO structure should ensure that access to advice for clients with smaller account sizes or who are located in smaller communities across Canada is not disrupted as a result of increased costs or requirements on dealers. We support an independent entrepreneurial model that drives innovation and improved client service. Any new SRO regulatory structure must support a viable opportunity for new market entrants. Excessive regulatory, capital or cost burdens will deter new entrants. This prevents innovation, capital raising opportunities, solutions for investors and overall industry growth.

Current back office solutions range from sophisticated third-party providers to in-house proprietary software. For a significant sized dual platform dealer, a migration to a single book of record represents a multi-year project with immense effort and significant operational costs. In addition, many firms have invested significant capital into proprietary front-end or peripheral systems designed to enhance the client experience. Should these need to be revisited or reconnected to other systems in a new model, acknowledgement of these costs and flexible implementation timelines will be key. The scope and cadence of recent regulatory reform has brought significant cost and development challenges to the industry's system providers. Consideration must be given to these entities as the move to a new SRO model could marginalize currently viable businesses by creating technical incumbents and inadvertently creating a monopoly. The industry will be better served if there is healthy competition among solution providers who are motivated to continually invest and improve their platforms and the client experience.

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Fee Structure

It has become increasingly clear that the regulatory fees for members operating similar sized businesses within the current MFDA and IIROC models are different, despite their common alignment and responsibilities of protecting Canadian investors. The financial well-being of the new SRO model must be balanced with that of the industry participants and the peripheral firms which support it. It will be extremely important that the cost structure of a new consolidated SRO model be conducive to an environment that encourages new entrants, stimulates innovation and is fair to all members. Incremental expenses could ultimately be borne by the client, in the absence of other significant cost savings. The move to a new consolidated SRO model will undoubtedly incur costs of harmonization and integration, however a reduction in the regulatory burden could afford member firms with increased operational efficiencies and cost reductions which can be passed on to clients.

Regulatory Arbitrage

The new consolidated SRO model should have broad oversight authority to ensure that investors have access to the products and services best suited to their needs, rather than based on their advisor's business model or regulator. In the current regulatory environment, dealers, advisors and investors may make decisions based on their regulator and differences in rules or interpretation. For example, advisors may currently make decisions based on whether they can incorporate or direct commissions, or may take advantage of an opt-out structure that insulates them from the appropriate level of SRO oversight. Investors may make decisions based on regulatory oversight or documentation required. This regulatory arbitrage should be eliminated, and the principles of regulation should be consistent for all market participants. Product-based regulation should be consistent within the new SRO model. There should be no room for regulatory arbitrage stemming from differences in rules or interpretations. A consistent unified approach under the new SRO model is critical to create a level playing field that does not favour one business model over another.

Investors

For the end investor, the new SRO model must be accessible, simplified and easily understood. We believe that a move towards a single regulatory structure with a single set of principles and rules is ultimately in the client's best interest. In an increasingly complex industry, it is important for the regulatory environment to be as transparent and as simple as possible for the client to transact. We support collaborative efforts to help investors understand the role of the new SRO and specifics as they pertain to investor protection and complaint resolution.

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We will be pleased to participate in any further public consultation on this topic or discuss our responses in greater detail with you. We also thank you for giving us this opportunity to provide comments.

Sincerely,

Executive Vice President, iA Wealth

CITADEL | Securities

October 23, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission, New Brunswick
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention:

The Secretary
Ontario Securities Commission
comments@osc.gov.on.ca

M[e] Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Consultation-en-cours@lautorite.qc.ca

Re: Consultation on the Self-Regulatory Organization Framework

Citadel Securities Canada[1] appreciates the opportunity to provide feedback to the Canadian Securities Administrators ("CSA") on the consultation on Canada's framework for self-regulatory organizations ("SROs").[2]

We commend the CSA for soliciting feedback from market participants to ensure that the overarching regulatory framework continues to promote fair, efficient, and transparent markets in Canada. The CSA along with the provincial securities regulators has effectively utilized SROs in connection with carrying out market oversight responsibilities. In our experience, this approach has delivered many benefits, including (a) national standards with respect to regulation and supervision that universally apply across the various Canadian provinces and territories, (b) effective market surveillance, and (c) the appropriate inclusion of specialized industry expertise in

[1] Citadel Securities is a leading global market maker across a broad array of fixed income and equity securities. In partnering with us, our clients, including asset managers, banks, broker-dealers, hedge funds, government agencies and public pension programs, are better positioned to meet their investment goals.

[2] https://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20200625_25-402_consultation-self-regulatory-organization-framework.pdf

the regulatory process. As such, we advocate for the continued appropriate separation between SROs and government regulatory bodies and do not recommend removing market surveillance responsibilities from IIROC or adopting overly prescriptive requirements regarding the independent governance structures of the SROs. Instead, we suggest that the CSA continue to enhance information sharing arrangements with the SROs and consider consolidating the two SROs into one self-regulatory body if it could result in additional efficiencies for the Canadian financial markets.

* * * * * * * * * *

We appreciate the opportunity to provide comments on the SRO consultation. Please feel free to contact the undersigned with any questions regarding these comments.

Respectfully,

/s/ Mark Wilkinson
President, Citadel Securities Canada ULC

/s/ David Archer
Head of CES Canada

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Investor
Protection
Clinic

Alberta Securities Commission

Authorité des marchés financiers

British Columbia Securities Commission

Financial and Consumer Services Commission (New Brunswick)

Financial and Consumer Affairs Authority of Saskatchewan

Manitoba Securities Commission

Nova Scotia Securities Commission

Nunavut Securities Office

Office of the Superintendent of Securities, Newfoundland and Labrador

Office of the Superintendent of Securities, Northwest Territories

Office of the Yukon Superintendent of Securities

Ontario Securities Commission

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

VIA EMAIL TO:

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Ontario Securities Commission

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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs

Autorité des marchés financiers

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October 23, 2020

Dear CSA Working Group,

Re: Submission to the Canadian Securities Administrators (CSA) in response to the Consultation on the Self-Regulatory Organization Framework

We are writing on behalf of the new Investor Protection Clinic at the University of Toronto, Faculty of Law (the **IPC**) to provide our general feedback and comments on specific issues and the related targeted outcomes raised in *CSA Consultation Paper 25-402: Consultation on the Self-Regulatory Organization Framework* (the **CSA Consultation Paper**).

The IPC at the University of Toronto launched in September 2020 to provide free legal services and public legal education to members of vulnerable communities who are at risk of suffering harm, or may have suffered harm and financial loss, relating to their investments. We aim to improve access to justice by engaging in a broad range of activities to educate the community and to promote investor protection and rights. Our legal clinic serves retail investors in vulnerable populations by increasing their understanding and access to information on investor rights and recourse, and by providing free legal services. These communities will include the elderly and newcomers to Canada.

We examined aspects of the CSA Consultation Paper which have a disparate impact on retail investors and investor confidence, particularly those described under *Issue 5: Investor confusion and Issue 6: Public confidence in the regulatory framework*. In addition, we reviewed the materials referenced in Appendix B.

Below, we comment on three key concerns which relate to the following issues:

- reducing inefficiencies and investor confusion due to overlapping regulatory jurisdiction;
- improving investors' ease of access to advice and products; and
- improving the current regimes on enforcement and providing remedies for investors.

1. Reducing inefficiencies and investor confusion due to overlapping regulatory jurisdiction in the current SRO framework

We observe that inefficiencies due to overlapping regulatory jurisdiction create investor confusion. The current self-regulatory organization (**SRO**) framework is structured with a focus on specific products, such that Investment Industry Regulatory Organization of Canada (**IIROC**) members can offer a wide range of products from mutual funds, guaranteed investment certificates, stock, bonds and options to more complex alternatives, while Mutual Fund Dealers Association (**MFDA**) members can only offer mutual funds and exchange-traded funds (**ETFs**) that meet the definition of a mutual fund. Dealers not regulated by these two SROs are regulated by the CSA. This three-tiered system can cause confusion by limiting investor access to advice and products, making it difficult for retail investors to make the investment choices best suited to their needs and objectives.[1]

Having to navigate between the advisors and dealers under the various SRO regimes can lead to investor fatigue, resulting in investors giving up on finding the right investment for them. Investors in rural areas are especially susceptible to this fatigue. The more rural an area, the less diversity there is in dealer membership.[2] If a client of a MFDA dealer wants to diversify or expand their investment portfolio, they must open a new account with a new investment firm. As a result, investors sticking with one advisor are limited in their access to advice, knowledge, and investments. In addition, dealers whose clients wish to invest in products not offered by them may be incentivized to dissuade them from doing do. This is a potential conflict of interest which potentially limits and harms investor choice.

Moreover, the regulatory overlap in the current SRO framework causes inefficiencies in responding to evolving investor needs. When an investor's needs shift, their current advisor may not offer the products best suited to meet their changed circumstances. The newly-formed mismatch leads to suboptimal advice for their investment portfolio, and potential investor confusion and fatigue where the investor must spend time and energy to research and locate a new advisor and investment firm and open a new account.

Reduce investor confusion with consolidated SRO platform

Both IIROC and the MFDA have proposed a consolidation of the SRO platforms, though their respective proposals on how to reform the SRO framework differ.

IIROC proposes merging the platforms, followed by consultations to combine and streamline the rules one by one.[3] This approach looks to leverage the strengths of both the IIROC and MFDA. By contrast, MFDA proposes to build a new SRO to prevent being confined to traditional SRO rules; the MFDA explains that this approach may make it easier to implement new initiatives dealing with the duplicative inefficiencies and public mistrust of the system. Below, we comment on specific aspects of these proposals.

Improvements for investors under the proposals

Under either of the combined platform propositions, investors would be able to access a diversified pool of investment products without having to switch advisors or firms. Improved investment product access would improve investor to access to the best investment advisors and products that suit their risk profile, financial constraints and goals without being limited by dealer status. Accordingly, investors would be less likely to suffer investment fatigue or confusion.[4]

We regard IIROC's approach as beneficial because a more gradual change in the rules would allow investors and dealers to gradually adapt to the new SRO as the rules evolve. By contrast, starting an SRO from a blank slate is a longer, more complex process which requires the new rules be laid out from the outset. This complexity means investors would face significant delays before they can enjoy the benefits of the new system.

The MFDA approaches governance of the new SRO differently from the IIROC, but we believe elements from both proposals would boost investor and public confidence. IIROC approaches the new SRO's governance by proposing more board directors with investor protection experience and the building of an expert investor issues committee. By contrast, the MFDA emphasizes having CSA nominees in addition to industry and independent directors on the board. The active role played by CSA nominees will enhance public interest protection. A combination of board directors with greater investor protection experience and the active participation of CSA nominees will strengthen and protect investors' interests.

Investors are concerned about the strong influence of industry on the board of SROs, and the SROs' ability to fulfill their public interest mandate. The CSA's direct participation as a board member can alleviate conflicts of interest inherent to a SRO structure. In addition, directors on the board with investor protection experience would serve to balance out the industry perspective by giving a greater voice to investors' concerns.[5] We support FAIR Canada's proposal to staff the board of the new SRO with an equal share of directors who represent SRO dealer members'

interests and directors that represent the investing public's interests.[6] These changes to the new SRO governance structure would help guard against regulatory capture, ensuring that the new SRO does not act in a way to benefit the very industry that it regulates, rather than the public.

How will costs savings from merger benefit investors?

Under the current SRO framework, there are duplicative costs for firms that have both MFDA and IIROC registered dealers. Under a new single SRO framework, reduced operating costs to investment firms if passed on to their clients through reduced costs and fees would mean lower investment costs for retail investors.[7] If a new SRO framework could also simplify and streamline the investor experience by facilitating access to advice and products, that would reduce investor confusion and fatigue.

IIROC asserts that under its proposal, the merger to form a single SRO would reduce overhead of the member firms which will be re-invested into customer service and innovation. However, we are concerned that there seems to be no plan associated with how these funds will be reinvested. A study published by Deloitte states that over a 10 year period, the dual-platform investment firms can expect to save $380-$490 million CAD.[8] However, of the 175 dealer firms that IIROC regulates, only 25 are dual platform dealers. [9] Consequently, on the IIROC platform, only 14% of IIROC firms would benefit from these cost savings; 86% of the current IIROC dealers will not experience any savings. There is no guarantee that these savings by 14% of its members will be redistributed to retail investors.

Cost-savings alone should not be determinative of how to reform the SRO framework, especially without more plans on how the new framework would improve the investor experience and reduce confusion. A simple merger for cost savings, without more detailed proposals for reform on investor access to advice, products and complaint resolution, might lead the regulatory industry to become tired of this process, and stop before any real change has taken place. While there is no clear answer as to how to reform the SRO framework to best address the concerns of investors, we believe the CSA should consider which option would have the best long-term outcome for investors.

2. Improving investors' ease of access to advice and products

One of our overarching concerns with the current SRO framework is the lack of transparency and control in the wealth management process from the investor's perspective and how it may exacerbate barriers to investing.

Reducing barriers to investment services

There is a persisting lack of access to the full range of products from one representative and investors may face rigid barriers when attempting to transition between investment services. For example, there is a growing demand for ETFs, but access is limited for clients of mutual fund dealers.[10] Investors who wish to progress from mutual funds to ETFs may need to change firms or representatives.[11]

Some key factors which encourage investors to stay with more basic investment products include: comfort with their current financial advisors and existing mutual fund options[12], lower levels of trust in alternative products relative to mutual fund options[13], lack of access to a full range of products from one advisor or dealer[14], "friction" or high switching costs for investors between mutual funds and other products.[15] Such barriers may discourage an investor from investing compared to having an advisor within a dealer with access to a full range of products who can guide them through the entire financial planning and investment process in one setting.

We are also concerned with how investor access to investment products and services may be affected by due to the economic incentives of advisors and dealers under the current SRO framework. It is well documented in the financial economics literature that there is a fundamental, prevalent conflict between the interests of brokers and the interests of investors.[16] There is evidence that certain incentive structures skew mutual fund brokers incentives and can lead to worse investment performance for their clients.[17] There is also significant evidence that mutual fund sales loads skew brokers incentives leading brokers to sell inferior products to customers.[18] The current segregated SRO framework in Canada only exacerbates the problem by limiting the type of products that a particular dealer can sell, which could lead to investment advice which may not be the best tailored to their client's circumstances. For example, an MFDA member that can only sell mutual funds has an incentive to sell mutual funds to their clients whether or not a different investment product may be better suited for their clients' needs.

Promoting more equitable access

The current regulatory framework may perpetuate differences in access based on geographic, demographic or pecuniary differences. For example, an investor residing in a rural area may not have access to certain products offered by IIROC dealers as these areas are predominantly occupied by mutual fund dealers.[19]

In considering how to reform the SRO framework, we consider that more equitable access to investing may be promoted through improving consistency and transparency in the interpretation of standards under the current regulatory framework by each of the SROs.[20] For example, differences in interpretation of suitability requirements by each SRO create different ranges of access to products for the same investor. A particular product may be viewed as suitable by a member

of the IIROC, but unsuitable by the MFDA.[21] This creates differences in access to advice and range of products by two different investors who otherwise have identical characteristics and risk profiles.

Under a new SRO structure of a single SRO, whether in the form envisaged by IIROC or the MFDA, investor access to products could increase by allowing one-stop shopping, a feature desired by 86% of current investors.[22] It would also promote competition for clients among dealers by enlarging the dealer pool rather than separating dealers into two siloes. Overall, a single SRO would allow for a larger and more efficient investments market.

Simply consolidating SROs into a new regulatory framework will not guarantee improved access to investment products or services. Housing the current regulatory framework within a parent organization, or having one organization absorb the other does not change the retail investor experience unless this new organization is focused on harmonizing regulations of dealers and product offerings, and sharing information about access to products, services, and advice with the public through outreach. It would be important for any new SRO framework to emphasize the need to improve access, but it should also help investors understand what investment services and products are available and how to find an advisor.

3. Improving the current regimes on enforcement and providing remedies for investors

Shortcomings of SRO enforcement under the SRO framework

Under the current SRO framework, violations of SRO rules can lead to fines, suspensions or industry bans for both firms and individuals.[23] Yet despite these enforcement sanctions, we believe that reform of the SRO framework should address the need for improved enforcement mechanisms to properly protect retail investors. Most notably, SROs lack the power to order restitution or to compensate victims of wrongdoing by investment dealers.

We recognize that the level of coordination required between government and CSA members could be problematic and poses challenges for establishing a compensation scheme for investors, particularly at the SRO level. However, in our view, an amended SRO framework should improve on the current avenues of recourse available to investors and make an investor compensation scheme simple to administer and accessible to investors.

What can be improved for investors?

In the United States, regulators can create compensation funds for harmed investors.[24] These funds are generally made up of disgorged amounts, fines and interest.[25] Ideally, a Canadian system would offer restitution in a similar way. To be effective, then, SROs should have: (1) the power to maximize fine collections; and (2) a structure which makes restitution orders as simple as possible for investors.

Today, industry representatives looking to avoid a fine imposed by IIROC or the MFDA need only leave the industry – which many do.[26] In response, some provinces have sought to increase fine enforceability.[27] While this has helped, most fines still remain unpaid.[28] One potential solution, to improve enforceability, would involve firms paying any amounts owed by former advisors.[29] SRO contracts with dealer firms could, for example, include joint and several liability clauses as between firms and their representatives. This would increase collections, while also incentivizing compliance and supervision at the firm level.[30] We are cognizant that this contractual mechanism might allow firms to indemnify advisors. However, in our view, investor compensation and protection should be prioritized.

A single, comprehensive SRO would likely be more successful in administering a future investor compensation scheme. It would allow for a single recovery fund (regardless of product type), while minimizing investor confusion over the process. Even if an SRO did not administer such a scheme, a single, comprehensive SRO would help ensure consistency in both outcome and public communication.

The difficulties of pursuing compensation for an investor under the IIROC arbitration program

Currently, an investor seeking a legally binding resolution for a dispute with an IIROC dealer must consider either the IIROC arbitration program or civil litigation. In the event an investor wishes to proceed with arbitration, they must pay arbitration fees and related costs. Furthermore, while investors are not required to hire legal representation in arbitration proceedings, the dealer firms against whom they are seeking compensation will always be represented by a lawyer.

This dynamic creates a difficult situation for investors who have suffered financial loss and harm due to misconduct or non-compliance by their investment dealer firm and/or investment advisor. First, investors must grapple with the costs of arbitration fees which may be prohibitive depending on the financial resources available to that investor. Secondly, investors face the daunting prospect of representing themselves in a legal proceeding against experienced counsel and this may lead to pressure to retain legal counsel in arbitration, further increasing the direct costs to investors. For many investors, the high cost of legal representation relative to the loss suffered may hinder them from pursuing the claim. Third, IIROC arbitration is capped at $500,000 plus interest and legal costs.[31] While $500,000 is not an

immaterial amount of money to many retail investors, it may not be sufficient to an investor who has lost their life savings due to their dealer or advisor's misconduct. This creates a barrier for investors who have lost more than $500,000 as they will have to pursue much more costly and time-consuming litigation.

Changes to the IIROC arbitration program should focus on reducing the direct costs that currently fall on the complainant in order to make the program more accessible to investors. As it stands, administrative and arbitrator fees are usually divided equally between the investor and the IIROC dealer firm. IIROC should consider different measures that could allow for a subsidization of investor fees related to arbitration, either through increased membership fees or through use of collected fines. In addition, resources should be dedicated to increasing investor competence in self-representation so that if an investor cannot afford the costs associated with retaining legal counsel, they will not be disadvantaged in arbitration proceedings. This could be accomplished by creating investor-focused brochures or webcasts that explain the essentials of how to represent oneself in an arbitration proceeding.

Improving the OBSI complaint process for investors

In our view, the Ombudsman for Banking Services and Investments' (**OBSI**) non-binding recommendation authority contributes to the complexity of the SRO framework and is not sufficiently comprehensive to act in the public interest. Under the current regime, OBSI only has the power to issue recommendations for remedies.[32] These recommendations, while often followed, are non-binding on dealer-members of the SROs.

Consequently, firms could negotiate down the amount of compensation paid out to affected customers. A review found that in over 1 in 3 cases considered by OBSI, the paid out compensation was not the recommended sum.[33] While in half of the cases, the subsequent payment was more favourable to the affected customer, in cases where the payment was negotiated down, the reduction in payment amounts was over three times the total increase in payments. This incapacity to issue binding recommendations undermines the industry's reputation and investor confidence. Reform of the SRO framework should consider how to improve the enforceability of OBSI recommendations, if it is not feasible for OBSI decisions to have binding authority.

While we acknowledge the significant benefit to investors of having a complaint process through OBSI, we observe a number of aspects that can be improved, which in turn would improve access to justice for investors. For instance, the burden of supplying evidence falls on the customer, yet customers are not given any guidance on what type of evidence may be material. The online application process does not provide any guidance on what to include or may be relevant to the complaint. Case studies on the website show what factors OBSI may consider during the investigation process for a successful claim. However, these case studies feature financial terminology and situations which an average customer may

not be familiar with. Moreover, the non-participatory nature of OBSI's complaint process disregards the importance of testimony from the parties that ultimately suffered loss. For those without the resources to access the court system OBSI may be their only alternative. Yet, it lacks crucial features that can help reach a fair and just decision.

Summary and Conclusions

We have commented on those aspects of the CSA Consultation Paper which have a disparate impact on retail investors and investor confidence, particularly those described under *Issue 5: Investor confusion* and *Issue 6: Public confidence in the regulatory framework*. Our three key concerns relate to:

1. reducing inefficiencies and investor confusion due to overlapping regulatory jurisdiction;

2. improving investors' ease of access to advice and products; and

3. improving the current regimes on enforcement and providing remedies for investors.

A consolidated SRO platform, whether achieved through merger or the formation of a new SRO, would benefit investors by having the potential to reduce investor confusion and fatigue. We believe that a consolidated SRO would also serve to reduce barriers to investment advice, products and services that investors currently face, as well as promote more equitable access to investing.

Cost savings should not be the primary determinant for the new SRO structure, without considering how the savings may lower costs for investors or otherwise improve investor access to advice, products and complaint resolution.

The restructuring of the SRO framework must address the shortcomings of the complaints and disputes resolution processes for investors. An improved framework should provide for the power to maximize fine collections and a dispute resolution process which can provide compensation or restitution to investors in a timely and cost-effective manner. To promote its public interest mandate, a new SRO's governance structure should include a board of directors with investor protection experience, CSA nominees and independent directors.

We believe that reform of the SRO framework which considers and addresses the issues which we have highlighted will serve to improve investors' understanding, provide appropriate investor protection and ultimately serve the public interest.

We thank you for the opportunity to comment and participate in this consultation process.

Sincerely yours,

Project SRO Working Group

Investor Protection Clinic

The University of Toronto, Faculty of Law

Appendix A

Members of the Project SRO Working Group

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Mitchell Hayes

Michelle Huong

Shawn Lallman

Anton Lunyov

Jacob Reynolds

Karan Sharma

Nick Studley

Chandrasekar Venkataraman

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Appendix B

Endnotes

[1] The lack of dealer product uniformity due to overlapping regulatory jurisdiction confuses investors. For example, someone who deals exclusively with an Approved Person under the MFDA will only be offered and have the option of mutual funds. The investor may not be aware that there are other investment products or why their advisor cannot offer other products and they can be left confused by this.

[2] See “Consultation on the Self-Regulatory Organization Framework” (June 2020) 43 OSCB 5484, CSA Consultation Paper 25-402 at 12, online: *Ontario Securities Commission* <https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20200625_25-402_consultation-self-regulatory-organization-framework.htm>

[3] IIROC proposes the merger of the IIROC and MFDA platforms; MFDA goes further and suggests the merger of IIROC, MFDA, and direct registrants under the CSA.

[4] Though we understand that the MFDA proposal (regarding improved access) is contingent on a change in the registrant category regime, the IIROC proposal would only allow mutual fund dealers to distribute ETFs in an easier way and this improvement is contingent on better access to the ETF clearing and settlement system.

[5] We would also propose a clearer definition of ‘independent director’. We suggest that greater clarity in the roles for the board members of the new SRO may ensure the SRO’s public interest mandate is upheld.

[6] See Ermanno Pascutto, "Submission to CSA on the proposed scope of the review of self-regulatory organizations” (27 March 2020) at para 16, online: *FAIR Canada* <https://faircanada.ca/submissions/submission-to-csa-on-the-proposed-scope-of-the-review-of-self-regulatory-organizations/>

[7] See Joanne De Laurtentiis, “Ripe for Reform: Modernizing the Regulation of Financial Advice” (October 2019) at 3, online (pdf): *CD Howe Institute* <https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary%20556.pdf>

[8] See Deloitte Touche Tohmatsu Limited, "Assessment of the Benefits and Costs of Consolidation” (July 2020) at slide 11, online (pdf): *IIROC* <https://www.iiroc.ca/industry/sro-proposal/Documents/Deloitte_Assessment_of_Benefits_and_Costs_of_SRO_Consolidation_Final_EN.pdf>

[9] *Ibid* at 23

[10] *Ibid* at 9

[11] See *supra* note 6 at 24

[12] See Pollara Strategic Insights, "Canadian Mutual Fund & Exchange-Traded Fund Investor Survey" (September 2020) at slide 8, online (pdf): *IFIC* <https://www.ific.ca/wp-content/uploads/2019/09/IFIC-and-Pollara-Strategic-Insights-Investor-Survey-September-2019.pdf/23217/>

[13] *Ibid*

[14] See *supra* note 9 at 9

[15] See *supra* note 6 at 24

[16] Susan E. K. Christoffersen, Richard Evans & David K. Musto, "What Do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives" (2012) 68:1 J Finance 201.

[17] *Ibid*

[18] Mark Egan, "Brokers versus Retail Investors: Conflicting Interests and Dominated Products" (2019) 74:3 J Finance 1217.

[19] *Supra* note 2 at 22

[20] We would also include the extension of the SRO's oversight functions to direct registrants (Exempt Market Dealers, Portfolio Managers, Scholarship Plan Dealers).

[21] *Supra* note 2 at 17

[22] See the Strategic Counsel, "Access to Advice: Key Findings" (Jan 2020) at 6, online (pdf): *IIROC* <https://www.iiroc.ca/investors/Documents/Access-to-Advice-Presentation-FD_en.pdf>

[23] IIROC, "Penalties: What A Panel Can Impose" (2020), online: *IIROC* <https://www.iiroc.ca/industry/enforcement/Pages/Penalties-What-the-Panels-Can-Impose.aspx>; MFDA, "Enforcement" (2020), online: *MFDA* <https://mfda.ca/enforcement/sanction-guidelines/>

[24] Drew Hasselback & Barbara Shecter, "The OSC has introduced steps to help recover funds for wronged investors, but are they enough?", (30 October 2015), online: *Financial Post* <https://financialpost.com/news/fp-street/the-osc-has-introduced-steps-to-help-recover-funds-for-wronged-investors-but-are-they-enough>; FINRA, "Legitimate Avenues for Recovery of Investment Losses" (2020), online: *FINRA* <https://www.finra.org/investors/have-problem/legitimate-avenues-recovery-investment-losses>.

[25] *Ibid*.

[26] Barry Critchley, "IIROC and unpaid fines Part 11: Time to give it the power in Ontario to collect from those who leave the industry", (9 March 2016), online: *Financial Post* <https://financialpost.com/news/fp-street/iiroc-and-unpaid-fines-part-11-time-to-give-it-the-

power-in-ontario-to-collect-from-those-who-leave-the-industry>; David Baines, "MFDA struggling to collect fines", *Investment Executive* (5 December 2007), online: investmentexecutive.com/newspaper_/news-newspaper/news-42184/.

[27] Peter R Greene & Wendy Sun, "IIROC And MFDA Can Now Collect Fines In Court" (5 July 2017), online (blog): *The Litigator* <https://www.thelitigator.ca/2017/07/iiroc-and-mfda-can-now-collect-fines-in-court/>

[28] IIROC, "Enforcement Report 2019" (2019) at 23, online (pdf): *IIROC* <https://www.iiroc.ca/news/Documents/IIROC2019EnforcementReport_en.pdf> [*IIROC*]; IIROC, "Enforcement Report 2019" (2019) at 23, online (pdf): *IIROC* <https://www.iiroc.ca/news/Documents/IIROC2019EnforcementReport_en.pdf>. Fine collections from individuals have gone up materially in 2018 and 2019.

[29] Ken Kivenko, "Request for Comments Regarding the Statement of Priorities for Financial Year to End March 31, 2019" (30 April 2018) at 16, online (pdf): *Ontario Securities Commission* <https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20180430_11-780_kenmar.pdf>. Having firms pay outstanding fines is also discussed in this paper.

[30] *Ibid*. See also *IIROC, supra* note 28 at 23. Firms generally pay fines.

[31] IIROC, "Getting Your Money Back" at Arbitration, online: *IIROC* <https://www.iiroc.ca/investors/gettingyourmoneyback/Pages/default.aspx#:~:text=The%20Arbitrator%20can%20award%20up,costs%20to%20the%20successful%20party>

[32] It operates on a "name and shame" basis by publishing a firm's refusal to follow through on OBSI's recommendations. An independent evaluation of OBSI in 2016 (Page 27) noted, however, that there was no evidence that naming and shaming had improved the behaviour of those who were at risk of outright rejecting OBSI's decisions. The evaluation is found online (pdf): *OBSI* <https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/2016-Independent-Evaluation-Investment-Mandate.pdf>

[33] *Ibid*

TD Bank Group
TD Bank Tower
66 Wellington
Street W.
Toronto ON
M5K 1A2

October 23, 2020

Submitted Via Email

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: the Canadian Securities Administrators Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

We are pleased to provide comments in response to the CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Framework, dated June 25, 2020 (the "SRO Framework Consultation"). This letter is being submitted on behalf of TD Waterhouse Canada Inc., TD Investment Services Inc., TD Asset Management Inc. and TD Waterhouse Private Investment Counsel Inc. (collectively "TD" or "we"). TD Waterhouse Canada Inc. is a Dealer Member of the Investment Industry Regulatory Organization of Canada ("IIROC") and TD Investment Services Inc. is a Member of the Mutual Fund Dealers Association of Canada ("MFDA"). TD Asset Management Inc. and TD Waterhouse Private Investment Counsel Inc. are both directly regulated by one or more Canadian securities regulators (collectively the "CSA"). TD supports the CSA's efforts to review the benefits, challenges and issues of the current SRO regulatory framework, as well as the CSA's targeted regulatory outcomes of promoting regulatory efficiencies, harmonization, consistent access to products and services, flexibility for innovation, investor protection and market surveillance.

The purpose of our submission is to highlight the importance of any new or amended SRO framework:

- allowing for a distinct mutual fund/ETF business ("mutual fund channel") to be preserved as a separate registrant or as a line of business within a single registrant with multiple lines of business;

- ensuring that investment advice at an affordable price continues to be available to Canadians;
- appropriately differentiating amongst the spectrum of service offerings, from order-execution only, to simplified investment-fund only models, to full-service brokerage services, to discretionary portfolio management; and
- facilitating new and innovative business models, including potential hybrid models, to best provide clients with affordable suitable offerings.

Preserve mutual fund channel

TD agrees with the responses to the specific questions posed in the SRO Framework Consultation provided by the Investment Industry Association of Canada ("IIAC"), in their letter dated October 23, 2020. However, IIAC's letter is predicated on the assumption that an IIROC-MFDA merger will inevitably result in firms consolidating their IIROC and mutual fund channels into one channel.

It is important for the CSA to note, and to anticipate that, some firms may still find value in preserving a distinct mutual fund channel and a distinct full-service brokerage channel to best serve their clients' needs in a cost-effective manner. Therefore, the regulatory framework for any new or amended SRO should support firms either preserving a mutual fund channel as a separate registrant or structuring this channel as a separate line of business within a single registrant with multiple lines of business. Where organized as separate lines of business within a single registrant, the regulatory framework should allow for treating each line differently, according to the specific products and services offered in each business line.

Ensure access to affordable advice

Many Canadians have concerns about long-term financial security and prosperity. This has been amplified with the pandemic. Accordingly, ensuring investors can access lower-cost, simplified investment solutions remains more important than ever. As such, any new or amended SRO framework must benefit investors by fostering investor protection while also maintaining investor choice for lower-cost solutions. Eroding basic retail offerings through excessive regulation more suitable for more complex products will adversely affect retail investors without significantly improving investor protection.

Differentiate service offerings

While we support greater consistency of regulatory approach where possible and appropriate, the businesses that IIROC and MFDA regulate remain diverse and that diversity warrants appropriate differentiation in regulation. Such differentiation is important for helping to ensure small retail investors have ongoing access to cost-effective investment products and services.

As various stakeholders cited in the SRO Framework Consultation have noted, SROs have traditionally regulated their members through prescriptive rules that often limit investment offerings and increase regulatory burden for firms with less complex product offerings. By using a principles-based model that differentiates requirements by product and service offerings, firms with simplified retail offerings could meet regulations suitable to their offerings which would differ from those regulations suitable to firms offering more complex products that are designed to achieve more sophisticated investment strategies. Appropriate regulatory differentiation for simplified offerings would enable firms and the regulating SRO to focus compliance and control resources on more complex offerings.

Accordingly, any new or amended SRO framework should appropriately address retail offerings in the mutual fund space. The complexity of a mutual fund distribution channel that enables clients to purchase fully paid mutual fund offerings is considerably less than that posed by channels which offer margin trading, alternative funds or more sophisticated trading strategies. Any new or amended SRO requirements should appropriately differentiate the level of regulation to reflect this diversity.

Accommodate Innovative Business Models

The provision of investment services continues to evolve in response to increased investor demand and technological progress. In this changing environment, investors are better served when businesses innovate in order to provide clients with improved products and services in an accessible, affordable

manner. Often such innovation revolutionizes the way business is organized, including business structure, products, offerings and service delivery.

TD encourages the CSA to ensure that any new or amended SRO framework can nimbly respond to and accommodate new business models that better serve clients. We note that IIROC's commitment to innovation and accommodating new digital advice and service offerings has been well received by business and clients, alike. Recent examples of IIROC's progressiveness includes its guidance on:

- the use of automation in the account opening process for order execution only dealers;
- electronic signatures/e-signatures; and
- technological tools offered by order execution dealers for informing clients, such as portfolio analyzer tools.

Neither SRO member clients nor the markets are protected or served by regulatory requirements that cannot adequately accommodate innovative practices that respond to evolving client concerns, expectations and demands.

Additional consultation on registrants directly regulated by CSA

We agree with the approach taken by the CSA in the SRO Framework Consultation, which was to examine the issues and challenges of the current framework, without proposing any specific solutions. While the SRO Framework Consultation does not propose any specific solutions, nor does it pose any questions on a new or amended SRO regulating all registrant categories, we would like to note there would be significant complexities and potential capital implications in moving investment fund managers, portfolio managers and exempt market dealers, that are currently registered with the CSA, to an SRO model.

Before any consideration is given to moving additional registrants to an SRO, we recommend that the status of any potential merger or other combination of IIROC and the MFDA on the existing regulatory landscape, including capital obligations, business models, and investment products and services, be assessed.

Thank you for the opportunity to provide our views and recommendations regarding the SRO Framework Consultation. Should you require any further information please do not hesitate to contact us.

Sincerely,

Leo Salom,
Group Head, Wealth Management
and TD Insurance

Kerry Peacock,
EVP Branch Banking and Distribution Strategy

APCSF | Association Professionnelle des Conseillers en Services Financiers
Professional Association of Financial Services Advisors

Vendredi 23 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246 Tour de la Bourse Montréal (Québec)
H4Z 1G3

Objet : 25-402 - Consultation sur le cadre règlementaire des organismes d'autoréglementation

Je souhaite soumettre un commentaire aux Autorités canadiennes en valeurs mobilières (ACVM) et à l'Autorité des marchés financiers.

La présente consultation qui porte sur le cadre règlementaire des organismes d'autoréglementation (OAR) canadiens aura vraisemblablement des impacts majeurs au Québec. Toutefois, cette importante consultation a été décidée et se déroule à toutes fins utiles à l'extérieur des frontières de notre territoire puisqu'elle a été initiée par les grandes institutions de dépôt canadiennes de Toronto avec comme objectif principal l'amélioration de leurs propres conditions tout en y greffant de vagues promesses d'apparat concernant une protection accrue des épargnants.

Il ressort de cet exercice que la situation de quasi-monopole dont bénéficient déjà les grandes banques avec leurs réseaux de distribution se consolidera encore davantage puisque les petits courtiers en épargne collective se retrouveront privés de représentation à la table des grandes firmes de courtages advenant une fusion des deux OAR canadiens. Ce qui est déjà annoncé. Conséquemment l'APCSF par la voie de son président et conseil d'administration a entrepris la diffusion d'une pétition pour mettre au courent les représentants en fonds communs de l'initiative de ceux deux organismes. Liens pour la pétition :

- http://chng.it/QwCGdwvK (français)
- http://chng.it/j4MpMRYs (anglais)

L'encadrement règlementaire appliqué par les associations de sociétés de courtage que sont l'OCRCVM et l'ACCFM qui prévaut actuellement dans le reste du Canada (ROC) est un encadrement d'une autre époque qui favorise les sociétés bancaires et qui considère les conseillers comme des « employés ». Dans ce modèle éculé, les OAR supervisent les firmes de courtage et les firmes de courtage encadrent les

intermédiaires à qui elles imposent un fardeau de règles prescrites et d'obligations qui ne cessent de s'alourdir. Dans ce système, les conseillers sont considérés comme des subalternes et ne participent pas de façon démocratique à l'amélioration des pratiques, à la déontologie, à la formation continue, à la prévention et à la reconnaissance de leur professionnalisme et à l'Independence du conseil financier.

Les acquis du professionnalisme

Par ailleurs, le modèle québécois actuel responsabilise le conseiller professionnel qui doit prioritairement servir l'intérêt du client avant le sien. C'est le cœur du professionnalisme. Les clients doivent pouvoir avoir confiance en leur conseiller en raison de la complexité du domaine et des impacts possibles sur leur santé financière.

- Le conseiller membre de la CSF peut se prévaloir de plusieurs privilèges que lui confère son appartenance à une organisation professionnelle :
- Le contrôle sur la formation continue et la qualification des membres par l'entremise de la CSF
- Une autonomie certaine dans l'organisation et la régulation des activités professionnelles
- La participation aux activités, au conseil de l'organisation, aux différents comités, dont le comité de discipline et aux décisions concernant la profession
- L'obligation spécifique de servir l'intérêt supérieur du client n'est pas inscrite dans la règlementation des OAR canadiens.

Concurrence affaiblie = protection du public menacée

La protection du public passe par une saine concurrence. En forçant l'établissement de nouvelles règles sur le territoire québécois dont les répercussions risquent de nuire à la survie des courtiers, de petites tailles, les OAR canadiens et les ACVM vont favoriser la mainmise des grands groupes financiers sur le secteur des valeurs mobilières, laissant le marché devenir de plus en plus concentré.

En limitant la concurrence ou en réduisant l'entrée sur le marché de joueurs de plus petites envergures sans avantage démontrable pour les consommateurs, les décideurs des ACVM pourraient rompre l'équilibre essentiel entre les intérêts de la protection des consommateurs et les vertus du marché dynamique et concurrentiel qui caractérisent le Québec aujourd'hui.

L'importance du conseil pour tous les Québécois

Il est primordial pour l'État québécois que les familles puissent avoir accès à des professionnels des services financiers afin de les aider à gérer leur situation financière.

APCSF | Association Professionnelle des Conseillers en Services Financiers
Professional Association of Financial Services Advisors

Le conseiller en services financiers est la clé de voûte du système qui assure que le plus grand nombre de contribuables possibles bénéficient d'épargne retraite afin de ne pas trop imposer de pression sur le filet social des gouvernements. Le gouvernement ne doit pas négliger l'importance et la fragilité de l'écosystème qui caractérise aujourd'hui le Québec. Le Québec et ses institutions, le ministère des Finances doivent, dans les faits protéger le modèle que s'est donné le Québec il y a 20 ans. Un modèle qui donne d'excellents résultats, qui est à l'image de sa population, qui est diversifié, qui permet aux Québécois des régions et aux entreprises régionales de bénéficier de conseils professionnels de premier plan et de prospérer.

Toute tentative de bouleverser cet équilibre risquera d'avoir des conséquences néfastes pour le Québec et l'ensemble des Québécois.

Je remercie les ACVM de bien vouloir tenir compte de la position de L'APCSF concernant cette consultation.

Flavio Vani
Président APCSF

LEEDE JONES GABLE

October 23, 2020
Delivered Via Email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities,
Yukon Territory Superintendent of Securities, Nunavut

Delivered to

The Secretary
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Dear Sirs/Mesdames,

RE: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

We are writing in response to CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization ("SRO") Framework. We are appreciative of the CSA's efforts to evaluate the SRO framework in Canada.

Leede Jones Gable ("LJG") is a national independent, employee-owned investment dealer and is regulated by IIROC. LJG takes an active interest in regulatory initiatives and actively participates in several industry regulatory bodies.

LJG participated on the IIAC working group reviewing this consultation. We support IIAC's comments regarding the SRO framework. Investors will benefit from the clarity a single SRO environment provides. Registered firms will benefit from cost reductions, and a single SRO should be more cost effective. Finally, a single SRO can ensure more consistent application of securities legislation and regulations across all registrant types, which should result in a level playing field for all participants.

The current regulatory landscape is intricate and difficult to navigate for the average investor. The solo nature of different registrants can cause confusion for investors. Investors may not fully understand what protections are available to them when dealing with firms that are under different regulatory regimes or that they have no protection when dealing with unregulated entities. Having one SRO would simplify and improve investor education and would help investors know when they are dealing with an unregulated entity.

IIROC commissioned Deloitte LLP to assess the benefits and costs of SRO consolidation. Deloitte LLP determined that consolidation would result in aggregate industry savings of between $380 - $490 million over a 10 year period. In addition to the savings for registered firms, the SROs themselves would see cost reductions from redundant functions such as operating two finance and human resource departments. A more efficient SRO should result in reduced fees for regulated firms.

We believe a single SRO model could also mitigate regulatory arbitrage. Regulation between different registrant classes, different regions, and different SROs is uneven leading to regulatory arbitrage for some registrants. Having a single SRO with consistent compliance would eliminate this issue. A single SRO model should achieve more consistent application of regulation through compliance reviews. A single SRO can also provide a clearer, fuller picture of how the investment industry is adapting to changes in the industry and supports timely and consistent updates to regulation as needed.

We appreciate the opportunity to comment on this matter. If you have any questions or further inquiry, please feel free to contact us.

Sincerely,
Leede Jones Gable Inc.

Jim Dale
Chief Executive Officer

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CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization*

To the attention of:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Question 3.1: What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

The problems that the failure of SRO in British Columbia has wrought on the life of a 100-year-old client has been a 14-year demonstration of the fact that SRO in British Columbia is not treated seriously, and the regulatory apparatus performs overt bad faith; specifically:

- The regulators disregard the evidence that the client asked for GICs repeatedly and the practice of extreme dehumanization is practiced in that the regulators ask questions based on an assumption that the client asked for segregated funds, and the evidence says the opposite. The false SRO practices amount to a Kafkaesque charade.
- The Ministry of Finance of BC has disregarded evidence that demonstrates that one of the investment companies that the client retained was not authorized to sell GICs for a ten year period from 2004

to February 2014 and there has been no questioning of the elaborate deception perpetrated against the client and indulged by the OFSI when they were informed about the fraud. They have documented in an e-mail thread, that it is unlawful to pretend to provide GICs in exchange for consideration, but they have chosen to do nothing about the dishonest acts.

- At no time have any of the agencies that the client approached since 2006 questioned the lack of the IIROC Rule 2500 verification of account practices.
- The record indicates that the SRO system in BC is a pretend exercise, and it can only be concluded that following the rules is 'optional' and the victims can be just left in a situation of intense mental trauma and financial exploitation for years with no consequences to the instigators of this blatant predatory elder abuse.

"iii) Regulatory capture

In this Consultation Paper, "regulatory capture" refers to a regulatory agency that may become dominated by the industries or interests they are charged with regulating. The result is that an agency, charged with acting in the public interest, instead acts in ways that benefit the industry it is supposed to be regulating. Factors that cause regulatory capture include a regulator being subject to excessive levels of influence from industry stakeholders, a regulator not having sufficient tools and resources to obtain accurate information from industry or to deter industry wrongdoing, or regulatory incentives being skewed toward industry stakeholder interests.

An investor advocacy group stated that the inherent conflict between the SROs' obligation to their members and their public interest mandates may not be manageable under their current governance structures and may result in the erosion of public

confidence. Specifically, they expressed concern about regulatory capture occurring when SRO actions are inappropriately influenced by industry stakeholder interests. By contrast, two investment industry associations stated that SROs need to be more responsive to industry, with one noting that its inability to directly access an SRO's board of directors runs contrary to the concept of 'self'-regulation."

"THE TONE AT THE TOP" has demonstrated a thorough-going practice of impunity for the infliction of indictable offenses against vulnerable clients – misleading and refusing to deliver what the client requests. This has necessitated that a political solution be devised that will require all personnel to understand that we all have duties to ensure that everyone's rights are protected. [Article 29 of the Universal Declaration of Human Rights] and that SRO be required to put all relevant Criminal Code Sections as the primary regulative tools.

It is no longer possible to allow undue enrichment to replace good faith practices as the dominant values in marketing of securities. The Finance Committee in Parliament under MP Wayne Easter was satisfied with a few changes to the Ministry of Finance website asking for 'more financial literacy' instead of facing the 4500 pieces of evidence that came out of the CBC Go Public investigation into fraud and forgery in banking and investment from Feb-May 2017.
https://www.cbc.ca/news/business/financial-industry-employees-forge-documents-more-often-than-you-d-think-1.4138212?__vfz=medium%3Dsharebar

The regulatory culture in BC must never be allowed to destroy the capacity of SRO to function by allowing vendors of service to not have to account for why they have failed to practice the IIROC Rule 2500 verification procedure. This has been avoided and not answered by

- The BC Securities Commission
- The RCMP
- The Insurance Council of BC
- MFDA
- OBSI

- IIROC
- MLAs who have been approached for help

The record demonstrates a captured culture and will require everyone who is wanting common law of contract norms to be protected to band together and require that our elected representatives take a stand against such corruption of the regulatory process.

Alan Blanes
Vancouver Island
[redacted]

Brief on the CSA's Consultation 25-402 on the Self-Regulatory Organization Framework

October 2020

Presented to:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention:

Me Philippe Lebel
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The Secretary
Ontario Securities Commission
20 Queen Street West
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Fax: 416 593-2318
Email: comments@osc.gov.on.ca

PEAK Financial Group ("PEAK") welcomes the opportunity to provide comments on **CSA's Consultation Paper 25-402: Consultation on the Self-Regulatory Organization Framework**, which examines how the roles fulfilled by the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers of Canada (MFDA) can be better aligned with the innovation and evolution that has occurred in the marketplace since the current structure was put in place twenty years ago.

Who We Are

To establish a constructive position for the industry and to give independent financial advisors a strong voice, PEAK Financial Group carefully considered this matter. To that end, it consulted a number of its financial advisors. Several members of PEAK's management team, members of its compliance team and external consultants were also involved in developing this brief.

PEAK Financial Group is the largest network of independent advisors in Quebec and one of the top fully independent multidisciplinary dealers in Canada. It was founded more than 28 years ago and operates across Canada, with more than $11 billion in assets under administration. It has 1,500 independent advisors, professionals and employees who serve more than 150,000 investors across the country with impartial and independent financial advice.

PEAK Financial Group includes PEAK Investment Services, PEAK Financial Services, PEAK Securities and PEAK Insurance Services.

General Comments

As the CSA is aware, the current self-regulatory structure has been in place for over 20 years. The industry has since evolved significantly, making it time to revisit the structure.

Regarding the reasons for reform of the SRO system, the Consultation Paper provides a helpful summary of the comments provided by a broad range of stakeholders in the informal consultations the CSA conducted in 2019. Those comments clearly set out the benefits, challenges and issues presented by the current SRO system.

We commend the CSA for taking this two-step approach of first, gathering comments from the market, and then, reflecting and using those comments to ask more specific questions. Those comments lay out all of the reasons why reform is no longer a avoidable. They clearly illustrate why it simply makes sense to get on with it.

Another clear reason to get on with it is that CSA's own regulatory initiatives have been creating the conditions where consolidating the SRO function is inevitable and necessary to achieve CSA's objectives. The clear example is the Client Focused reforms. These reforms make changes to the registrant conduct requirements. The objective was to better align the interests of securities advisors, dealers and representatives with the interests of their clients, improve outcomes for clients, and make clearer for them the nature and the terms of their relationship with registrants.

But, while the objective was to harmonize registration-related rules regardless of which SRO the advisor falls under, the result has been otherwise. In fact, there are differences in the way know-your-client and suitability requirements are applied by the different SROs. As a multi-disciplinary dealer, it is frustrating and time-consuming to work through and apply the subtle and not-so-subtle differences of the SRO requirements.

As a final general comment, we are pleased that this is a CSA initiative. We are optimistically assuming that the reform that goes forward will lead to a single SRO which is recognized and applicable by all provinces. As a dealer operating across Canada, we look forward to a more efficient framework, so we can provide better service to Canadian investors.

Overall Framework of New Structure

Considering the questions in the paper, we strongly recommend that the CSA retains the self-regulatory framework for the future structure that will be put in place. The advantages of such a structure is that by sharing the governance role with market participants, the regulator is much better attuned to the needs of its participants, thereby ensuring that the regulatory oversight structure serves the needs of dealers and investors.

Because market participants are around the table, they are able to communicate and demonstrate their needs practically in 'real time'. As we are all aware, the industry has been evolving at a rapid pace and is expected to keep doing so in the foreseeable future. It is important that the regulatory framework be able to respond promptly to those changes rather than in retrospect.

A self-regulatory structure, in fact, creates a beneficial working partnership and commits all participants to work in harmony together.

Specific Comments

Below are our views on the three key issues set out by the CSA:

1. Structural Inefficiencies

2. Investor Confidence

3. Market Surveillance

1. Structural Inefficiencies

We begin with our comments on structural inefficiencies of the current framework and the sub-issues the paper lists under that heading.

a) Duplicative operating costs for dual platform dealers
b) Product-based regulations
c) Regulatory inefficiencies
d) Structural inflexibility

The current regulatory structure is designed to oversee dealers according to the type of financial product or service they provide. Full-service investment dealers are required to be members of IIROC, and mutual fund dealers must be members of the MFDA, except in Quebec, where mutual fund dealers are regulated directly by the Autorité des marchés financiers (AMF).

For PEAK, which operates across the country, including Quebec, this means that we are being visited and audited by three regulators throughout the year, all with their particular approaches. It means separate meetings, three separate rule books, and different compliance structures, staff, and back-office support systems.

A single regulatory structure involves a single audit, a more harmonized set of rules which allows us to better integrate our compliance and back office systems and reduce costs. We foresee not only savings in operating costs, but the opportunity to reinvest those savings into innovations and better services to our advisors so that they are better able to serve their investor clients.

We also believe that an integrated SRO will be in a better position to respond to facilitating innovations that are being requested by investors. Examples include the use of electronic signatures, email and online financial checks. Some professions and organizations have already made this shift successfully, such as the legal profession and the Canada Revenue Agency. There is no reason why these cannot be implemented in the investment advisory sector. In fact, the new entity could create a dedicated work stream with its members to explore harnessing technology to improve and enhance investor services.

The new structure, should, however, ensure it preserves certain elements that are important for the viability of certain business models. Specifically, we refer to the ability of advisors currently under the MFDA regime to be able to direct their commissions to personal corporations. Any new harmonized structure should give advisors the flexibility to obtain administrative services though a corporation.

The new structure should also revisit some rules with a view to ensuring they meet the 'reality' test. One such rule is the strict regulation of outside business activities of advisors. These rules do not reflect the fact that many advisors are also members of a community and are expected to be involve in that community as sports coaches, community organization members etc. Severely restricting these activities and labelling them all as creating conflicts of interest in the advisor's ability to provide their professional services is an overreach by the regulator. These rules should be reviewed.

2. Investor confidence

a) **Investor confusion**
b) **Public confidence in the regulatory framework**

Regarding investor confidence, we consider this question in regard to the level of satisfaction from the clients of our advisors. We are happy to report it is quite high. However, we have not specifically asked clients whether the existence of multiple SROs creates a confidence or confusion issue for them. We suspect not many have given it any thought. But, intuitively, we feel that greater harmonization would enable investors to benefit from a more efficient financial advisory community, help raise public confidence and remove any investor confusion which may exist.

The current regulatory model requiring clients to deal with different advisors to obtain financial services and products is sub-optimal. A single point of service is less confusing that having to go through several structures.

In addition, a consolidated SRO would mean a single exclusive regulatory body focusing on helping to build investor confidence. Furthermore, the investor could turn to a single regulator.

3. Market surveillance

a) **Separation of market surveillance from statutory regulators**

We are not aware of any specific problems with IIROC's current double role of market regulation and market surveillance, but we would support further study of this issue. Its resolution should not, however, delay the reform of the SRO structure.

Creating a harmonized, more efficient SRO structure should proceed without delay.

Conclusion

To reiterate our position, we strongly support consolidation of SROs as this will not only benefit the financial advisory industry, but ultimately the Canadian investor, who will experience a simplified regulatory framework. Our collective efforts would be reallocated rather than maneuvering through an overly structured and complex regulatory framework.

We would like to thank the CSA for this opportunity to submit our comments.

Respectfully,

Robert Frances
Chief Executive Officer
PEAK Financial Group

UNIVERSITÉ LAVAL
Faculté de droit

CSA Consultation 25-402 on the Self-Regulatory Organization Framework

Brief submitted by the Groupe de recherche en droit des services financiers

Prepared by

Raymonde CRÊTE*, *Ad. E.*
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Summary

Introduction

- As part the consultation process conducted by the Canadian Securities Administrators (**CSA**) on the self-regulatory organization framework, the purpose of this brief submitted by the *Groupe de recherche en droit des services financiers* (**GRDSF**) (research group on financial services law) is to enrich the debate surrounding some of the issues presented in the *Consultation Document 25-402* and to assess solutions that could improve the current legal framework.
- From the standpoint of protecting retail investors, our comments focus on investment services, i.e. investment advice, portfolio management, securities trading and financial planning.

Part 1. An overview of intermediaries providing investment services

- Investment dealers provide investment advice and trading services for all types of securities, including stocks, bonds, mutual funds, exchange-traded funds (**ETF)**.
- Mutual fund dealers provide advisory and trading services for investment funds, mainly mutual funds.
- Other intermediaries offer investment services, including exempt market dealers, scholarship plan dealers, restricted dealers, advisors (portfolio managers), financial planning firms and intermediaries in the life insurance sector who provide advice and trade insurance investment products, such as segregated fund individual variable insurance contracts, commonly known as "segregated fund contracts".

Part 2. Regulatory issues of investment services provision

- This part focuses on some of the issues addressed in the *Consultation Document* namely product-based regulation (**Issue 2**) and investor confusion (**Issue 5**).
- Research shows convergence of the investment services provided by intermediaries. Among those, advisory services represent a central core element for all the intermediaries.
- Despite the similarity of the services provided, the regulatory framework is currently based on a fragmented approach focused on products rather than on the activities of intermediaries.
- This fragmented framework is characterized by multiplication of regulatory authorities who establish various registration categories and sets of rules applicable to the intermediaries.
- These authorities include the following organizations:
    - The Investment Industry Regulatory Organization of Canada (**IIROC**) which regulates investment dealers, their managers and representatives providing services across Canada.
    - The Mutual Fund Dealers Association of Canada (**MFDA**) which regulates mutual fund dealers, their managers and representatives providing services across Canada, except in Québec.

- The Chambre de la sécurité financière (**CSF**) which is responsible for regulating mutual fund dealers' representatives, scholarship plan dealers' representatives, financial planners and representatives in insurance of persons doing business in Québec.
- Securities authorities, including the Autorité des marchés financiers (**AMF**) and Financial Markets Administrative Tribunal (**MAT**) in Québec, and the other provincial and territorial securities authorities in Canada that are part of the CSA. The AMF and the MAT regulate, among others, investment dealers, exempt market dealers, advisors (portfolio managers), scholarship plan dealers, financial planning firms and their representatives doing business in Québec.

- Among the negative impacts, this fragmented framework may lead to unequal protection for investors which is reflected in the different investor protection plans provided for in cases of insolvency or fraud by intermediaries. These plans vary depending on the registration category and the province where intermediaries do business.
- The investor protection plans include the Canadian Investor Protection Fund (**CIPF**) for investment dealers who are members of the IIROC and the MFDA Investor Protection Corporation (**MFDA IPC**) for mutual fund dealers regulated by the MFDA.
- In addition to these plans existing across Canada, there is, in Québec, the *Fonds d'indemnisation des services financiers* (**FISF**) which provides compensation for victims of fraud, fraudulent practices and embezzlement in respect of financial products or services provided by mutual fund dealers and scholarship plan dealers, representatives of such dealers, insurance firms and representatives, insurance adjusters, financial planners and mortgage dealers registered with the AMF.
- The multiple regulatory authorities and the various registration categories, sets of rules and investor protection plans can also create confusion among investors.

Part 3. Towards a reform of investment services regulation

- In this part, we present the guiding principles that could serve as a basis to assess the current regulatory framework and the reform proposals submitted by the IIROC and the MFDA and other solutions.
- Given the analysis standpoint of this brief, and as part of a reform, we recommend the creation of a regulatory framework with the following characteristics, namely **an integrated, simplified, specialized and flexible framework**, that will provide investor protection and maintain public trust in this core sector of the economy.
- In light of these guiding principles, the framework contemplated would maintain the self-regulatory model but should be designed using a coherent, holistic approach covering all investment sectors, i.e. investment advisory services, portfolio management services, securities trading services, financial planning services and life insurance services offering insurance-related investment products.
- This holistic approach should focus not on products but on the activities performed by the intermediaries who may offer similar services.
- An integrated framework should cover both the individual and organizational aspects of investment services provision, by giving the supervisory authorities jurisdiction over the three

groups of stakeholders (firms, their managers and representatives), as is currently the case for the IIROC and the MFDA.

- A specialized and flexible framework should also be able to adjust to the complex situations and constant changes that characterize the investment services industry in Canada.
- Based on these guiding principles, our analysis of the proposals submitted by the IIROC and the MFDA shows that both contain several aspects that echo the approach we recommend.
- If we compare the solutions proposed by the two bodies, the MFDA's solution appears to us to be more appropriate, in that it is more conducive to a holistic, simplified and flexible approach for regulating this sector of the financial services industry.
- The MFDA's proposal takes into account the specific situation of Québec, where the organization is not currently recognized by the AMF as a self-regulatory body, and where the CSF currently acts as a self-regulatory organization for representatives in the mutual fund and scholarship plan sectors and in other financial services sectors.
- In our comments of the MFDA's proposal with respect to the specific situation of Québec, we express some concerns that lead us to submit proposals with a view to improving the regulatory framework of investment services.

Conclusion

- Our analysis of the fragmented regulatory framework of investment services and the potential negative impacts of the current situation highlights the need to review the structure and content of the SROs' regulatory framework and the elements to be considered for the reform.
- Overall, we believe the proposals submitted by the IIROC and the MFDA offer some promising solutions that will help improve the self-regulatory organization framework.

Introduction

On June 25, 2020, the Canadian Securities Administrators (**CSA**) published the *CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework* to obtain comments on the issues connected with the proposed review of the current framework for two self-regulatory organizations, the Investment Industry Regulatory Organization of Canada (**IIROC**), which regulates investment dealers and their representatives, and the Mutual Fund Dealers Association of Canada (**MFDA**), which regulates mutual fund dealers and their representatives.[1]

The purpose of this brief is to enrich the debate surrounding some of the issues presented in the *Consultation Document* and to assess solutions that could improve the current framework. It focuses on investment services, i.e. investment advice, portfolio management, securities trading and financial planning.[2] In view of the scope of the consultation, our specialty fields and time constraints, our comments are mostly made from the standpoint of protecting retail investors.[3]

In the first part of the brief, we present an overview of the main intermediaries, and in the second part, we comment on two of the issues set out in the *Consultation Document*, namely **Issue 2,** on product-based regulation, and **Issue 5** on investor confusion. Consideration of these two issues reveals the fragmentation of the current framework and the need for a review. It also highlights the relevance of the proposed reform, and the need to contextualize the possible solutions presented in the third part of this brief.

Although this brief does not address any of the other issues identified by the CSA, we acknowledge, like the stakeholders surveyed by the CSA as part of the informal consultation process, that the current legal framework may be responsible for certain regulatory inefficiencies and a level of structural rigidity that is detrimental to stakeholders (investors, industry intermediaries, regulatory authorities, etc.), particularly in terms of the associated costs.

The comments made in this brief are based on research carried out since 2007 by the *Groupe de recherche en droit des services financiers* (**GRDSF**) (research group on financial services law) at the Faculty of Law of Université Laval, of which the brief's authors are members. The Group

* The authors thank Benjamin Waterhouse for the English translation of this brief. The authors also thank the members of the GRDSF who took part in a research program on dealers and financial advisors, whose publications served as a basis for this brief.

1 CANADIAN SECURITIES ADMINISTRATORS, *Canadian Securities Administrators Consultation Paper* 25-402– *Consultation on the Self-Regulatory Organization Framework*, June 25, 2020, [Online]: https://lautorite.qc.ca/fileadmin/lautorite/consultations/valeurs-mobilieres/2020-10/2020juin25-25-402-doc-consultation-oar-en.pdf (***Consultation Document***).

2 The term "investment services" covers a financial service sector that is not defined as such in Canada's financial regulation. The term is used by the GRDSF researchers to refer to a set of services provided to address a growing need among consumers for investment advice to manage and grow their savings.

3 For the purposes of this brief, the term "retail investors" refers to individual clients or clients other than institutional investors, the latter mainly including financial institutions, retirement funds, investment funds and public bodies. "Retail investors" may also be referred to as "savers", "clients" and "consumers".

conducts research to understand and provide a critical assessment of the legal and organizational framework surrounding investment services.[4]

To simplify the text, the terms "intermediaries" and "registrants" are used to refer to firms and individuals offering investment services, including investment dealers, mutual fund dealers, restricted dealers, scholarship plan dealers, exempt market dealers, advisors (portfolio managers), financial planning firms and life insurance firms (for insurance investment products), and the representatives of all these different firms.

In addition, in the brief, the terms "regulatory authorities" and "supervisory authorities" are used to refer to securities authorities such as the Autorité des marchés financiers (**AMF**) and the Financial Markets Administrative Tribunal (**MAT**) in Québec, and the other provincial and territorial securities authorities in Canada that are part of the CSA. These terms also cover self-regulatory organizations **(SRO)**, such as the IIROC, the MFDA, and the Chambre de la sécurité financière (**CSF**). These authorities, in their respective jurisdictions, exercise a variety of regulatory, administrative, enforcement and disciplinary powers over intermediaries providing investment services. Lastly, it should be noted that the observations set out in this brief are not intended as criticisms of individuals or regulatory authorities; their purpose is to enrich the debate and fuel thinking on how to improve the regulatory framework for the investment services industry and enhance the protection given to investors.

[4] A list of the GRDSF's main publications can be found in Appendix 1 to this brief.

Part 1. An overview of intermediaries providing investment services[5]

Before presenting our thoughts about the regulation set up by the SROs, we will begin by looking briefly at the investment dealers and mutual fund dealers that are subject to the regulation, and at the other intermediaries providing investment services in Canada.

1.1 Investment dealer intermediaries[6]

Investment dealers provide investment advice and trading services for all types of securities, including stocks, bonds, mutual funds, exchange-traded funds (**ETF**), exempt market products, futures contracts, derivatives and alternatives. These dealers may also provide discretionary portfolio management services by taking over asset management on behalf of investors. Their services may also be limited to trading services for order-execution only securities.[7]

1.2 Mutual fund dealer intermediaries[8]

Mutual fund dealers provide advisory and trading services for investment funds, mainly mutual funds.[9] Unlike investment dealers, mutual fund dealers cannot offer investment products such as shares, bonds and derivatives. Similarly, they cannot offer certain services, such as the discretionary portfolio management services provided by investment dealers.

Most mutual fund dealers distribute investment fund products produced and managed by one of their affiliates in the same financial group. It should be noted that, today, most investment and mutual fund dealers work within corporate structures involved in an extensive range of financial

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5 This part does not present some specific investment service industry intermediaries such as "investment fund managers". For a detailed description of these intermediaries and the services they provide, see the *Consultation Document*, *supra*, note 1, p. 2-7; *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (*including the most recent amendments in force on December 31, 2019), in part 7, p. 31-35; Raymonde CRÊTE and Cinthia DUCLOS, "Le portrait des prestataires de services de placement", in R. CRÊTE, M. NACCARATO, M. LACOURSIÈRE and G. BRISSON (Eds.), *Courtiers et conseillers financiers - Encadrement des services de placement*, vol. 1, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, p. 76 and following; Martin CÔTÉ, *Les mécanismes d'indemnisation des consommateurs dans l'industrie des services financiers au Québec*, vol. 5, coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015, p. 23 and following. For a summary profile of intermediaries, the services they offer and the products in respect of which they can act, see Table 1 (Appendix 2).

6 See the references cited in the previous note. See also Clément MABIT, *Le régime de sanctions disciplinaires applicable aux courtiers en placement*, vol. 2, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2010. In addition, for a list of services provided by investment dealers, see Appendix 1 of the following text: IIROC, *Improving Self-Regulation for Canadians*, June 2020, p. 36, [Online]: https://www.IIROC.ca/Documents/2020/IIROC_consolidation_FNL.pdf. (consulted on September 24, 2020).

7 The terms "advice", "trading" and "discretionary portfolio management" are defined in Table 1 (Appendix 2).

8 See the references in note 5. See also Raymonde CRÊTE and Cinthia DUCLOS, *Mémoire présenté à la Commission des finances publiques concernant le Projet de loi nº 141*, Loi visant principalement à améliorer l'encadrement du secteur financier, la protection des dépôts d'argent et le régime de fonctionnement des institutions financières, January 18, 2018; R. CRÊTE, C. DUCLOS and F. BLOUIN, "Les courtiers en épargne collective, leurs dirigeants et leurs représentants sont-ils à l'abri de sanctions disciplinaires au Québec?", (2012) 42 *R.G.D.* 267, p. 333-341.

9 Mutual funds are part of the broader family of investment funds that also includes exchange-traded funds (ETF), hedge funds and labour funds or risk capital funds.

activities, including deposits and loans, insurance and securities (i.e. investment dealership, mutual fund dealership, portfolio management and investment fund management).[10]

1.3 Other intermediaries providing financial advisory services[11]

In the securities sector, *National Instrument 31-103 Respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (***National Instrument 31-103***)[12] provides for three other categories of dealers and representatives. The first category comprises exempt market dealers, authorized to act as dealers mainly by trading securities distributed under exemptions from prospectus requirements. The second comprises scholarship plan dealers, authorized to act as dealers in respect of scholarship plan, educational plan or educational trust securities. The third comprises restricted dealers, authorized to act as restricted dealers with respect only to specific securities categories, such as mining or gas sector shares. These intermediaries may provide advice and may trade specific products, depending on their registration categories, but like mutual fund dealers, they are not authorized to provide discretionary management services.

National Instrument 31-103 also provides for another registration category, "advisors" (also referred to as "portfolio managers") and their representatives, providing personalized advisory services and, more broadly, portfolio management services. They prepare complete investment strategies for retail investors (especially the richer ones) and for institutional investors, including investment funds. Depending on their registration category (unrestricted or restricted), they can provide services with respect to a broad range of products, like investment dealers, but they are not authorized to engage in trading securities. However, if they wish to provide execution services to their clients, they may do so via a dealer.

In the financial services sector, there are also financial planning firms and financial planners (individuals) providing advisory services on a wide range of topics, including legal and estate issues, insurance, risk management, finance, taxation, investment and retirement. If they provide investment advice, it must be general in nature and must not concern the purchase or sale of specific securities. In addition, they cannot provide securities trading services or discretionary portfolio management services.

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[10] See Jean-Marc SURET and Cécile CARPENTIER (CIRANO), "Réglementation des valeurs mobilières au Canada", working document prepared for the Commission des valeurs mobilières du Québec, Cirano, July 2003, p. 11, [Online]: https://cirano.qc.ca/files/publications/2003RP-11.pdf (consulted on September 23, 2020); Cinthia DUCLOS, *La protection des épargnants dans les services d'investissement: une étude des facteurs d'influence de nature organisationnelle des manquements professionnels à la lumière de l'étiologie des accidents*, Ph.D. thesis, Québec, Faculty of Law, Université Laval, 2019, p. 161 and following.

[11] See the references in note 5. For the life insurance sector, see also Martin CÔTÉ, "Le 'contrat de fonds distincts': un produit d'assurance à l'ombre du droit des valeurs mobilières ?", (2019) 53 *RJTUM* 395, p. 409 and following.

[12] *National Instrument 31-103 Respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations,* prepared in collaboration with IIROC and MFDA and adopted by the CSA, contains a detailed body of registration and conduct rules for several types of intermediaries offering investment services, including investment dealers, mutual fund dealers and their representatives.

Lastly, in the life insurance sector, firms and representatives offer life insurance products, individual annuities and other personal benefits. As part of this activity, they may provide advice and trade insurance investment products, including universal life insurance policies and segregated fund individual variable insurance contracts, commonly known as "segregated fund contracts".[13] Segregated funds are similar in some respects to the investment funds offered by investment dealers and mutual fund dealers.

Part 2. Regulatory issues of investment services provision

In this part, we focus on some of the issues addressed in the *Consultation Document* namely product-based regulation (**Issue 2**) and investor confusion (**Issue 5**). We begin by analyzing these issues from the standpoint of investor protection within the context of investment services for retail investors.

2.1 Product-based regulation

As pointed out in the *Consultation Document*, registrants in different registration categories "are providing similar products and services to similar clients but are overseen by different entities (i.e. the SROs and the CSA) and are subject to different rules."[14] This is especially true in Québec, due to the particular framework applicable to mutual fund dealers. More broadly, this problem also extends to other financial service intermediaries providing investment advice but not subject to the SRO in the securities sector (e.g. financial planners and life insurance representatives).

In the following paragraphs, we will look at two aspects of this problem, namely **convergence of services (2.1.1)** and **fragmentation of the current framework (2.1.2)**.

2.1.1 Convergence of services[15]

The GRDSF has found similarities among the services offered to investors by registrants in the different categories provided for in securities regulations and, more broadly, in the financial services sector in general. This convergence appears mainly in the supply of advisory services by different intermediaries for identical products, similar products and, more generally, different investment products.

Under the current regulation, registrants in different registration categories are permitted to provide advice on identical products. For example, investment dealers, mutual fund dealers, restricted

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13 M. CÔTÉ (*Le contrat de fonds distincts*), *supra*, note 11.

14 *Consultation Document*, *supra*, note 1, p. 17.

15 See among others R. CRÊTE et C. DUCLOS (*Le portrait des prestataires*), *supra*, note 5, p. 108-115; M. CÔTÉ (*Les mécanismes d'indemnisation*), *supra*, note 5, p. 227-228; Raymonde CRÊTE, Martin CÔTÉ and Cinthia DUCLOS, "Un devoir légal, uniforme et modulable d'agir au mieux des intérêts du client de détail", *Mémoire préparé pour l'Autorité des marchés financiers (AMF) et les Autorités canadiennes en valeurs mobilières (CSA)* on Consultation Paper 33-403 – *The Standard of Conduct for Advisors and Dealers : Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*, March 2013, p. 20-24.

dealers (depending on the circumstances) and advisors can provide advice on investment funds. This observation alone is sufficient to raise questions about product-based regulation.

Similarly, registrants in different registration categories can provide advice on products that are similar but not identical. For example, investment dealers can provide advice on mutual funds and ETFs, in the same way as advisors (portfolio managers) and restricted dealers, depending on the particular circumstances. Mutual fund dealers can do this with respect to mutual funds. As for life insurance representatives, they may provide advice on similar products in the insurance sector, such as segregated fund contracts. Lastly, financial planners may also provide advice, among other things to help clients clarify their financial goals for retirement and establish savings strategies that usually involve mutual funds and ETFs, or insurance-related investment products (including segregated fund contracts).

Overall, there is a lot of similarity between the advisory services available to investors, and some overlapping of the products with which intermediaries are permitted to work. This convergence is shown in **Table 1** (Appendix 2). More broadly, the table provides a summary of the functions of intermediaries by registration category in Québec. It clearly shows "advisory services" as a central core element for all the intermediaries.

2.1.2 Fragmentation of the current framework

The GRDSF's research over the last decade shows that the current structure for distribution of securities and advisory services to investors is highly fragmented. Analysis of the fragmentation has focused mainly on the multiple regulatory authorities (including separate sets of rules and processes) and the variability of investor protection plans.

1) The multiple regulatory authorities

As the following profile shows, regulatory authorities in the investment advisory industry vary by registration category and by location in Canada.

Regulation of investment dealers and their representatives

The IIROC, recognized as an SRO by the CSA, regulates investment dealers, their managers and representatives operating in Québec and elsewhere in Canada. It establishes rules of conduct, as well as a disciplinary process including sanctions for infringements of the rules. The IIROC's rules are completed by provincial and territorial securities regulation, including *National Instrument 31-103*.[16]

[16] See *Consultation Document*, *supra*, note 1, p. 2-4, 37-40; Cinthia DUCLOS, with Raymonde CRÊTE and Audrey LÉTOURNEAU, "Les autorités d'encadrement", in CRÊTE, R., M. NACCARATO, M. LACOURSIÈRE and G. BRISSON (Eds.), *Courtiers et conseillers financiers - Encadrement des services de placement*, vol. 1, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, p. 137-144; C. MABIT, *supra*, note 6, p. 27-33.

Regulation of mutual fund dealers and their representatives

The MFDA, recognized as an SRO by securities authorities across Canada except in Québec, regulates mutual fund dealers, their managers and representatives. It establishes and implements a set of rules, along with a disciplinary process for infringements of the rules. The MFDA's rules are completed by securities regulation, including *National Instrument 31-103*.

In Québec, mutual fund dealer intermediaries are regulated by three authorities, namely the CSF, the AMF and the MAT. The CSF, as an SRO, is responsible for regulating mutual fund dealers' representatives in the province. This specific role is similar to that of the MFDA. However, unlike the MFDA, which has jurisdiction over all mutual fund stakeholders (dealers, managers and representatives), the CSF's jurisdiction is limited because, in the mutual fund sector, it does not regulate mutual fund dealers and their managers. It is responsible for applying and imposing disciplinary sanctions for infringements of the rules established by the AMF and by the Québec Government, mainly in the *Securities Act*, the *National Instrument 31-103*, the *Act respecting the distribution of financial products and services* (**ADFPS**) and the *Regulation respecting the rules of ethics in the securities sector*. Mutual fund dealers that do business solely in Québec, and their managers, are not subject to regulation by the CSF or any other SRO. At the present time, the *Consultation Document* notes that there are 19 mutual fund dealers registered solely in Québec.[17] In the absence of an SRO for these intermediaries, the AMF and the MAT are responsible for regulating mutual fund dealers and some officers ("chief compliance officer" and "designated officer in charge") carrying out activities in Québec. These bodies must oversee compliance with the rules set out in Québec's securities legislation and regulations, including the *Securities Act* and *National Instrument 31-103.*[18]

Regulation of other intermediaries

Numerous other intermediaries, including scholarship plan dealers, restricted dealers, advisors (portfolio managers), financial planning firms and most of their respective managers and representatives are not governed by an SRO in Canada, but are generally subject to the CSA. In Québec, the CSF is responsible for regulating scholarship plan dealers' representatives, financial planners and representatives in insurance of persons, in the same way that it is responsible for mutual fund dealers' representatives.[19]

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[17] *Document de consultation*, *supra*, note 1, p. 45.

[18] See *Consultation Document*, *supra*, note 1, p. 4, 5, 41-44; C. DUCLOS (*Les autorités d'encadrement*), *supra*, note 16, p. 144-149; R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8.

[19] See *Consultation Document*, *supra*, note 1, p. 5-7; R. CRÊTE and C. DUCLOS (*Le portrait des prestataires*), *supra*, note 5, p. 90 and following; M. CÔTÉ (*Les mécanismes d'indemnisation*), *supra*, note 5, p. 23 and following.

Overview

In short, multiple authorities including the SROs, i.e. the IIROC, MFDA and CSF, along with the CSA, are responsible for regulating the intermediaries providing investment services in Canada, depending on their registration categories and the province where these intermediaries do business. **Table 2** (Appendix 4) reviews this structure as it exists in Québec.

To understand and visualize the problems arising from the existence of the different authorities, it is useful to consider the overall profile of the authorities with jurisdiction over intermediaries, including not only the SROs, but also the other regulatory authorities such as the AMF, MAT, etc., the organizations providing alternative dispute resolution mechanisms, and the investor protection funds. **Diagram 1** (Appendix 3) shows the connections between these authorities and their respective responsibilities over organizations and individuals providing investment services in Québec. The diagram clearly shows the complexity of the current regulatory framework and highlights the maze within which investors and the industry's intermediaries must function.

In closing, it is important to note that, at the present time, the overall profile of regulatory authorities is even more complex due to the structure of the financial services industry, characterized by the presence of financial groups providing different services within organizations or their subsidiaries, including finance services (deposits and loans), advisory services, discretionary portfolio management and securities trading services (investment dealers, mutual fund dealers, etc.), investment fund management, financial planning and insurance sector services.

2) Variability of investor protection plans[20]

The fragmentation of the current regulatory framework often leads to unequal protection for investors. First, some intermediaries have dedicated SROs for their framework, essentially disciplinary in nature, while others are regulated only by the CSA with broader functions (regulatory, administrative, disciplinary and enforcement responsibilities for numerous participants in the capital markets and the financial sector). This difference also accentuates differences in the content of the regulatory framework (standards of conduct, processing of complaints, disciplinary processes) and in its application to the various intermediaries. More specifically, while the rules of conduct are intended to prevent misconduct by intermediaries, the level of detail and specificity of these rules differ depending on registration categories and the province where intermediaries do business. For example, the suitability requirements imposed on mutual fund dealers regulated by the MFDA are more detailed and cover more officers and managers (including branch managers) than those applicable to mutual fund dealers subject to regulation by the Québec authorities, and those applicable to certain other intermediaries not

[20] See R. CRÊTE and C. DUCLOS (*Le portrait des prestataires*), *supra*, note 5, p. 108-115; R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8; C. DUCLOS (*Les autorités d'encadrement*), *supra*, note 16, p. 120-128, 163-168; M. CÔTÉ (*Les mécanismes d'indemnisation*), *supra*, note 5, p. 90-173.

regulated by an SRO (including scholarship plan dealers, restricted dealers and advisors).[21] Similarly, the level of detail, extent and nature of the disciplinary process and sanctions imposed also differ by registration category and region.

In addition, it is clear that the elements introduced to minimize the harm suffered by investors as a result of misconduct by intermediaries, including the complaint process and the investor protection funds, also vary by registration category. In Québec, for example, the *Fonds d'indemnisation des services financiers* (**FISF**) provides compensation for victims of fraud, fraudulent practices and embezzlement in respect of financial products or services provided by mutual fund dealers, scholarship plan dealers and representatives of such dealers, insurance firms and representatives, insurance adjusters, financial planners and mortgage dealers registered with the AMF. However, the FISF does not cover victims of fraud who dealt with an investment dealer or dealer's representative registered with the IIROC. For example, for the sale and purchase of mutual funds, if the service is provided by a mutual fund dealer, the investor will have access to the FISF in case of fraud, whereas if the same service is offered by an investment dealer, the investor will not have access to that or any other similar fund.

It is also important to note that, outside Québec, there is nothing similar to the FISF for victims of fraud who do business with an investment dealer or mutual fund dealer or one of their representatives. The IIROC and the MFDA each provide investors with an investor protection fund, but they only cover intermediary insolvency. The funds in question are the Canadian Investor Protection Fund (**CIPF**) for investment dealers who are members of the IIROC and the MFDA Investor Protection Corporation (**MFDA IPC**) for mutual fund dealers regulated by the MFDA. However, these two insolvency protection plans do not cover all intermediaries; among those not covered are exempt market dealers, advisors (portfolio managers) and scholarship plan dealers.

Table 2 (Appendix 4) presents the protection available to clients of the various intermediaries providing investment advisory services in Québec. It clearly shows that, although the services are the same, there are significant differences in the standards applicable to intermediaries, the regulatory bodies concerned and the protection afforded to investors, depending on registration category and region.

2.2 Investor confusion[22]

In line with the observations set out in the *Consultation Document*, we note that the current fragmented and complex regulatory framework applicable to investment services is likely to create confusion among investors. Investors are offered numerous products and services, many of which are similar, by a host of intermediaries registered in different categories: for example, advisory

[21] For a detailed analysis of this topic, see C. DUCLOS (*La protection des épargnants*), *supra*, note 10, p. 405 and following.

[22] See *Consultation Document*, *supra*, note 1, p. 23-27; R. CRÊTE and C. DUCLOS (*Le portrait des prestataires*), *supra*, note 5, p. 108-115; C. DUCLOS (*Les autorités d'encadrement*), *supra*, note 16, p. 123-128; R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8.

services offered by investment dealers, mutual fund dealers, financial planners and life insurance representatives (e.g. segregated fund contracts). However, because of the sector's complex and compartmentalized structure, it is difficult for a lay person to distinguish between the different types of intermediaries, understand their functions and grasp the limits on the activities they are permitted to perform (with respect to services and products).

For example, an investor who entrusts his or her savings to a mutual fund dealer's representative may not understand the impacts of that choice; because of the registration category, the representative can only, or mainly, offer mutual funds, unlike an investment dealer's representative, who can offer a much broader range of products and services (shares, bonds, mutual fund products, ETF products, discretionary portfolio management, etc.). As a result, the investor may not be able to choose the products and services best suited to his or her needs and expectations.

Lay investors almost certainly know little to nothing about the duties of intermediaries in different registration categories (e.g. training and proficiency required by the various regulatory authorities and the rules to which they are subject). Similarly, retail investors will probably find it difficult to differentiate between the remedies and other mechanisms available in case of intermediary misconduct or insolvency; these elements will differ according to the intermediary's registration category. Lastly, although the products and services appear similar, these investors may find it hard to distinguish between the respective powers of the different regulatory authorities, such as the AMF, the MAT, the CSF, the IIROC and the MFDA, whose overseeing functions vary by intermediary registration category and geographic region. Generally speaking, the fact that investors do not understand these distinctions may make it difficult if not impossible to select the services that are not only best suited to their needs, but also provide the best protection (e.g. detailed standards of conduct, severe penalties for misconduct, a compensation fund in case of fraud, etc.).

Overall, the issues considered above reveal a fragmented regulatory framework characterized by similarity of services, multiplication of regulatory authorities and a variety of investor protection plans, all of which, when combined, are likely to create confusion among investors and adversely affect their interests. Consideration of these issues highlights the need to review the structure and content of the SROs' framework and the elements to be considered for the reform.

Part 3. Towards a reform of investment services regulation

The following section presents the guiding principles that could serve as a basis to reform and review the current regulatory framework for investment services. These same guiding principles can also serve to assess the solutions submitted by the IIROC and the MFDA, and other possible reforms.

3.1 The guiding principles for reform

In the highly complex and diverse world of investment services, the regulatory authorities acknowledge the need for professionalism because of the required expertise for providing these services, the high level of client trust, dependency and vulnerability with respect to the intermediaries, and the significant risk that consumers' interests may be harmed.[23] Regulation of these services is therefore a significant challenge for the authorities aware of the need to minimize these risks.

Given the analysis standpoint of this brief, and as part of a reform, we recommend the creation of a regulatory framework with the following characteristics, namely **an integrated, simplified framework (3.1.1)** and **a specialized, flexible framework (3.1.2)**, that will provide investor protection and maintain public trust in this core sector of the economy. Although this brief does not address all the issues raised in the *Consultation Document*, we, like other observers of the financial services industry,[24] acknowledge the need to create a regulatory framework that will also foster regulatory and business efficiency. Similarly, we believe the implementation of a reform, beyond the elements presented in this brief, will demand a complementary analysis of the related economic, political and social issues.

3.1.1 An integrated, simplified framework

An "integrated framework" is designed to be holistic and coherent as opposed to a fragmented and partitioned approach. This framework should cover all investment services, i.e. investment advice, portfolio management, securities trading and financial planning. As other observers have suggested during proposed reforms of the financial sector, this holistic approach should focus not on products but on the activities performed by the intermediaries who may offer similar services.[25] It should also take into account the expectations of investors, who want easy, low-cost access to a broad range of investment products and services to grow their savings, along with consistent legal protection to ensure that their assets are safe.[26] Some observers have proposed a "one-stop"

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[23] R. CRÊTE, M. LACOURSIÈRE and C. DUCLOS, "La rationalité du particularisme juridique des rapports de confiance dans les services de placement", in R. CRÊTE, M. NACCARATO, M. LACOURSIÈRE and G. BRISSON (Eds.), *Courtiers et conseillers financiers – Encadrement des services de placement*, vol. 1, Coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, p. 229-273.

[24] IIROC (*Improving self-regulation*), *supra*, note 6, p. 23, 29; MFDA/MFDA, *A Proposal for a Modern SRO – Special Report on Securities Industry Self-Regulation*, Feb. 2020, p. 4, 6, 16, 18, 21, 25 and following., [Online]: https://mfda.ca/wp-content/uploads/MFDA_SpecialReport.pdf (consulted on September 24, 2020).

[25] See MFDA/MFDA (*A Proposal for a Modern SRO*), *supra*, note 24, p. 9, 22; ONTARIO SECURITIES COMMISSION, *The Fair Dealing Model*, 2004, [Online]: https://www.osc.gov.on.ca/documents/en/Securities-Category3/cp_33-901_20040129_fdm.pdf (consulted on September 24, 2020); GROUPE DE TRAVAIL SUR L'ENCADREMENT DU SECTEUR FINANCIER (Gouvernement du Québec), *Pour un encadrement intégré et simplifié du secteur financier au Québec*, Québec, Ministère des Finances, 2001 (**Rapport Martineau**).

[26] IIROC (*Improving self-regulation*), *supra*, note 6, p. 7-9.

scenario covering both supply of products and services by a single financial enterprise and the application of monitoring and control powers by a single regulatory authority.[27]

As part of the proposed approach, consideration should be given not only to the investment services available in the securities sector, but also to the products offered in the life insurance sector, including segregated funds. Currently, although life insurance products resemble the investment funds offered in the securities sector, the regulation governing the distribution of segregated fund contracts in the insurance sector are not the same as those applicable to the distribution of investment funds in the securities market.[28] In other words, the existence of these different regulatory frameworks perpetuates partitioning of similar products available through different distribution channels, and enhances the possibility of regulatory arbitrage.[29]

Second, the integrated structure we recommend covers both the individual and organizational (or systemic) aspects of investment services.[30] With respect to the regulation of intermediaries, from an administrative, disciplinary, civil or penal standpoint, it is important for the regulator or the supervisory authority to be able to act holistically, taking into account both the direct supply of services to investors and the leadership, management and supervision of the firm providing the services.

For example, in a case of professional misconduct by an investment dealer's representative, the supervisory authority should be able to verify whether the misconduct was also a result of supervisory failures by the managers of the firm for which the representative worked. The authority should be able to impose a sanction on the firm and perhaps even on certain members of its management if it uncovers weaknesses in the firm's monitoring and compliance mechanisms. A regulatory structure overseeing three groups of stakeholders (firms, management and representatives) should therefore be responsible for examining both the individual and the organizational aspects of investment services.[31]

Lastly, a "simplified" framework refers to a framework that simplifies regulatory structures and content in order to avoid or minimize duplication, redundancy and administrative or financial burdens, as well as the risk of confusion arising from the existence of numerous regulatory

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[27] Regarding the proposed "one-stop" approach for regulatory authorities, see the *Rapport Martineau*, *supra*, note 25, p. iii and chapter 8.

[28] M. CÔTÉ, *supra*, note 11, p. 13-43.

[29] The term "regulatory arbitrage" means "an activity in which registrants can exploit differences in regulatory frameworks to their advantage, in ways that the Securities Regulators did not intend": *Consultation Document*, *supra*, note 1, p. 17. It has also been defined as a situation "where loopholes in regulatory systems are used to circumvent unfavourable regulation". SEE CCIR/CCRRA, *Segregated Funds Working Group – Position Paper*, December 2017, p. 25, [Online]: https://www.ccir-ccrra.org/Documents/View/3369 (consulted on October 16, 2020).

[30] C. DUCLOS (*La protection des épargnants*), *supra*, note 10; R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8; R. CRÊTE, C. DUCLOS and F. BLOUIN, *supra*, note 8, p. 333-341, 402, 411-418.

[31] C. DUCLOS (*La protection des épargnants*), *supra*, note 10; R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8, p. 7, 9, 28, 29, 35, 38, 39.

authorities, intermediary categories and sets of rules. A simplified framework will help promote efficiency by ensuring that implementation costs do not exceed the anticipated benefits.

To create an integrated, simplified structure, it will also be necessary to restructure the regulators, through enhanced inter-authority coordination, de-partitioning and simplification of registration categories for intermediaries and harmonization of the regulation.

3.1.2 A specialized, flexible framework

The regulation contemplated should be designed to adequately reflect the complexity and diversity of the investment services industry. The framework must therefore be both specialized and flexible, and must, among other things, take into account the differences between types of investors, firms' business models, the products and services offered, the associated risks, and specific regional aspects. In the constantly evolving world of financial services, the regulation must also be able to adapt efficiently to technological innovations and to the frequent changes in the sector.

A specialized, flexible framework must also be workable in the different economic, social and legal environments in which the industry's stakeholders operate. To achieve this, it should involve local regulatory authorities with the specific expertise and experience needed to adapt the regulation to the differences and features of a given environment (e.g. in Québec, the specificity of a legal system based on civil law tradition and the promotion of the French language).

The self-regulatory model would be an appropriate basis for this specialized, flexible platform. As pointed out in the literature on the choice of regulatory methods, this model is justified by the expertise, flexibility and proximity of the SROs, since they are able to adapt regulation to the realities of the regulated industry.[32] Self-regulation may, however, raise some concerns, in particular with regard to SRO governance.[33] As pointed out by some of the stakeholders surveyed by the CSA, the involvement of investment services industry members in the SROs may increase the risk of industry capture and partiality, thereby undermining public trust in the SROs.[34] While acknowledging the relevance of these concerns and the need for them to be considered, we nevertheless believe that this regulatory method would produce a more specialized platform. We also point out that, for the purposes of this brief, our analysis of potential solutions is limited, since

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[32] Simon ROMANO, "Self-Regulation in the Securities Industry – A Regulatory Perspective", (1995) 18 *OCSB* 4824, p. 4 ; Christine FAY and Nicolas PARENT, "La structure de la réglementation des marchés financiers: survol de la littérature", *Revue du système financier*, p. 62, [Online] http://www.banqueducanada.ca/wp-content/uploads/2012/01/rsf-0604-fay.pdf. (consulted on September 24, 2020); Margot PRIEST, "The Privatization of Regulation: Five Models of Self-Regulation", (1997-1998) 29 *Ottawa L. Rev.* 233, p. 268-271; Peter DEY and Stanley MAKUCH, "Surveillance gouvernementale des organismes autorégulateurs dans l'industrie des valeurs mobilières au Canada", in INDUSTRIE CANADA, *Avant-projet d'une loi canadienne sur le marché des valeurs mobilières*, vol. 3, Consommation et Corporation Canada, p. 1626-1631.

[33] *Consultation Document*, *supra*, note 1, p. 27 and following.

[34] *Idem.*

it focuses on the aspects applicable to the regulatory authority's jurisdiction, over different types of intermediaries and the general structure of the regulation applicable to those intermediaries.

3.2 Proposed solutions

As pointed out earlier, Canada currently has several different self-regulatory organizations to oversee investment services. Surveillance of pan-Canadian services is carried out mainly by two SROs, namely the IIROC for investment dealers and their representatives, and the MFDA for mutual fund dealers and their representatives outside Québec.[35] The other intermediaries providing investment advisory and portfolio management services, including exempt market dealers, advisors (portfolio managers), and scholarship plan dealers and their representatives, are not covered by SROs, but are subject instead to surveillance by the CSA as part of their broader mandate.[36]

Québec has another SRO, the CSF, which is mainly responsible for discipline and continuous training of mutual fund dealers' representatives, scholarship plan dealers' representatives, representatives in insurance of persons and financial planners. Since the CSF is only responsible for surveillance and control of representatives, i.e. individuals who work in the sectors concerned, the AMF and the MAT provide complementary regulation and are responsible for supervising the firms themselves, i.e. mutual fund dealers, scholarship plan dealers, financial planning firms, insurance firms and insurers.[37]

The IIROC and the MFDA are aware of the problems arising from the multiple SROs that exist in Canada, and have submitted proposals to improve the self-regulatory model. An overview of these proposals is presented below. Due to time constraints, we will not consider some aspects addressed in the proposals, namely questions concerning SRO governance and the structuring of market surveillance activities.

3.2.1 The IIROC's proposal

In a document published in June 2020, entitled *Improving Self-Regulation for Canadians*, the IIROC suggests that it should merge with the MFDA in order to reduce the regulatory burden and associated costs, prepare flexible regulation adjusted to the firms' different business models and respond more effectively to investors' needs.[38] Under the proposal, the new SRO would comprise two divisions within the same organization: one to be responsible for investment dealers and the other for mutual fund dealers. There would be two sets of rules, one applicable to registrants under each of these divisions. In addition, at least in the early stages, the two dealer insolvency protection plans would also be maintained, providing coverage for cases currently covered by the CIPF for

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35 See the above text in section 2.1.2, especially with regard to the number of supervisory authorities.

36 Investment dealers and their representatives, as well as mutual fund dealers and their representatives outside Québec are also subject to surveillance by the CSA as part of their broader mandate. See Diagram 1 in Appendix 3.

37 See Table 2 in Appendix 4.

38 IIROC (*Improving Self-Regulation*), *supra*, note 6.

IIROC members and by the MFDA IPC for MFDA members.[39] However, the proposal also noted that the protection offered by the two plans should eventually be harmonized.

Under the terms of the proposal, dealers and their representatives would continue to carry out the same activities and be subject to separate regulation for each of the merged SRO's divisions, depending on the nature of those activities. Alternatively, dual-platform dealers, i.e. those currently registered with both SROs and subject to both regulatory platforms, could "choose to consolidate all their representatives in a single legal entity, etc., with each activity regulated in proportion to its risk".[40]

One of the main benefits of the merger would be for dual-platform dealers, whose regulatory burden and associated costs would be reduced as a result. As the IIROC document explains: "This would allow investment dealers to introduce a mutual fund-only offering within their existing legal entity without having to establish a separate dealer on the MFDA platform."[41] Merging the SROs would also allow mutual fund dealers and their representatives to enter more easily into agreements with investment dealers in order to expand their supply of products by distributing ETF products.[42]

In addition, the merger would allow the authorities to continue, as they already do, to cover both the individual and organizational aspects of investment services provision, while providing a specialized framework for the three groups of stakeholders (firms, management and representatives) as we recommend in the guiding principles set out earlier.

Although we recognize these benefits and those identified by the IIROC in its document, the proposal nevertheless has some limitations. First, the organization resulting from the merger would still maintain two separate bodies of regulation, one for each division. Unless it makes a significant effort to harmonize and consolidate these rules, continuation of the dual system would do little to eliminate the overlaps and redundancies identified by critics of the current system.

There are also questions concerning the obligations imposed on mutual fund dealers' representatives who may decide to join an investment dealership. In its proposal, the IIROC notes that, if the two SROs were to merge, "clients would not have to re-open accounts and/or change firms/advisors as their investing needs change."[43] This begs the following question: if mutual fund representatives are hired by an investment dealer, could they offer products other than investment fund products, along with a discretionary portfolio management service, in order to address their clients' changing needs? If so, would these representatives be required to previously fulfill additional proficiency requirements? If not, if mutual fund representatives were to maintain their current activities, would the clients who do business with them have to change intermediaries if

[39] IIROC (*Improving Self-Regulation*), *supra*, note 6, p. 26.
[40] *Idem*, p. 18.
[41] *Idem*, p. 14.
[42] *Idem*, p. 16, 18.
[43] *Idem*, p. 20.

they subsequently want access to a broader range of products and services to meet their changing needs?

The IIROC proposal also raises questions concerning the limited jurisdiction of the SRO resulting from the merger, which would not cover all the intermediaries offering investment services, but only investment dealers, mutual fund dealers and their representatives. Exempt market dealers, advisors (portfolio managers), scholarship plan dealers and financial planning firms and their representatives, most of which are currently subject to regulation by the CSA, would be excluded. It also seems that, in the case of investment services provided in Québec, the CSF would continue to be the supervising body for mutual fund dealers' representatives, scholarship plan dealers' representatives, financial planners and representatives in insurance of persons offering segregated fund contracts among other things. The AMF and the MAT would also continue to be responsible for regulating firms in these same sectors.

In short, the IIROC's merger proposal has benefits that would, in some respects, help to simplify the regulatory burden of registrants by creating a more flexible platform that could be adjusted to different business models, and by providing access to a more extensive range of products for investors and better coordination of the regulatory functions of the SRO resulting from the merger. On the other hand, the existence of two divisions, one for investment dealers and the other for mutual fund dealers, would maintain the current registration categories and would still require two bodies of rules, each applicable to one of the two divisions.

The merger proposal also is of limited scope in that it excludes regulation of mutual fund dealer intermediaries operating solely in Québec and regulation of other intermediaries offering investment services. In addition, at least in the early days, the IIROC would maintain the two existing insolvency protection plans (the CIPF and the MFDA IPC). In addition to these two plans, the FISF would also be maintained in Québec to compensate victims of fraud who did business with a mutual fund dealer, a mutual fund representative, a scholarship plan representative or an insurance representative registered with the AMF.[44]

Overall, the merger proposal would maintain several elements of the current compartmentalized platform. Regarding the guiding principles set out earlier, the proposed solution, at least in the short and medium terms, would not produce the changes required to create an integrated, simplified platform such as we recommend. However, its "step by step" approach does offer an interesting way forward in that it lays the groundwork for longer-term implementation of a general platform that would cover all intermediaries providing investment services in Canada, to minimize the problems arising from the multiple regulatory authorities, sets of rules and investor protection regimes.

[44] Regarding the FISF, see section 2.1.2, in particular on the variability of investor protection plans.

3.2.2 The MFDA's proposal

The reform proposed by the MFDA involves more extensive structural and regulatory changes than the IIROC's proposal.[45] Compared to the IIROC's proposal, which recommends merging two SROs to create a single entity with two separate divisions, the MFDA proposes the creation of a new SRO (*NewCo*), with a more comprehensive field of action. The new SRO proposed by the MFDA would be responsible for regulating different types of intermediaries providing investment services, including investment dealers, mutual fund dealers, advisors (portfolio managers), exempt market dealers and scholarship plan dealers, along with their respective representatives.[46] The MFDA's proposal also provides for the creation of a protection plan (or more than one plan) to cover the risks associated with the products and services provided by these intermediaries, including the risks currently covered by the CIPF and the MFDA IPC.[47] The MFDA's proposal, while suggesting an integrated platform for all intermediaries providing investment services, also takes into account the particular situation of Québec, where the MFDA is not currently recognized as an SRO by the AMF. We will come back to this question in more detail in the next section.

According to the MFDA's proposal, the main purpose of the new self-regulatory organization would be to protect the public interest by taking into account "in a fair and balanced way" the interests of the various stakeholders, including investors, industry participants, regulatory authorities, governments and Canadian society in general.[48] The new organization's regulatory action would also be based on the principle that similar activities would be subject to similar regulations so that investors have the same level of protection regardless of the registrant with whom they deal.[49]

The reform proposed by the MFDA includes some major changes that echo the integrated, simplified, specialized and flexible model we propose in this brief. From a structural standpoint, the new SRO would cover a broader range of intermediaries than the merger organization proposed by the IIROC, including not only the intermediaries subject to regulation by the current SROs (IIROC and MFDA), i.e. investment dealers, mutual fund dealers and their representatives, but also those regulated by the CSA, i.e. exempt market dealers, advisors (portfolio managers), scholarship plan dealers and their representatives.

A new, integrated organization covering all these intermediaries, as suggested by the MFDA, would continue to cover both individual and organizational aspects of investment services provision, and would also maintain specialized regulation, like the organization resulting from the merger proposed by the IIROC.

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45 MFDA (*A Proposal for a Modern SRO*), *supra*, note 24.
46 *Idem*, p. 5.
47 *Idem*, p. 23.
48 *Idem*, p. 16.
49 *Idem*, p. 9, 18.

From a regulatory standpoint, the MFDA's proposal is also consistent with the guiding principles set out in this brief, since it suggests a review of registration categories based on a holistic supply of financial advisory services, rather than an approach based on the sale of specific products or limited service supplies, as is currently the case.[50] Rather than two separate bodies of rules, as suggested by the IIROC, there would be one integrated set of rules that could be tailored to the range of situations existing in the industry, to take into account different business models, products, experiences and regional requirements, as well as broader public policy considerations.[51]

In closing, it should be noted that the MFDA's proposal, like that made by the IIROC, does not address the regulation of intermediaries in the financial planning and life insurance sectors.

3.2.3 Comments on the proposals submitted by the SROs and other potential solutions

The current SROs propose a number of structural and regulatory changes based mainly on the self-regulatory model, to modernize and improve the regulation of certain types of intermediaries offering investment services throughout Canada. Generally speaking, the solution proposed by the MFDA, namely the creation of a new SRO that would regulate a broader range of intermediaries and the introduction of common, activity-focused regulation, seems to be more promising in that it leans more towards a holistic, simplified, flexible approach. In comparison, it is difficult to reconcile this approach with the IIROC's proposal to maintain two separate divisions and two separate bodies of rules because, at least in the short and medium terms, the consolidated SRO contemplated by IIROC would maintain the current fragmentation by focusing on the products offered by intermediaries. However, we are aware that a reform similar to that recommended by the MFDA would present some significant challenges for all the stakeholders concerned, which would have to work together to achieve the aims of the process.

As mentioned earlier, the MFDA's proposal takes into account the specific situation of Québec, where the organization is not currently recognized by the AMF as a self-regulatory body, and where the CSF currently acts as a self-regulatory organization for representatives in the mutual fund and scholarship plan sectors.[52] The MFDA is aware of this and suggests that the new, integrated organization could enter into a cooperation agreement with these Québec organizations, as is currently the case, so as not to change the CSF's role and operations. At the same time, the MFDA suggests that the formal recognition for the new organization as an SRO in Québec could also be considered.[53]

Assuming that the new SRO is not formally recognized by the AMF, mutual fund intermediaries with activities in Québec and elsewhere in Canada would continue to be regulated by four organizations, namely the AMF, the MAT, the CSF and the new pan-Canadian SRO. This aspect

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50 MFDA/MFDA (*A Proposal for a Modern SRO*), *supra*, note 24, p. 9, 22.
51 *Idem*, p. 19.
52 *Idem*, p. 23.
53 *Idem.*

of the MFDA's proposal is troubling, since it would perpetuate the problems arising from the existence of too many regulatory authorities.

If the new SRO does not obtain AMF recognition for mutual fund intermediaries, this would also have the effect of maintaining a weakness in the current regulatory framework in Québec, which results in a division of responsibility for the sector between three different organizations, namely the AMF, the MAT and the CSF.[54]

Under the current regulatory regime for this sector, the AMF and the MAT regulate mutual fund dealer firms and some of their officers (the "chief compliance officer" and "designated officer in charge"), while the CSF is responsible only for disciplinary regulation of representatives, i.e. individuals.[55] Given the CSF's limited jurisdiction over the individual aspects of services provision, it cannot address organizational misconduct i.e. misconduct by the firms and by the officers and managers of the firms for which the representatives work.[56] This means that if the CSF identifies misconduct in the organizational environment, it cannot discipline either the firm or the officers and managers that failed to provide the required surveillance. Currently, only the AMF and the MAT have jurisdiction over organizational aspects.

Therefore, where misconduct occurs within a mutual fund dealership, the three authorities (the AMF, the MAT and the CSF) may become involved in the inspection, investigation, complaint and disciplinary process. In our view, this is a weakness of the current platform. Accordingly, the MFDA's proposal to maintain this aspect of Québec's current platform is not consistent with the integrated approach we propose, which should cover both the individual and the organizational aspects of investment services by regulating all three groups of stakeholders (firms, managers and representatives).

With this in mind, one of the solutions that might be considered is to extend the jurisdiction of the new SRO proposed by the MFDA to cover regulation of mutual fund dealers operating in Québec and elsewhere in Canada.[57] Extending the jurisdiction of this new SRO, which would be

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[54] The potential solutions for the regulation of the mutual fund sector were raised during consultations on Bill 141, on the reform of the financial sector, in 2017. See R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8, p. 26 and following. See also the consultations organized by the AMF during the registration reform that came into force in 2009: AMF, *Consultation on the regulatory framework applicable to the mutual fund sector further to the registration reform project*, February 20, 2007, [Online]: http://www.lautorite.qc.ca/files/pdf/reforme-inscription/epargne-collective/consultation-1/Document_consultation.pdf (consulted on September 24, 2020); AMF, *Consultation on the harmonization of mutual fund distribution regulations*, October 1, 2010, p. 5, [Online]: http://www.lautorite.qc.ca/files/pdf/consultations/valeurs-mobilieres/2010oct01-cons-epargnecoll-doc-fr.pdf. (consulted on September 24, 2020).

[55] C. DUCLOS (*La protection des épargnants*), *supra*, note 10, p. 379 and following; R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8, p. 5, 7, 20, 21; R. CRÊTE, C. DUCLOS and F. BLOUIN, *supra*, note 8, p. 333-341, 411-418.

[56] *Idem.*

[57] Formal recognition of the MFDA as a SRO in Québec has already been considered during the consultations organized by the AMF in 2007 and 2010, see the references cited in note 54.

responsible for overall regulation of most investment services sector intermediaries, would help to reduce the problems arising from the current multiple regulatory authorities.

If this avenue were to be chosen, we would need to ask ourselves if the concentration of regulatory, surveillance and control powers in a single SRO with pan-Canadian jurisdiction would remove the benefits of regulation by local bodies such as the AMF, the MAT and the CSF in Québec. These authorities have developed expertise in and experience of financial services regulation that allows them to consider the economic, social and legal aspects specific to Québec. In practical terms, this means they can establish standards and exercise their surveillance and control powers with due regard for Québec's civil law tradition and promotion of the French language.

To address these concerns, the proposed reform could maintain the benefits of local regulation by including provincially established sector-based structures within the new SRO. These structures could be managed by qualified personnel with appropriate expertise and experience in the province concerned. This would allow the personnel members to play an active role in developing and implementing the regulation. It is also worth noting that, under the proposals submitted respectively by the IIROC and the MFDA, the CSA would still exercise the new SRO's surveillance and control powers, as they currently do for the existing SROs.

Rather than expanding the jurisdiction of the new SRO proposed by the MFDA to include regulation of mutual funds' representatives working in Québec, an alternative solution would be to expand the powers of the CSF and recognize it as an SRO for regulating the three groups of mutual fund stakeholders (dealers, managers and representatives) working in Québec.[58] This solution would also maintain the CSF's benefits in Québec, including local surveillance, qualified personnel and overall regulation of representatives in the sectors governed by the *Act respecting the distribution of financial products and services*. However, the fact of expanding the CSF's powers in the mutual fund sector would do nothing to avoid regulatory duplication for dealers and representatives working in Québec and elsewhere in Canada, because the new SRO proposed by the MFDA would be required to intervene in activities outside Québec. The two organizations could enter into a cooperative agreement for the preparation and implementation of the regulatory platform, and in particular for the introduction of a coordinated inspection, investigation and disciplinary process.

In preparing and implementing the regulation, it is important to note that the current SROs, namely the IIROC and the MFDA, have, in recent years, developed detailed rules applicable throughout Canada to investment dealers, mutual fund dealers and their representatives, and that they have

[58] C. DUCLOS (*La protection des épargnants*), *supra*, note 10, p. 403; R. CRÊTE, C. DUCLOS and F. BLOUIN, *supra*, note 8, p. 418. As an alternative solution, Bill 141 on the reform of the financial sector, tabled in 2017, provided for the abolition of the CSF and the Chambre de l'assurance de dommages (ChAD), and the transfer of their powers to the AMF and the MAT. This potential solution was not retained when the bill was finally passed. Regarding this proposal, see R. CRÊTE and C. DUCLOS (*Brief Bill 141*), *supra*, note 8, p. 6, 7, 8, 26 and following.

worked closely with the CSA to adopt and enforce harmonized regulation applicable to these intermediaries, including *National Instrument 31-103*. In this regard, a new SRO that is responsible for regulating intermediaries in Canada would be able to use qualified and experienced people from both these organizations to draw up the new pan-Canadian regulation and exercise oversight powers in each province with due regard for local characteristics.

Conclusion

Based on the work we have done as members of the GRDSF, we agreed enthusiastically to take part in the CSA consultation on the SRO framework, by contributing to the debate on some of the issues presented in the *Consultation Document* and assessing some potential solutions to improve the regulation of investment services offered by a broad range of intermediaries. Our comments in this brief are made from the standpoint of investor protection.

Our analysis, like that of many other observers, shows that the current framework is based on a fragmented approach focused on products rather than on the activities of intermediaries. This compartmentalized platform has led to the creation of multiple authorities, each with different registration categories and sets of rules, and this despite the similarity of the services provided. One of the negative consequences of this fragmentation is that it leads to unequal protection for investors, especially with regard to the application of the protection plans in cases of insolvency or fraud, which vary by registration category and region. Our analysis also reveals that the various regulatory authorities, the range of registration categories and sets of rules, and the existence of different protection plans, is likely to create confusion among investors.

These observations highlight the need to review the structure and content of the current SRO framework. In the consultation process organized by the CSA, we therefore consider it necessary to put forward certain guiding principles in order to assess the solutions submitted by the IIROC and the MFDA for an eventual reform. From the analysis standpoint used in this brief, these principles include the creation of an integrated, simplified, specialized, flexible framework to protect investors and maintain public trust in the financial service sector.

More specifically, this framework, based on the self-regulatory model, should be designed using a coherent, holistic approach covering all investment sectors, i.e. investment advisory services, portfolio management services, securities trading services, financial planning services and life insurance services offering insurance-related investment products. As proposed by other observers, this approach would focus on intermediaries' activities rather than products, and would take similarity of services into account. It would help minimize or avoid duplications, variability of protection plans and administrative or financial burdens, and would minimize the risk of confusion generated by the multiple regulatory authorities, registration categories and rules. The integrated framework contemplated here should also cover both the individual and organizational aspects of investment services by giving the supervisory authorities jurisdiction over the three

groups of stakeholders (firms, managers and representatives), as is currently the case for the IIROC and the MFDA. Lastly, the framework should be both flexible and specialized, and should be able to adjust to the complex situations and constant changes that characterize the investment services industry in Canada.

Based on these guiding principles, our analysis of the proposals submitted by the IIROC and the MFDA shows that both contain several aspects that echo the approach we recommend. If we compare the solutions proposed by the two bodies, the MFDA's solution appears to be more appropriate, in that it is more conducive to a holistic approach for regulating this sector of the financial services industry, subject, however, to the concerns and alternatives we have presented for some aspects of investment services regulation in Québec. Overall, we believe the proposals submitted by these two pan-Canadian SROs are interesting and offer some promising solutions that will help improve the regulatory framework.

APPENDIX 1 - Main GRDSF Publications

Monographs, collective works and other publications

BRISSON, G., P. TACHÉ, H. ZIMMERMANN, C. MABIT et R. CRÊTE, *La réglementation des activités de conseil en placement. Le point de vue des professionnels*, vol. 3, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2010, 186 p.

CÔTÉ, M., *Les mécanismes d'indemnisation des consommateurs dans l'industrie des services financiers*, vol. 5, coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015, 273 p.

CRÊTE, R., M. CÔTÉ et C. DUCLOS, avec la collab. de M.-J. NORMAND-HEISLER, « Un devoir légal, uniforme et modulable d'agir au mieux des intérêts du client de détail », *Mémoire préparé pour les Autorités canadiennes en valeurs mobilières (CSA) dans le cadre de la consultation 33-403*, mars 2013, 43 p.

CRÊTE, R., et C. DUCLOS, *Commentaires soumis aux Autorités canadiennes en valeurs mobilières*, concernant le Document de consultation 33-404 des Autorités canadiennes valeurs mobilières – *Propositions de rehaussement des obligations des conseillers, des courtiers et des représentants envers leurs clients* (28 avril 2016), Québec, 30 septembre 2016, 26 p.

CRÊTE, R., et C. DUCLOS, *Mémoire présenté à la Commission des finances publiques concernant le projet de no 141, Loi visant principalement à améliorer l'encadrement du secteur financier, la protection des dépôts d'argent et le régime de fonctionnement des institutions financières*, 18 janvier 2018, 53 p.

CRÊTE, R., et C. DUCLOS, *Réflexions sur l'encadrement des services de courtage en épargne collective*, mémoire soumis dans le cadre de la consultation sur le *Rapport sur l'application de la Loi sur la distribution des produits et services financiers*, Québec, 30 septembre 2015, 52 p.

CRÊTE, R., et C. MORIN (dir.), *La protection juridique des personnes aînées contre l'exploitation financière*, *Revue générale de droit*, 2016, vol. 46, 529 p. (numéro hors série).

CRÊTE, R., et C. MORIN, *Mémoire de la Chaire Antoine-Turmel pour la Consultation des Autorités canadiennes en valeurs mobilières (CSA) sur le Projet de modification visant à rehausser la protection des clients âgés et vulnérables*, déposé auprès de l'Autorité des marchés financiers (AMF), le 20 juillet 2020, 30 p.

CRÊTE, R., I. TCHOTOURIAN et M. BEAULIEU (dir.), *L'exploitation financière des personnes aînées: prévention, résolution et sanction*, Cowansville, Éditions Yvon Blais, 2014, 542 p.

CRÊTE, R., M. LACOURSIÈRE, M. NACCARATO et G. BRISSON (dir.), *La confiance au cœur de l'industrie des services financiers*, Cowansville, Éditions Yvon Blais, 2009, 483 p.

CRÊTE, R., M. NACCARATO, M. LACOURSIÈRE et G. BRISSON (dir.), *Courtiers et conseillers financiers. Encadrement des services de placement*, vol. 1, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, 720 p.

DUCLOS, C., *La protection des épargnants dans les services d'investissement : une étude des facteurs d'influence de nature organisationnelle des manquements professionnels à la lumière de l'étiologie des accidents*, thèse de doctorat, Québec, Faculté de droit, Université Laval, 2019, 521 p. (Publication aux Éditions Yvon Blais à venir).

LÉTOURNEAU, A., *Le contrat de service, le mandat et le régime de l'administration du bien d'autrui : similitudes, incidences et différences dans le contexte des services d'investissement*, mémoire de maîtrise, sous la direction de Raymonde Crête, janvier 2013, 176 p.

MABIT, C., *Le régime de sanctions disciplinaires applicable aux courtiers en placement*, vol. 2, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2010, 177 p.

PARADIS, J., *La rémunération des acteurs de l'industrie de l'épargne collective au regard de la protection des épargnants*, vol. 4., coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015, 230 p.

Papers in journals and collective works

CÔTÉ, M., « Le « contrat de fonds distincts » : un produit d'assurance à l'ombre du droit des valeurs mobilières ? », (2019) 53 *RJTUM* 395-459.

CRÊTE, R., « Les manifestations du particularisme juridique des rapports de confiance dans les services de conseils financiers et de gestion de portefeuille », (2009) 39 *R.G.D.* 581-653.

CRÊTE, R., « La difficile cohabitation des impératifs économiques des gestionnaires de patrimoine et des intérêts des épargnants », dans *Les conflits d'intérêts*, Journées nationales, Association Henri Capitant, t. 17, Lyon, Dalloz, 2013, p. 153-171.

CRÊTE, R., C. DUCLOS et F. BLOUIN, « Les courtiers en épargne collective, leurs dirigeants et leurs représentants sont-ils à l'abri de sanctions disciplinaires au Québec? », (2012) 42 *R.G.D.* 267-446.

CRÊTE, R., et C. MORIN, « La protection juridique des personnes aînées contre l'exploitation financière », (2016) 46 *R.G.D.* 5-11.

CRÊTE, R., et M. CÔTÉ, « La reconnaissance juridique de la spécificité des services de gestion de patrimoine dans l'industrie des fonds d'investissement », dans T. GRANIER (dir.), *Les fonds d'investissement*, coll. Axe Droit, Paris, Lamy, 2013, p. 19-45.

CRÊTE, R., M. LACOURSIÈRE et C. DUCLOS, « La rationalité du particularisme juridique des rapports de confiance dans les services de conseils financiers et de gestion de portefeuille », (2009) 39 *R.G.D.* 523-580.

CRÊTE, R., M. NACCARATO, C. DUCLOS, A. LÉTOURNEAU et C. MABIT, « L'encadrement légal et les types de déviances dans les services de placement », (2010) 35:2 *Gestion* 35-48.

CRÊTE, R., M. NACCARATO, C. DUCLOS, A. LÉTOURNEAU et C. MABIT, « Les déviances dans les services de placement : responsabilités, sanctions et moyens de prévention », (2010) 35 *Gestion* 49-60.

DUCLOS, C., et F. LÉVESQUE, « L'incidence de l'âge et de la vulnérabilité de la victime dans l'évaluation de sa part de responsabilité dans le préjudice subi : l'exemple des services financiers », (2016) 46 *R.G.D.* 219-276.

NACCARATO, M., et A. LÉTOURNEAU, « La confiance trahie : La répression pénale et criminelle du manquement contractuel de l'intermédiaire de marché en valeurs mobilières et la détermination des peines applicables », (2010) 43 *R.J.T.* 145-270.

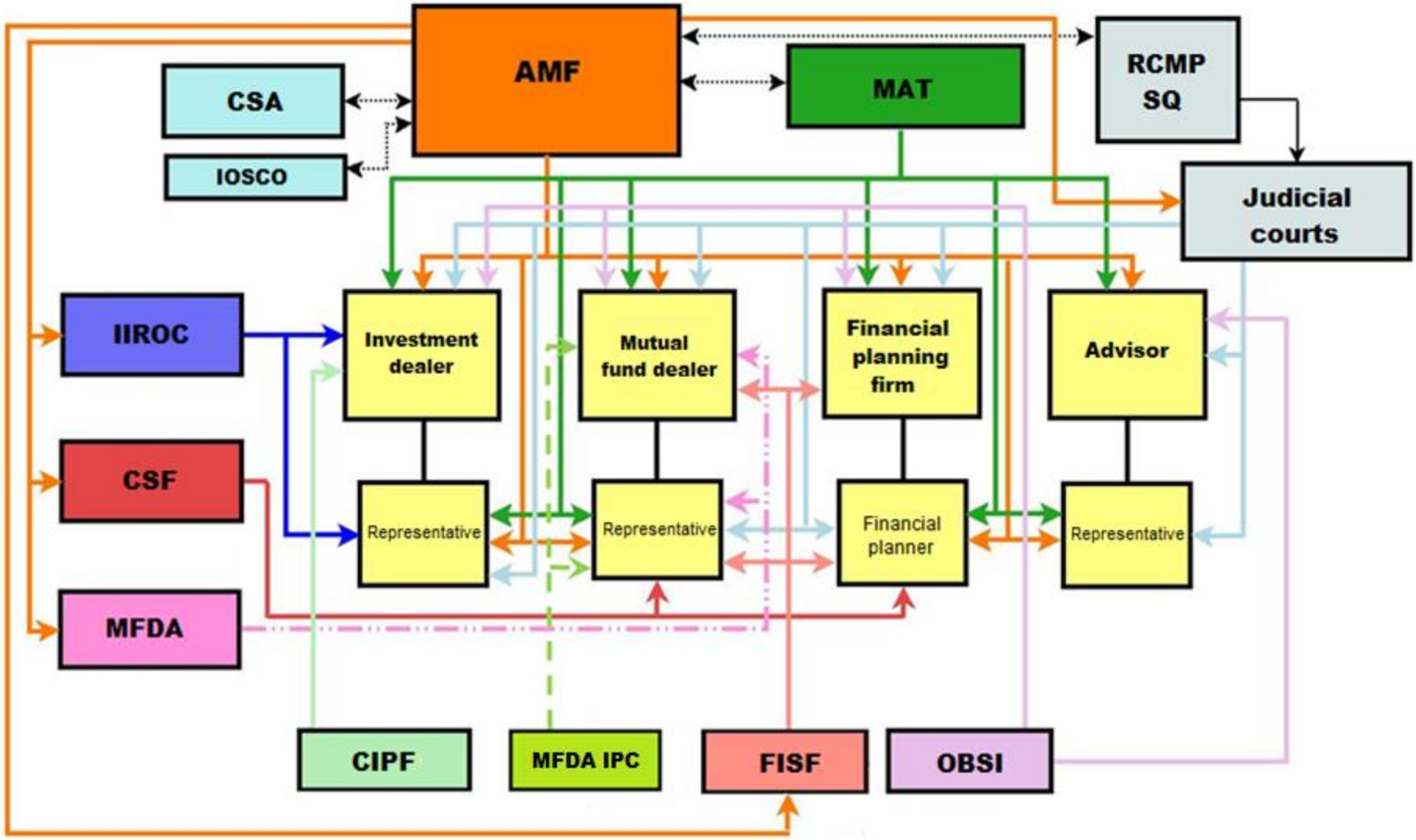
APPENDIX 2 - Table 1: Products and services by registration category[59]

Functions and activities / Products / Definition		Investment dealer and representatives	Mutual fund dealer and representatives	Other dealers and representatives	Advisor (portfolio manager) and representatives	Financial planning firm and financial planners	Life insurance firm and representatives
Functions and activities	**Definition** / **Products**	All products	Mutual fund products	Specific products according to their registration category	All products (subject to restrictions)	All products	Segregated fund contracts
Trading	Action through which financial instruments are traded (purchased and sold).	Authorized	Authorized	Authorized	Not authorized	Not authorized	Authorized
Advice	Recommendations made and opinions offered on what should be done or the provision of an intellectual contribution aimed at offering guidelines, selecting actions or assisting with decisions on different operations.	Authorized	Authorized	Authorized	Authorized	Authorized (only for general advice)	Authorized
Discretionary portfolio management	Portfolio management contract under which the intermediary has extended powers to select and carry out operations without obtaining prior consent from the client.	Authorized	Not authorized	Not authorized	Authorized*	Not authorized	Not authorized

* With assistance from a dealer for securities trading.

[59] Table based on the table presented in R. CRÊTE and C. DUCLOS (*Le portrait des prestataires*), *supra*, note 5, p. 109.

APPENDIX 3 - Diagram 1: The regulatory authorities in the investment services industry in Québec[60]



[60] Diagram updated in 2020. See C. DUCLOS (*Les autorités d'encadrement*), *supra*, note 16, p. 128.

APPENDIX 4 - Table 2: Regulation of investment services providers in Québec[61]

CATEGORIES OF INTERMEDIARIES	LEGAL REGULATION						
	Rules	**Administrative bodies and administrative tribunals**	**Self-regulatory organizations**	**Body with disciplinary jurisdiction**	**Body with ethics jurisdiction**	**Compensation fund for clients**	**Alternative dispute resolution mechanisms**
	Main sources of rules*	Regulation of the right to practice, awarding of licences, and imposition of penalties	Regulation by members of an activity sector (specific and adapted to that sector)	Enforcement: follow-up of complaints, investigations, hearings	Preparation of rules of conduct and inspections to ensure enforcement	Compensation for consumers in case of insolvency, fraud, etc. (varies by fund)	Mediation, conciliation and arbitration services
Investment dealers and their representatives	SA, NI 31-103, SR, Rules of member dealers-IIROC	AMF, MAT, IIROC (for registration)	IIROC	IIROC	IIROC	CIPF	AMF IIROC (OBSI)
Mutual fund dealers	SA, NI 31-103, SR (MFDA rules)	AMF, MAT	- (MFDA)	AMF, MAT (MFDA)	AMF (MFDA)	FISF (MFDA IPC)	AMF (OBSI) (MFDA)
Mutual fund dealers' representatives	SA, ADFPS[62], NI 31-103, SR, RRESS (MFDA rules)	AMF, MAT	CSF (MFDA)	CSF	AMF / CSF	FISF (MFDA IPC)	AMF (OBSI) (MFDA)
Other dealers and their representatives	SA, NI 31-103, SR, RRESS[63]	AMF, MAT	-	AMF, MAT	AMF	-	AMF
Advisors and their representatives	SA, NI 31-103, SR	AMF, MAT	-	AMF, MAT	AMF	-	AMF
Financial planning firms	ADFPS, RRFRIP	AMF, MAT	-	AMF, MAT	AMF	FISF	AMF (OBSI)
Financial planners	ADFPS, CSF code of ethics, RPAR, IQPF rules	AMF, MAT	CSF, IQPF	CSF	CSF	FISF	AMF
Firms (personal insurance)	ADFPS, RRFRIP	AMF, MAT	-	AMF, MAT	AMF	FISF	AMF
Personal insurance representatives	ADFPS, CSF code of ethics, RPAR	AMF, MAT	CSF	CSF	CSF	FISF	AMF

* *Securities Act*, CQLR, c. V-1.1 (**SA**); *Securities Regulation*, CQLR, c. V-1.1, r. 50 (**SR**); *Regulation respecting the rules of ethics in the securities sector*, CQLR, c. D-9.2, r. 7.1 (**RRESS**); *Regulation respecting the registration of firms, representatives and independent partnerships* CQLR, c. D-9.2, r. 15 (**RRFRIP**); *Regulation respecting the pursuit of activities as a representative* CQLR, c. D-9.2, r. 10 (**RPAR**).

61 Table based on R. CRÊTE and C. DUCLOS (*Le portrait des prestataires*), *supra*, note 5, p. 113. The elements shown in brackets are applicable mainly to intermediaries that also have activities outside Québec.

62 Only some sections of the ADFPS are applicable to mutual fund dealers' representatives. See SR, s. 149.2; ADFPS, Division V to VI.

63 Only for scholarship plan dealers' representatives.

Le vendredi 23 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
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H4Z 1G3

Par courriel : consultation-en-cours@lautorite.qc.ca

Objet : 25-402 - Consultation sur le cadre réglementaire des organismes d'autoréglementation

Je souhaite soumettre un commentaire aux Autorités canadiennes en valeurs mobilières (ACVM) et à l'Autorité des marchés financiers. Je suis un professionnel des services financiers.

La présente consultation qui porte sur le cadre réglementaire des organismes d'autoréglementation (OAR) canadiens aura vraisemblablement des impacts majeurs au Québec. Toutefois, cette importante consultation a été décidée et se déroule à toutes fins utiles à l'extérieur des frontières de notre territoire puisqu'elle a été initiée par les grandes institutions de dépôt canadiennes de Toronto avec comme objectif principal l'amélioration de leurs propres conditions tout en y greffant de vagues promesses d'apparat concernant une protection accrue des épargnants.

Il ressort de cet exercice que la situation de quasi-monopole dont bénéficient déjà les grandes banques se consolidera encore davantage puisque les petits courtiers en épargne collective se retrouveront privés de représentation à la table des grandes firmes de courtages advenant une fusion des deux OAR canadiens. Ce qui est déjà annoncée.

L'encadrement réglementaire appliqué par les associations de sociétés de courtage que sont l'OCRCVM et l'ACCFM qui prévaut actuellement dans le reste du Canada (ROC) est un encadrement d'une autre époque qui favorise les sociétés bancaires et qui considère les conseillers comme des « employés ». Dans ce modèle éculé, les OAR supervisent les firmes de courtage et les firmes de courtage encadrent les intermédiaires à qui elles imposent un fardeau de règles prescrites et d'obligations qui ne cessent de s'alourdir. Dans ce système, les conseillers sont considérés comme des subalternes et ne participent pas de façon démocratique à l'amélioration des pratiques, à la déontologie, à la formation continue, à la prévention et à la reconnaissance de leur professionnalisme.

Les acquis du professionnalisme

Par ailleurs, le modèle québécois actuel responsabilise le conseiller professionnel qui doit prioritairement servir l'intérêt du client avant le sien. C'est le cœur du professionnalisme. Les clients doivent pouvoir avoir confiance en leur conseiller en raison de la complexité du domaine et des impacts possibles sur leur santé financière.

Le conseiller membre de la CSF peut se prévaloir de plusieurs privilèges que lui confère son appartenance à une organisation professionnelle :

- Le contrôle sur la formation continue et la qualification des membres par l'entremise de la CSF

- Une autonomie certaine dans l'organisation et la régulation des activités professionnelles

- La participation aux activités, au conseil de l'organisation, aux différents comités, dont le comité de discipline et aux décisions concernant la profession

- L'obligation spécifique de servir le meilleur intérêt du client n'est pas inscrite dans la réglementation des OAR canadiens.

Concurrence affaiblie = protection du public menacée

La protection du public passe par une saine concurrence. En forçant l'établissement de nouvelles règles sur le territoire québécois dont les répercussions risquent de nuire à la survie des courtiers de petites tailles, les OAR canadiens et les ACVM vont favoriser la mainmise des grands groupes financiers sur le secteur des valeurs mobilières, laissant le marché devenir de plus en plus concentré.

En limitant la concurrence ou en réduisant l'entrée sur le marché de joueurs de plus petites envergures sans avantage démontrable pour les consommateurs, les décideurs des ACVM pourrait rompre l'équilibre essentiel entre les intérêts de la protection des consommateurs et les vertus du marché dynamique et concurrentiel qui caractérisent le Québec aujourd'hui.

L'importance du conseil pour tous les Québécois

Il est primordial pour l'État québécois que les familles puissent avoir accès à des professionnels des services financiers afin de les aider à gérer leur situation financière. Le conseiller en services financiers est la clé de voûte du système qui assure que le plus grand nombre de contribuables possibles bénéficient d'épargne retraite afin de ne pas trop imposer de pression sur le filet social des gouvernements. Le gouvernement ne doit pas négliger l'importance et la fragilité de l'écosystème qui caractérise aujourd'hui le Québec. Le Québec et ses institutions, le ministère des Finances doivent, dans les faits protéger le modèle que s'est donné le Québec il y a 20 ans. Un modèle qui donne d'excellents résultats, qui est à l'image de sa population, qui est diversifié, qui permet aux Québécois des régions et aux entreprises régionales de bénéficier de conseils professionnels de premier plan et de prospérer.

Toute tentative de bouleverser cet équilibre risquera d'avoir des conséquences néfastes pour le Québec et l'ensemble des Québécois.

Je remercie les ACVM de bien vouloir tenir compte de ma position concernant cette consultation.

Michel Madore

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Advocis The Financial Advisors Association of Canada

October 23, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Care of:

The Secretary
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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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consultation-en-cours@lautorite.qc.ca

SENT VIA EMAIL

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators Consultation Paper 25-402
Consultation on the Self-Regulatory Organization Framework

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments on the Canadian Securities Administrators' (CSA) Consultation Paper 25-402, *Consultation on the Self-Regulatory Organization* (SRO) *Framework*.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With more than 13,000 members across the country, Advocis is the definitive voice of the profession, advocating for professionalism and consumer protection. Our members are provincially licensed to sell life, health and accident and sickness insurance, as well as by provincial securities commissions as registrants for the sale of mutual funds or other securities. Members of Advocis are primarily owners and operators of their own small businesses, creating thousands of jobs across Canada. Advocis members provide advice in several key areas, including estate and retirement planning, wealth management, tax planning, employee benefits, life insurance, critical illness and disability insurance.

Professional financial advisors and planners are critical to the ongoing success of the economy, helping consumers to make sound financial decisions that ultimately lead to greater financial stability and independence both for the consumer and the country. No one spends more time with consumers than advisors and planners, educating them about financial matters and helping them to reach their financial goals. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

2. OUR COMMENTS

EXECUTIVE SUMMARY

Advocis applauds the CSA for launching this initial review of the SRO framework. We feel that a move towards a consolidated SRO is necessary and long overdue. With increasing pressures of globalization, digitization and emerging systemic risks including COVID-19 and the recent financial downturn, we feel that Canadian investors deserve a regulatory framework that is responsive, flexible, and proportionate.

In our view, the current focus on product-based regulation is a barrier to innovation, effective investor protection, and the accessibility of financial advice for all Canadians. While a consolidated SRO only mitigates some issues stemming from this product-focused approach, we feel that it offers an opportunity to meaningfully level the playing field for industry and will lead to opportunities for investors that align better with their financial needs and goals.

Reviewing the stakeholder comments and proposals from both IIROC and the MFDA, we feel that the need for a consolidated SRO is evident. We encourage the CSA to act with urgency, and implement a single SRO that can respond effectively to the changing needs of Canadian businesses and investors.

1. DUPLICATIVE OPERATING COSTS FOR DUAL PLATFORM DEALERS

Question 1.1: *What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

> *a) Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients.*
> *b) Describe instances whereby those duplicative costs are necessary and warranted.*
> *c) How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?*

Response:

The stakeholder comments reflect the feedback that Advocis has received from our membership regarding costs for dual platform dealers. Dual platform dealers seek the flexibility to meet the evolving needs of their clients within a single firm. We support efforts to enhance consumer choice in this manner and believe that the current system is unnecessarily complex and cost-prohibitive.

We would expect that a consolidated SRO would be better equipped to regulate and develop a fee structure based on the risk of a given product or practice. This would eliminate the need for maintaining the current IIROC upgrade requirement and allow members to create business structures that reflect their internal resources, expertise, and the needs of their communities.

While Advocis would like to see a regulatory framework that accommodates dealers seeking to expand their service offerings in the securities and mutual fund sectors, we understand that this approach may not make business sense for all members. A consolidated, modern SRO should be mindful of the cost and resources required for regulatory compliance, and should ensure that that the system does not favour larger dealers, including those with the significant backing of large financial institutions.

In our view, it is critical to promote a regulatory framework where cost is proportionate to size, risk and the need for regulatory intervention. We would hope that any fee structure developed by a consolidated regulator would maintain cost-effective fee solutions for smaller,

independent mutual fund dealers that provide service to Canadians living and investing outside of city centres.

Question 1.2: *Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.*

Response:

In our view, the targeted outcome should also reflect a regulatory framework that is sensitive to the needs of an inclusive, competitive market, including the needs of smaller dealers.

2. PRODUCT-BASED REGULATION

Question 2.1: *What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

> *a) Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories?*
> *b) Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services?*
> *c) What role should the types of products distributed and a representative's proficiency have in setting registration categories?*
> *d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?*

Response:

In our view, existing regulation focuses on products, at the expense of proper regulatory oversight of the most critical retail financial relationship — the ongoing relationship between

financial advisors and their clients. The current product-based framework does not reflect modern advice-giving or the way that modern consumers see their advisors, or access financial advice, today.

While existing regulators may be adept at regulating their member dealers or brokers, including regulating the constant product innovation in the industry, they do not have a collective focus on the retail consumer's overall advisory experience. Many advisors hold multiple licenses which allow them to provide consumers with risk management and wealth solutions from across not only mutual fund and securities sectors, but also the insurance sector.

As a practical matter, most consumers do not conceive of the retail financial services industry as structured in such rigid "silos." Nor should they be expected to understand the legal rules and regulatory processes which have produced this model. Consumers often have no sense of when their advisor is wearing their mutual funds hat vs. an insurance/segregated funds hat; not only should consumers not be expected to understand these distinctions, they should be able to expect comparable treatment and protections regardless of which products their advisor recommends.

In the current regulatory framework which is predicated on product sales, it is often the case that the advisor-client relationship is not governed by a single regulatory entity, but by a combination of them. The result is that the protections which consumers do receive vary widely, as they are based on the sector from which the product originates. We have seen the importance of this distinction coming to light if problems arise, leaving consumers confused and disappointed.

It is our opinion that reducing the number of SROs is a step towards a regulatory regime that is more aligned with consumer needs and expectations. Advocis also encourages the CSA to evaluate whether other registration categories such as Exempt Market Dealers (EMDs), Portfolio Managers (PMs) and Scholarship Plan Dealers (SPDs) can also be appropriately included in the regulatory jurisdiction of a single SRO. In our view, this is particularly appropriate from a consumer-focused perspective. In particular, retail customers should be able to expect that securities professionals are held to similar standards and share points of contact for any questions of qualifications, disciplinary actions, or other issues. This consumer-focused perspective should be central to the creation of a new SRO framework.

Consolidating registration categories under the banner of a single SRO facilitates a consumer-focused approach that would reduce regulatory arbitrage, limit investor confusion, and would better reflect how Canadians seek financial advice and make product purchasing decisions. However, while consolidation would be beneficial, arbitrage opportunities still remain between the securities and insurance sector.

In our view, while a single securities SRO would mitigate the risks, challenges and arbitrage opportunities inherent in a product-focused regulatory framework, it is ultimately necessary to modernize financial services regulation by professionalizing financial advice. We encourage CSA members to lend their support to initiatives to protect the titles of "financial advisor" and "financial planner", like those currently proceeding in the provinces of Ontario and Saskatchewan. We also invite CSA members to again consider our Professions Model,[1] which outlines a path to relationship-focused regulation that would ultimately reflect the needs and expectations of consumers while reducing regulatory arbitrage and holistically address risks, concerns and bad actors within the industry.

Question 2.2: *Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.*

Response:

We recommend that the regulatory framework also focus on aligning with the consumer's perspective, including how modern consumers access financial advice and products, and their reasonable expectations from a financial services regulator.

3. REGULATORY INEFFICIENCIES

Question 3.1: *What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

> *a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.*
> *b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.*

[1] An overview of the Professions Model is included in pages 11-16 of our 2016 response to the CSA's proposals re: NI 33-404, which can be found here: https://www.advocis.ca/regulatory-affairs/RA-submissions/2016/160930-Advocis-Response-to-CSA-33-404-v5.pdf

c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

Response:

The stakeholder comments on the issue of regulatory inefficiencies reflect the feedback that we have received from our members, especially in the category of mutual fund dealers. Our members have expressed concern with the differing approach to audits and compliance matters between SROs in various geographic regions, with some approaches requiring a more significant investment of time and resources than seems proportionate to the risk. Advocis Members have also expressed concern with the difference in fee structures between the MFDA and IIROC, especially given the restricted product offerings under the former.

That said, members licensed with the MFDA felt that the ability to incorporate and direct commissions was a valuable tool for addressing corporate structure and business needs. Especially in a time of disruption and industry change, we feel that the ability to incorporate affords advisors the flexibility necessary to innovate and create business models that align with consumer expectations. In our view, this option should be available regardless of product shelf.

Our members have also expressed concern that while consumer demand grows for products such as Exchange-Traded Funds (ETFs) and Platform-Traded Funds (PTFs), mutual fund dealers are not able to access these products in an efficient manner. Even where individual mutual fund representatives may be qualified to sell these products, the dealers are unable to trade or settle securities other than mutual funds under their current licensing category, and must navigate the structural separation between the MFDA and IIROC in order to access the clearing and settlement system through investment dealers.

In addition to placing mutual fund dealers at a competitive disadvantage, consumers also have difficulty accessing ETFs and PTFs which may be more cost-effective and aligned with their financial goals than more traditional mutual funds. Under a single SRO, we feel that advisors in the mutual fund space would be better equipped to offer their clients access to these products through introducing-carrying relationships, without creating otherwise unnecessary referral relationships or sacrificing the ability to book business in the client's name or re-direct commissions.

Clients would also be able to purchase ETFs more efficiently through the mutual fund channel, which offers enhanced access to personal financial advice than other ETF purchasing options, such as online platforms that do not provide access to fulsome financial advice. We believe that clients understand the value of advice, and in addition to granting clients access to a broader suite of lower cost products such as ETFs, facilitating these sales through the mutual fund channel also helps ensure that consumers receive the advice of trusted, qualified professionals.

Question 3.2: *Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors*.

Response:

The targeted outcome should include not just consistent access, but consistent obligations on registrant and consistent protections for consumers.

4. STRUCTURAL INFLEXIBILITY

Question 4.1: *What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

> *a) How does the current regulatory framework either limit or facilitate the efficient evolution of business?*
> *b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancements, and how this has impacted the client experience.*
> *c) Describe factors that limit investors' access to a broad range of products and services.*
> *d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?*
> *e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?*

Response:

Advocis echoes the stakeholder comments made with respect to structural inflexibility within the current regulatory framework.

Consolidation of SROs provides more flexibility to advisors, many of whom are small business owners seeking to serve retail clients with specific needs. In our view, greater flexibility to

expand product offerings through ongoing education and other means of developing proficiency is a net positive to clients. With a single SRO, we anticipate that financial advisors will be able to more responsively adapt to changes in the market and address the emerging needs of their clients.

Structural inflexibility also creates challenges for the evolution of technological solutions, from client relationship tools to compliance management. As a market, Canada is comparatively small compared to global tech hubs such as Silicon Valley and New York. Startups seeking to bring FinTech products to the Canadian market face challenges in creating profitable products that comply with the complex and sometimes overlapping regulatory regimes in the financial services space. While larger dealers and other entities may have the resources to create technological solutions from scratch or adapt existing products to meet their needs, independent advisors and smaller dealers may not have the resources to fully access the advantages that technological innovation can offer their business.

While products such as robo-advisors offer some solutions, we believe that Canadians benefit from being able to meet with trained, qualified financial advisors who can make personal and holistic recommendations about how to reach their goals and maintain their financial health. It is our view that while SRO consolidation offers opportunities to encourage broader technological innovation, it will specifically encourage the development of back-office solutions and client-facing tools for advisors, freeing them to focus on what they do best – advising their clients. We believe that this is an important step towards evening the playing field for independent advisors, large dealers, and online platforms.

The new SRO should take a modern approach to directed commissions and advisor incorporation. Historically, advisors in the insurance sector have been allowed to incorporate, and more recently so too have advisors on the MFDA platform; to Advocis' knowledge, consumers have not been harmed as a result of this practice. Allowing financial advisors to incorporate in the securities sector would prove beneficial to advisors and consumers. Advisor incorporation provides the advantage of reducing administrative red tape for financial advisors, as well as enhancing their ability to plan for contingencies or succession in these uncertain times. Not allowing financial advisors to direct their commissions to their personal corporations makes little sense, especially in an environment in which most of them are dual-licensed to sell securities and insurance products.

In our view, enhancing the ability of advisors to adopt digital tools, enhance their proficiency and expand product offerings, and adjust their business structure through incorporation has a direct benefit for consumers. Advisors would be more able to be more directly responsive to the unique and evolving needs of their clients. Further, greater flexibility allows for greater innovation, especially where addressing rural and remote communities, as well as the needs of populations that have historically been underserved in the financial advice space.

Question 4.2: *Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.*

Response:

We believe that this targeted outcome is described appropriately.

5. INVESTOR CONFUSION

Question 5.1: *What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

> *a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?*
> *b) Describe the difficulties clients face in easily navigating complaint resolution processes.*
> *c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.*

Response:

With continuous product innovation and convergence, it is increasingly difficult for consumers to see the differences between different financial products and unreasonable for industry and regulators to expect them to do so. Consumers come to financial professionals seeking to achieve certain financial objectives. They turn to financial advisors to recommend strategies to achieve these goals, including investment and risk management products. In our view, a modern SRO framework should reflect the consumer's view and align with their reasonable expectations.

In the current framework, securities regulators, the MFDA and IIROC are each empowered to impose a variety of sanctions, including the stripping from an advisor of his or her license or registration. However, the limitations of the existing product-based approach become most apparent when considering the gaps which open when one considers the practical impact of

having multiple regulatory authorities investigate and act on consumer complaints: each regulator's enforcement powers are limited to its respective sector.

While consolidating the SROs would reduce areas of confusion for investors, it would not fully resolve the complexity of the current regulatory framework. For example, the insurance industry will not fall under this umbrella, and even where conduct is so egregious that an advisor loses their registration or membership with the MFDA or IIROC, they can still continue to provide advice and sell similar products (such as segregated funds) through an insurance licence. This is an industry-wide concern that puts consumers at risk.

In our view, a more holistic and comprehensive approach to reducing investor confusion is required, especially where it pertains to identifying bad actors and protecting investors. Regulators should seek holistic solutions that simplify things for the investing public at all stages of the process, whether that is maintaining a single database of complaints and disciplinary actions across all regulators, sectors, and SROs or harmonizing the coverage by the Canadian Investor Protection Fund (CIPF) and the Investor Protection Corporation (IPC).

Although we support SRO consolidation and believe it will reduce some investor confusion, it is Advocis' position that any meaningful step towards an effective, comprehensive investor protection regime must include a shift from product-based regulation to one that focuses on the client-advisor relationship and is streamlined accordingly.

Ultimately, we feel that the regulatory framework should include a single point of contact for all consumer complaints regarding financial advisors, regardless of product sector. In our view, financial advisors should be overseen by a professional body that is empowered to act on the basis on the quality of that advice, across product sectors to protect the public interest. In addition to enhancing consumer protection, this would provide greater harmonization, reducing regulatory arbitrage and bureaucratic red-tape.

Question 5.2: *Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that is easily understood by investors and provides appropriate investor protection.*

Response:

We believe that this targeted outcome is described appropriately.

6. PUBLIC CONFIDENCE IN THE REGULATORY FRAMEWORK

Question 6.1: *What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe changes that could improve public confidence in the regulatory framework.
b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved.
c) Describe instances of how investor advocacy could be improved.
d) Describe instances of regulatory capture in the current regulatory framework.
e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

Response:

Advocis is in favour of exploring ways to integrate investor protection more effectively into the governance fabric of a consolidated SRO. In particular, we support the formation of a committee focused on investor issues, and the inclusion of independent board members with demonstrated expertise and knowledge in investor advocacy and protection.

However, we also believe that for an SRO to operate effectively and efficiently, there needs to be an appropriate balance between CSA oversight and SRO independence. With a national SRO, regional issues may also play a role in effective governance, as well as enforcement and compliance matters.

We recommend that the CSA hold a separate consultation on governance structure once the CSA has decided on a direction regarding the overall SRO framework. In our view, this would also be a suitable step to ensure that investor advocacy and public interest concerns are appropriately incorporated in any revised SRO framework.

Question 6.2: *Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.*

Response:

We believe that this targeted outcome is described appropriately.

7. MARKET SURVEILLANCE

Question 7.1: *What is your view on the separation of market surveillance from statutory regulators, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

> *a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concerns?*
> *b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.*

Response:

Advocis does not take a position on the role of an SRO with respect to market surveillance.

Question 7.2: *Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Targeted Outcome for Consideration: *An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk*

Response:

We believe that this targeted outcome is described appropriately.

We look forward to working with the CSA as it continues to review the framework for SROs in the securities and mutual funds industries. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Senior Director, Legal and Regulatory Affairs at 416-342-9849 or jryu@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Abe Toews, CFP, CLU, CH.F.C., CHS, ICD.D
Chair, National Board of Directors

Desjardins

Le 23 octobre 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs, Nouveau-Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registraire des valeurs mobilières, Territoires du Nord-Ouest
Registraire des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Nunavut

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The Secretary
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Objet : Commentaires du Mouvement Desjardins à la consultation sur le cadre réglementaire des organismes d'autoréglementation

Mesdames,
Messieurs,

Le Mouvement Desjardins remercie les Autorités canadiennes en valeurs mobilières (ACVM) de consulter l'industrie sur l'évolution du cadre réglementaire des organismes d'autoréglementation en valeurs mobilières au Canada (ci-après les « OAR »). La publication du document de consultation s'inscrit dans l'examen lancé par les ACVM du cadre réglementaire de l'Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM) et de l'Association canadienne des courtiers de fonds mutuels (ACFM) à la fin 2019. Nous accueillons favorablement cette initiative importante des ACVM qui touche une dimension significative de l'encadrement des valeurs mobilières au Canada. Celle-ci est d'autant plus encourageante que les ACVM ont consulté, depuis le début de l'examen, un vaste éventail de participants afin d'avoir un portrait juste et exhaustif de la situation.

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Introduction

Avec un actif de près de 350 G$, le Mouvement Desjardins est le 1er groupe financier coopératif au Canada et le 6e au monde. Pour répondre aux besoins diversifiés de ses 7 millions de membres et clients, particuliers comme entreprises, il offre une gamme complète de produits et services par l'entremise de son vaste réseau de points de service, de ses plateformes virtuelles et de ses filiales présentes à l'échelle canadienne. Il exerce ses activités dans les domaines suivants : Particuliers et Entreprises, Gestion de patrimoine, Assurance de personnes et Assurance de dommages.

Comptant sur les compétences de ses 48 000 employés et l'engagement de 3 000 dirigeants élus, Desjardins affiche des ratios de capital et des cotes de crédit parmi les meilleurs de l'industrie. Il figure au 6e rang des institutions financières les plus sécuritaires en Amérique du Nord (40e au monde) selon le classement mondial 2019 de *Global Finance*.

Comme les autres acteurs financiers pancanadiens, le Mouvement Desjardins compte différentes entités inscrites auprès de l'ACFM, de l'OCRVM, de l'Autorité des marchés financiers (AMF) ou d'autres commissions des valeurs mobilières ailleurs au Canada. La création de l'ACFM en 1998 et celle de l'OCRVM en 2008 sont le fruit d'échanges reflétant le souci des ACVM et des intervenants de l'industrie de positionner favorablement le cadre réglementaire par rapport à la réalité du marché et des investisseurs.

Pour maintenir sa pleine efficacité, l'encadrement réglementaire doit être en phase avec l'évolution de l'industrie et des besoins des investisseurs. La collaboration avec l'ensemble des participants du marché est essentielle à l'atteinte de cet objectif. C'est dans cet esprit de collaboration que les ACVM ont entrepris le présent examen et que nous présentons ci-après nos observations sur le sujet.

Un cadre adapté aux besoins des investisseurs et du public

L'évolution, au cours de la dernière décennie, des besoins des investisseurs a contribué à une nouvelle offre des produits et une tendance vers une prestation de services intégrée en matière d'épargne et de placements. Ces changements ont par le fait même fait renaître la réflexion par rapport à la configuration des OAR nationaux et les différentes avenues possibles afin de bien répondre aux changements et s'assurer que l'encadrement est conforme à l'intérêt public, au maintien et à l'application efficace des règles, à la protection des investisseurs et l'intégrité des marchés.

Les besoins de nos membres et clients ont beaucoup évolué et cela se reflète dans l'offre de produits et de services. Celle-ci tend davantage vers un accompagnement qui s'inscrit tout au long de leur parcours financier et non seulement un service ponctuel, plutôt offert en fonction des produits disponibles sur le marché. Cet ajustement de l'offre de service vers les préférences du public investisseur et en retour une meilleure appropriation, de sa part, de ses besoins, nous emmène à constater que le système à deux OAR pose certains défis, et ce, tant aux courtiers qu'aux investisseurs.

Le cadre actuel a été structuré en fonction des produits offerts, et doit maintenant être repensé en fonction des besoins des clients. Comme le soulèvent les ACVM dans le document de consultation, des personnes inscrites dans différentes catégories auprès de l'ACFM et de l'OCRCVM fournissent des produits et des services similaires à des clients au profil semblable, sans toutefois être soumises aux mêmes règles. Malgré les efforts d'harmonisation, on constate que dans la pratique, l'interprétation et l'application des règles diffèrent d'un OAR à l'autre. Par exemple, l'offre et la vente des titres d'organismes de placement collectif (OPC) sont soumises à un niveau différent de surveillance de la conformité, selon que ces titres sont vendus par un courtier en épargne collective ou un courtier en placement. Cette situation alourdit inutilement les processus internes des

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courtiers, mais crée surtout de la confusion chez les investisseurs, notamment en ce qui a trait au processus de résolution des plaintes et à la couverture offerte par les fonds de protection des investisseurs. Les charges additionnelles, les coûts liés à la formation et les chevauchements de vérification représentent certes un enjeu opérationnel pour les courtiers et les groupes financiers auxquels ils appartiennent, mais ce sont en fin de compte les investisseurs qui se retrouvent les plus désavantagés par le système actuel.

Lors de leurs consultations informelles des participants à l'automne 2019, les ACVM affirment avoir relevé à plusieurs reprises que les préférences et les besoins des investisseurs ont évolué au-delà du modèle actuel. Comme nous l'indiquons plus haut, nous constatons la même tendance chez nos membres et clients. Cela se manifeste entre autres dans l'intérêt accru pour les produits comme les fonds négociés en bourse ou ceux axés sur l'investissement responsable, et pour une prestation de service plus intégrée. Le cadre réglementaire nuit à l'accompagnement simple et continu de nos membres et clients tout au long de leur parcours financier. Il n'est plus en phase avec les besoins propres aux différentes étapes qu'ils vont franchir au cours de celui-ci.

En somme, l'évolution du marché et des préférences des investisseurs portent à croire que le modèle actuel à deux OAR n'est plus à même de répondre adéquatement aux objectifs de surveillance des ACVM et surtout, aux besoins des investisseurs. Il est donc opportun pour les ACVM, dans l'esprit de la présente consultation, de considérer une consolidation des deux OAR.

Les avantages d'une consolidation pour les inscrits seraient nombreux. On pense à une harmonisation de la surveillance et des exigences réglementaires, une plus grande agilité dans l'offre de produits et une réduction potentielle des coûts opérationnels. Ce sont toutefois les bénéfices pour les investisseurs qui seraient les plus notables. Davantage d'entre eux pourraient être accompagnés tout au long de leur parcours financier sans avoir à changer de courtier au fur et à mesure que leurs besoins changent, et que leurs connaissances en matière de placement évoluent.

Une consolidation souhaitable mais non optimale

Notre conclusion voulant qu'une consolidation soit l'avenue à privilégier par les ACVM élargit la réflexion sur les structures en place, notamment au Québec où l'ACFM n'est pas un OAR reconnu. Effectivement, l'encadrement québécois, se singularise par la présence de la Chambre de la sécurité financière, organisme chargé de veiller à la discipline et à la formation continue des représentants en épargne collective, et de l'AMF qui encadre les activités des courtiers en épargne collective, qui définit les critères d'entrée en fonction, qui émet et renouvelle les permis de représentants de courtiers en épargne collective. Cela pose des défis de taille, voire empêche la réalisation des objectifs relatifs à la simplification réglementaire, à l'harmonisation de l'encadrement du secteur de l'épargne collective et à la concrétisation d'un véritable régime de passeport en valeurs mobilières. La consolidation des OAR demeure souhaitable pour les assujettis québécois faisant affaire dans l'ensemble du Canada. Néanmoins, sa valeur ajoutée est bien difficile à percevoir dans la mesure où d'importants travaux seraient requis pour, au bout du compte, continuer d'évoluer dans un environnement réglementaire inégal qui conserverait toute sa complexité. Le Mouvement Desjardins est conscient que la remise en question de l'encadrement québécois suscite des débats, mais il aurait été important pour les ACVM d'aborder directement cet aspect pour se permettre de faire une analyse complète de la situation.

Si toutefois les ACVM allaient de l'avant, un OAR consolidé devrait inclure un bureau fort au Québec pouvant garantir une expertise en français, conjugué à une représentativité significative sur son conseil d'administration et dans le processus décisionnel de celui-ci. Cela permettrait de maintenir la proximité nécessaire à une saine concurrence et à l'innovation sur les marchés québécois et canadien, dans un environnement réglementaire qui répond aux besoins des investisseurs et de l'ensemble de l'industrie.

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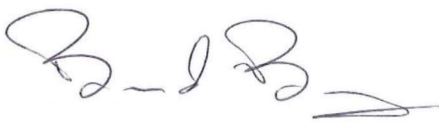
La consolidation s'avérera complexe. Néanmoins, en débutant les premières étapes dès que possible, les ACVM se donneront la marge de manœuvre nécessaire pour s'adapter au fur et à mesure que la nouvelle structure prendra forme. Par ailleurs, l'ACFM et l'OCRCVM ont toutes deux proposé une marche à suivre pour en arriver à celle-ci. Il appartient aux ACVM de juger des mérites des différentes options possibles pour en arriver à une consolidation. L'important est qu'elle se fasse de façon ordonnée et dans un avenir rapproché.

Finalement, la concertation avec l'ensemble des acteurs de l'industrie demeure la pierre angulaire de toute supervision adéquate. C'est pourquoi le Mouvement Desjardins tient à remercier les ACVM de l'inviter à participer à son examen du rôle des organismes d'autoréglementation. Cette réflexion est importante, à l'heure où l'incertitude règne sur l'économie et sur la situation financière de bien des Canadiens et Canadiennes. Les ACVM ont l'occasion d'ajuster une partie de leur encadrement pour pleinement soutenir une industrie des valeurs mobilières moderne et au service du public. C'est avec plaisir que nous poursuivrons notre collaboration avec l'ensemble des intervenants gouvernementaux, les organismes d'autoréglementation et les autorités réglementaires à ce sujet et dans tous les dossiers entourant la supervision et la réglementation du commerce des valeurs mobilières.

Nous vous invitons à communiquer avec le soussigné pour obtenir des précisions ou tout complément d'information relativement à cette consultation.

Veuillez recevoir, Mesdames, Messieurs, nos salutations distinguées.



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October 23, 2020

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Re: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

PFSL Investments Canada Ltd ("PFSL") appreciates the opportunity to provide our comments to

About PFSL

PFSL is a mutual fund dealer and a member of the Primerica Financial Services Canada group of Companies ("Primerica"). Primerica is a leading distributor of basic savings and protection products to middle-income households throughout Canada. In addition to PFSL, our Canadian corporate group includes a mutual fund manager (PFSL Management Ltd.) and a life insurance company (Primerica Life Insurance Company of Canada). Primerica has been serving the Canadian public since 1986. Our mutual fund dealer contracts with the largest independent mutual fund sales force in the country with 7,200 Approved Persons ("APs") and administers over $11.5 billion of client investments, the vast majority of which serve the saving needs of middle-income Canadians. Our life insurance company contracts over 12,000 licensed life insurance agents across the country, protecting Canadian families with over $120 Billion of term life insurance.

Primerica dedicates its efforts to providing middle-income families with access to simple, yet essential products and service through one of the nation's largest and exclusive (captive) sales force. We consider our focus on middle-income Canadians one of the distinguishing features of our company since they are often overlooked by other financial service providers, particularly those providing personal advice. With this experience and a focus on preserving access to affordable financial products, we submit our comment to the CSA.

Context

Our mutual fund dealer offers a diverse set of funds from well-known fund managers. In addition, we offer a proprietary suite of mutual funds. All funds are vetted to ensure they meet the needs of the clients we

serve. Over 85% of our assets under management are in registered accounts. Our investment products, principles and personal advice help middle-income Canadians establish a long-term savings plan for retirement, education and other financial goals. Our representatives nudge their clients at life's critical points, helping them avoid the pitfalls of saving and investing: starting late, not saving enough, neglecting tax-advantaged opportunities, and buying and selling at the wrong times. We do not require minimum account sizes and offer savings programs with contributions as little as $25 per month, with initial investments as low as $100 to $500. This approach allows Canadians, no matter how small their budget, to participate in the capital markets and set and achieve their financial goals. Our monthly contribution plans establish a savings discipline and better prepare our clients for their retirement and other life events. We often do this with our representatives conducting face to face meetings with clients at their kitchen table. Our representatives spend a significant amount of time and effort identifying their clients' needs and establishing their financial objectives, contributing to their personal financial knowledge in the process. Our representatives take a holistic approach to their clients' financial situation; it is far more than just making a fund recommendation but also empowering them with the knowledge and tools to strive towards financial independence.

Considerations

Even though mass market households own only about 6% of financial wealth in Canada, they are a significant segment of mutual funds' investor base. They account for approximately 28% of assets and 83% of households. That is because mutual fund dealers provide the most accessible advisory service to retail investors in the securities industry today. The mass market's access to investments and advice needs to be preserved and that requires that independent mutual fund dealers continue to be viable under a new SRO model, without facing undue increase of their regulatory burden or costs.

Self Regulatory Organizations and Retail Investors

PFSL believes in the value and efficacy of the SRO model of regulation of the investment industry. SRO's provide market regulation tailored to retail investors. They are better able to identify trends that may impact investors and adjust their regulatory approach accordingly.

We also believe it is important to maintain a funds (mutual funds, ETF's) registration category for dealers and for advisors (currently MFDA Approved Persons). This distribution channel has demonstrated its importance in serving investors of all means, but in particular those with more modest amounts to invest. The channel provides access to advice for those that are starting out investing, combined with personal advice to help investors achieve their financial goals.

Proposals to consolidate the regulation of various regulatory organizations and increase the scope of these organizations have been released recently. Consolidation, through merger or another approach, may provide efficiencies, as a minimum through the elimination of duplication of overhead. However, a clear set of outcomes should be established prior to embarking on any such consolidation. These should include:

- A consistent approach to retail investor protection;
- regulatory oversight commensurate with the investors being served and the products being sold;
- maintaining funds dealer and advisor registration categories;
- maintaining fees at current levels, or passing along savings from efficiencies achieved so that serving modest investors does not become uneconomical; and

- the ability to move to more complex product registration categories through obtaining the required proficiency, both at the dealer and advisor level.

The complexity and work required to combine two or more regulatory organizations is significant and bringing in registrants currently not subject to regulation by an SRO will be very challenging. We believe that, should this route be taken, it will need to be done in stages. However, we believe that registrants serving retail investors should be subject to a consistent regulatory approach.

Questions

PFSL was pleased to participate in and contribute to the submission that The Investment Funds Institute of Canada provided and we endorse their responses.

Conclusion

We appreciate the opportunity to provide comments on CSA Consultation Paper 25-402. As always, we remain open to discussion and willing to work with the CSA, the MFDA and with IIROC during the consultation period and beyond to ensure that the right regulatory model is established. Arriving at the right SRO structure will be crucial in ensuring that Canadian investors continue to have confidence when investing through either investment channel. It is equally crucial in ensuring that the industry remains competitive and able to serve investors of different budget sizes and needs.

Sincerely,

[*Original Signed by]*

John Adams, CPA, CA
Chief Executive Officer

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INVESTOR PROTECTION CLINIC

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October 23, 2020

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

We are pleased to provide comments on CSA Consultation Paper 25-402. By way of background, the Investor Protection Clinic at Osgoode Hall Law School ("the Osgoode Investor Protection Clinic"), the first clinic of its kind in Canada, is dedicated to providing free legal advice and services to retail investors across the country.

Since launching in 2016, we have worked with a wide range of clients who have suffered investment losses. From elderly couples whose adviser mismanaged their entire life savings on the cusp of their retirement, to the single parent who fell victim to a fraudster promising massive returns, we have worked with vulnerable retail investors who need assistance in seeking redress but cannot afford a lawyer. We are pleased to bring their voices to CSA Consultation Paper 25-402.

We appreciate your consideration of our comments; in the spirit of brevity, we have focused on those questions and topics where we think we can best offer a value add to the process.

Sincerely,

Osgoode Investor Protection Clinic

Poonam Puri & Brigitte Catellier, Co-Directors

CSA Consultation Paper 25-402 Response: Osgoode Investor Protection Clinic

Introductory Comments

Overall, the Osgoode IPC is in favour of streamlining the self-regulatory organizations (SROs) and we believe that a single SRO structure that covers all registered firms providing advice will benefit retail investors. As a broad principle, we recommend that the new SRO incorporate best practices for investor protection from both predecessor organizations.

Robust and meaningful investor protection is critical for strong capital markets. Without adequate protection, investors will not feel confident in the markets and will not invest. Economic growth depends on investors trusting that the rules of the game are fair, robust and responsive to changes in the market. Having a strong investor protection framework for any merged SRO is not only good for investors, but also for registrants.

Issue 2, "Product-Based Regulation", p. 18

Our clients, vulnerable retail investors often with little investment knowledge, have remarked to us about the confusing nature of the current regulatory regime. Regulatory complexity makes the process of investing more difficult for average Canadians, and if their investments are mishandled, a confusing registration and regulatory regime creates unnecessary hardship for already-harmed individuals.

We support the principle of rule harmonization between SROs and the CSA, so long as the harmonized rules are not reflective of a "race to the bottom". Lack of harmonization, including with respect to know-your-client and suitability requirements, further exacerbates investor confusion and disadvantages retail investors in particular, who may see the same terms and assume they have the same meaning and application.

Issue 5, "Investor Confusion", p. 23

We welcome the CSA's focus on investor confusion. As cost of living gets more expensive, and as more Canadians are expected to save for their own retirement, average investors are saving more and investing more to create a safety net for their later years. At the same time, increasingly complex products have made investing more complicated and new technologies such as crypto-assets and social media have enhanced the risk of fraud.

The IPC agrees that retail investors are often confused about the securities regulatory regime in Canada. They often do not understand the role of the SROs or their jurisdiction, nor their relationship to the securities commissions. A single SRO would address this confusion in part, but investor education is key as well.

We also welcome the CSA's comments about multiple titles and the impact on investor confusion. Investors who seek the Clinic's help are often confused as to the differences between the various titles and the credentials (if any) behind those titles. Our clients in Ontario are often unaware that common business titles are unregulated in the province.[1] Beyond simply confusion, this leads to serious investor protection concerns, with potentially unqualified individuals abusing the trust that comes with a specific title and mishandling investor funds, whether purposefully or due to negligence.

With respect to multiple registration categories and differing rules, we agree that there are suitability concerns when retail investors do not understand the registration categories and view their advisers as akin to fiduciaries—even if the investors may not articulate the relationship in that exact legal term—when in fact the advisers are salespeople.

Question 5.1(b): Describe the difficulties clients face in easily navigating complaint resolution processes.

When they were financially harmed, multiple Clinic clients expressed confusion about the complaints processes available to them. Our clients explain that, when they invest their hard-earned monies, they are not always thinking about what could go wrong. Even if the complaints process is mentioned by their adviser when they first invest, they are still confused about what to do if they think their investment has been mishandled. Clients have expressed confusion about where to complain, how to file the complaint, what to mention in their complaint and how best to get redress.

When they are looking to file a complaint, investors face a complex regulatory regime. With OBSI, IIROC, the MFDA, and the securities regulators, our clients do not know where to turn when they have been harmed. Often, the most promising path to restitution is civil litigation. Many of our clients, however, cannot afford a long and costly litigation process.

If they are able to determine which regulator to file a complaint with, our clients have

[1] The Financial Services Regulatory Authority of Ontario is conducting consultations on a financial adviser and financial planner title regulatory regime currently.

told us that the complaints processes are often opaque. They are not sure what information to include in the complaint, which documents to attach or how to properly frame their issues.

Issue 6, "Public Confidence in the Regulatory Framework", p. 23

Question 6.1(c): Describe instances of how investor advocacy could be improved.

We welcome the comments from stakeholders advocating for enhancing the investor voice in the SROs and in any merged SRO. We encourage the CSA to mandate formal investor advocacy mechanisms in the SRO governance structure. These could include requirements for directors with investor protection experience (as is being contemplated by the Ontario Capital Markets Modernization Taskforce) and the creation of investor advisory panels (IAPs).[2]

A mandatory IAP within the SRO governance structure is an important investor advocacy mechanism. An IAP is able to provide critical insight to the leadership of the SROs. The Ontario Securities Commission has had an IAP for several years. Its mandate is as follows:

> The Panel's mandate is to solicit and represent the views of investors on the Commission's policy and rule making initiatives. In order to fulfil its mandate, the Panel will:
> - Advise and comment in writing on proposed rules, policies, concept papers and discussion drafts, including the Commission's annual Statement of Priorities;
> - Consider views representative of a broad range of investors through consultation with and input from investors and organizations representing investors in formulating its advice and written submissions to the Commission;
> - Bring forward for the Commission's consideration policy issues that may emerge as a result of the Panel's investor consultation activities and comment on the potential implications for investors posed by those issues;
> - Advise and comment in writing on the effectiveness of the investor protection initiatives implemented by the Commission.

[2] IIROC has announced its intention to form an Expert Investor Issue Panel, a step in the right direction.

If similar IAPs were mandated in the SROs, they would gain an additional, value-added investor perspective. The IAP is able to conduct detailed research and consult with experts in real time, providing a dedicated investor protection perspective to SRO leadership.

Question 6.1(e): Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

We echo some of the concerns raised about the enforcement processes at the SROs. Our clients who consider filing a complaint with an SRO express dismay to learn that the SROs are not necessarily focused on helping them recover their lost funds. They understand the public policy importance of deterrence, but their top priority is to recover their money, which they lost often through no fault of their own. For many of our clients, this money represents retirement savings or funds for children's education.

In our experience, not being able to get their money back not only impacts our clients in terms of real financial harm, but also reduces their confidence in the capital markets and the securities regulatory regime.

We note that in June of this year, IIROC announced that it was considering ways to return monies to harmed investors.[3] The IPC, in principle, welcomes this step and encourages the CSA to ensure any merged SRO likewise contains such mandates and procedures.

[3] For more on this, please see: https://www.investmentexecutive.com/news/from-the-regulators/iiroc-examines-returning-money-to-harmed-investors/

Canadian ETF Association

Draft October 23, 2020

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- and -

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Dear Sirs/Mesdames:

RE: CSA Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework (the Consultation SRO Framework)

On behalf of the Canadian Exchange-Traded Fund Association (the **CETFA**) we wanted to submit our comments on the Consultation SRO Framework.

Based in Toronto, Ontario, the CETFA is the only exchange-traded funds association in Canada, and the first of its kind in the world. The CETFA represents approximately 97% of the assets under management in Canada that are invested in exchange-traded funds (**ETFs**), with the mandate to support the growth, sustainability and integrity of Canada's ETF industry.

While the CETFA is not directly regulated by any self-regulatory organization (a **SRO**), the advisors who sell ETFs to the public are typically regulated by either the Investment Industry Regulatory Organization of Canada (the **IIROC**) or the Mutual Fund Dealers Association of Canada (the **MFDA**).

Accordingly, please find set out below our comments on each of the issues raised in the Consultation SRO Framework:

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

As a number of our members have dual platforms (i.e., a member of the IIROC and a member of the MFDA), we believe that it will be beneficial to investors if duplicative costs of being both a member of the IIROC and the MFDA can be reduced and ideally eliminated. Specifically, this will include both operational, administrative and compliance savings by avoiding the need to comply with two different regulatory frameworks, which while similar, are different and involve the need for more capital, insurance and personnel, both from a client servicing capacity and from a compliance oversight perspective. As the IIROC already oversees representatives that only sell mutual funds, it appears that substantial cost savings can be achieved and potentially passed on to investors, including allowing affiliated dealers (i.e., an investment dealer and a mutual fund dealer) to offer investors a more seamless suite of investment products, including ETFs. We respectfully submit that this is what investors want, as initiatives like the Client Relationship Model have been aimed at making investors more aware of the costs they are incurring and the negative impact this can have on the performance of their investment portfolios.

Issue 2: Product-Based Regulation

As noted above, we do believe that regulatory arbitrage can be an issue as the IIROC and the MFDA do not regulate products in exactly the same manner. For example, an advisor at an investment dealer will have no issues selling an ETF which has been approved by his or her dealer. However, an advisor at a mutual fund dealer who wants to sell ETFs to his or her clients as a low cost option, may face significant obstacles in terms of being able to do this, unless his or her dealer has an affiliated investment dealer, which can increase investor costs and reduce investor options. From an investor perspective, if an investor wants to buy an ETF there should be no difference in terms of how the investor buys an ETF from an investment dealer or a mutual fund dealer. How the ETF is purchased by the dealer for the investor may be different in terms of what has to be done from an operational perspective, but the investor experience should be the same, and ideally the cost of buying the ETF

should be generally the same in each instance. As this is currently not easy to accomplish, it does create opportunities for regulatory arbitrage, and cost and operational inefficiencies. Regulatory standards should be consistent and product-agnostic in order to protect investors and ensure efficient capital markets.

Issue 3: Regulatory Inefficiencies

As noted above and in the Consultation SRO Framework, mutual fund dealers have had issues selling ETFs to their clients, unless they have an affiliated investment dealer. We believe that combining the IIROC and the MFDA may help alleviate some of these issues and create a more robust platform that will allow more mutual fund dealers to sell ETFs in the future.

In addition, the manner in which the IIROC and the MFDA deal with ETFs is not entirely the same, as they have different proficiency requirements when dealing with ETFs, and different ways of managing product risk, which can in certain instances lead to investor confusion. In addition, the sales practices rules of the IIROC and the MFDA are slightly different, which means investors end up having different experiences depending on what type of advisor they are dealing with when they want to buy an ETF. A dual platform dealer also has to deal with the added compliance cost of dealing with two different regulatory frameworks. This results in increased costs, confusion for investors, regulatory arbitrage and an unlevel playing field between investment dealers and mutual fund dealers.

We respectfully submit that there will be significant advantages if both types of dealers can be regulated by the same SRO. A single SRO might also be better able to respond to changes in the marketplace and to better respond in a more focused and consistent manner.

Issue 4: Structural Inflexibility

ETFs have grown significantly over the last 10 years as investors want to have access to more than mutual funds. This has also been evidenced by the number of mutual fund complexes that now offer

ETFs as part of their product offerings. This switch by investors from regular mutual funds to ETFs is also demonstrated in the following chart from the Investor Economics ETF and Index Funds Report for Canada, for the second quarter of 2020.

Assets in Mutual Funds per $1 in ETFs*, by Asset Class					
	Dec-09	Dec-13	16-Dec	Dec-19	Jun-20
All Asset Classes	22:1	16:1	11:1	8:1	7:1
Money Market	597:1	161:1	46:1	7:1	6:1
Fixed Income	22:1	13:1	11:1	8:1	7:1
Balanced	593:1	251:1	290:1	209:1	202:1
Equity	14:1	11:1	8:1	6:1	6:1
Equity income	42:1	15:1	9:1	6:1	6:1
Canadian equity	8:1	7:1	6:1	5:1	4:1
US equity	22:1	13:1	6:1	4:1	4:1
International equity	26:1	22:1	15:1	10:1	9:1
Real estate	161:1	109:1	60:1	28:1	18:1

*Excludes portfolios.
Sources: The Investment Funds Institute of Canada (IFIC), Investor Economics and Morningstar Canada.

Mutual fund dealers have not been able to keep up with this demand for ETFs by investors, unless they have an affiliated investment dealer. This has resulted in structural inefficiencies between mutual fund dealers and investment dealers, which will only become more problematic as the Canadian Securities Administrators' (the **CSA**) client focused reforms come into force next year. The robustness of the back office processing systems of investment dealers also gives them a strategic advantage when dealing with ETFs as they can more easily be integrated into a broader and more diversified investment portfolio for a client. The industry needs to be continually innovating if it's going to meet the evolving needs of investors, and that is why we respectfully submit having one SRO instead of two is the preferred solution.

Issue 5: Investor Confusion

Investor confusion is a concern and we have been advised by our members that clients do not always appreciate the differences between an investment dealer and a mutual fund dealer, the different types

of products each dealer offers, the different regulatory regimes that each is subject to and this may impact how they make a complaint and seek restitution. As noted above, the CSA's client focused reforms are intended to put a client's interests first, which may be more difficult to achieve, depending on the circumstances, if the regulatory rules to implement this initiative are not the same at both the IIROC and the MFDA, and investors get different answers depending on which type of advisor they are talking to (i.e., one at an investment dealer and one at a mutual fund dealer). Although the product platforms may be different, ideally the rules should be the same, and the recourse available to investors when something goes wrong should be the same. Having one SRO instead of two should make this easier to achieve.

Issue 6: Public Confidence in the Regulatory Framework

For the reasons noted above, we believe that one SRO may better enhance public confidence in how investment dealers and mutual fund dealers are regulated. This may also help avoid investor confusion and help ensure that investors have the same type of experience at either type of dealer, despite the different scope of products being offered by each type of dealer. Having one SRO with one set of rules and one approach will benefit investors, will be simpler to administer, will be more cost efficient, will be easier to oversee from a compliance perspective and will better be able to regulate the Canadian marketplace. We respectfully submit that this will be beneficial to investors and will hopefully create a more harmonized manner in which regulatory reforms can be tackled and better protect investor interests in the future.

Issue 7: Separation of Market Surveillance

Although separating market surveillance from both the IIROC and the MFDA may have merit, we submit that it will be better to have one SRO instead of two, and that once that integration is completed, then the CSA and the SRO will be better able to determine each party's responsibilities in terms of how the markets are monitored, and how the CSA oversees the SRO. Then, if appropriate, the CSA can determine if additional investor governance initiatives need to be considered. Simplifying

the current SRO framework will have real benefits and should be one of the initial initiatives the CSA considers in terms of improving Canada's regulatory oversight of investment dealers and mutual fund dealers.

General

Based on the foregoing, we respectfully submit that it will be beneficial to the public to merge the IIROC and the MFDA to reduce regulatory requirements, avoid duplication of efforts, reduce costs and most importantly, result in a better investor experience, both in terms of who they are dealing with, how that person is regulated and the cost savings they should be able to achieve which should lead to improved portfolio performance.

Thank you for giving us this opportunity to comment on the Consultation SRO Framework. If you have any questions about our response, please do not hesitate to contact us.

Yours truly,

Pat Dunwoody
Executive Director
Canadian ETF Association
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INCLUDES COMMENT LETTERS RECEIVED

THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

IFIC Submission

Re: CSA Consultation Paper 25-402: *Consultation on the Self-Regulatory Organization Framework*

October 23, 2020

TABLE OF CONTENTS

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October 23, 2020

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Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
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Dear Sirs and Mesdames:

RE: CSA Consultation Paper 25-402: *Consultation on the Self-Regulatory Organization Framework*

The Investment Funds Institute of Canada (IFIC) appreciates the opportunity to comment on the Canadian Securities Administrators' (**CSA**) Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization (**SRO**) Framework*. IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members. Of course, not all members hold identical views to those set out below.

The CSA consultation on the Canadian SRO framework underlines the importance of self-regulation for investors, market participants, regulators and governments. While membership in the Investment Industry

Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) is mandatory for investment dealers and mutual fund dealers, the SROs' authority to regulate their members according to their rules is derived from contracts between the members and their respective SROs. It is this characteristic of SRO membership that distinguishes IIROC and the MFDA from a statutory regulator. It is the view of IFIC members that, whatever the outcome of these consultations, the value that a member-driven SRO brings to the regulation and reputation of Canada's capital markets should not be lost.

As discussed in more detail below, IFIC believes that the benefits of self-regulation for investors and the industry could be significantly improved with the timely implementation of a single SRO for mutual fund and investment dealers.

In this letter, we provide our comments on aspects of the Consultation that raise high-level themes. Our detailed responses to certain of the questions posed by the Consultation are set out in Appendix A.

The Value of Self-Regulation

IFIC members strongly support self-regulation for investment dealers and mutual fund dealers and their representatives because it provides cost effective dealer regulation and investor protection.

Self-regulation improves industry compliance. If the industry actively participates in the development of the rules that govern their behavior, the resulting rules are more likely to be understood and supported by the industry.

SROs can move more quickly than statutory regulators to address changes in rapidly-evolving markets. More current regulation is more effective regulation. Because SRO members are closer to the business activity being regulated, they bring greater expertise and experience to their regulatory duties. Furthermore, they can and have implemented higher standards for their members than the statutory minimums.

SROs are even more important in Canada because of our fragmented regulatory structure. National SROs bring a single set of rules and a national approach to compliance and enforcement. This national, harmonized approach would be lost if direct dealer regulation were divided among the thirteen provinces and territories.

Self-regulation, because it is self funded, demonstrates the industry's commitment to regulating in the public interest and spares the public purse from the not inconsiderable costs. In effect, this self-funding can supplement scarce public resources.

Furthermore, self-regulation has been recognized internationally as an effective means of regulation, particularly with effective ongoing oversight by statutory regulators as is the case in Canada. In "Model for Effective Regulation" (2000), IOSCO noted that self-regulation has proven to be effective regulation, where market participants with an intimate knowledge of markets, operations and technical matters know how to maximize regulatory benefits (e.g., orderly markets, investor protection, reduction of systemic risk), while minimizing unnecessary regulatory burden and the associated costs. It recognized that, as financial markets and products become more complex and as national and global markets become more interconnected, this specialized knowledge is particularly beneficial.

IOSCO re-affirmed its support for self-regulation in a May 2017 report, Methodology for Assessing Implementation of IOSCO Objectives and Principles of Securities Regulation.

The CFA Institute, in "Self-Regulation in the Securities Markets – Transitions and New Possibilities" (August 2013), recognized that SROs can contribute to market innovation through their industry expertise. This expertise can encourage the development of "ahead-of-the-curve" regulations.

The Importance of the "Self" in Self-Regulation

If self-regulation is to continue to have value, it is important not to lose sight of the "self" in self-regulation. This means that the SRO must continue to have some degree of independence from the provincial and territorial securities regulators. In 2008, the CSA reviewed the role of SROs in securities regulation in Canada to identify and analyze current issues relating to self-regulation. In a Discussion Paper prepared for the CSA consultation, "Current Issues in Self Regulation in Canadian Securities Markets", John Carson noted that the concept of self-regulation requires that members have a significant degree of control and influence over the rules, policies and operations of the organization.

It is for this reason that IFIC members disagree with the Capital Markets Modernization Task Force Report proposals for:

- an OSC veto on any significant SRO guidance or rule interpretation;
- an OSC veto on key appointments, including the Chair and the President; and
- the appointment of up to half of the SRO directors jointly by all CSA regulators.

These proposals represent unwarranted interference with the mandate of the board of the SRO. Furthermore, CSA appointments to the SRO board would result in a significant conflict of interest for those board members appointed by the CSA. The result of these proposals would be a "private" or "third party" regulator, but not a self-regulator. The value of self-regulation would be significantly diminished or lost.

A Single SRO for Investment Dealers and Mutual Fund Dealers

IFIC believes that a single SRO that regulates all retail-facing investment dealers and mutual fund dealers and their representatives would significantly improve the investor experience and investor outcomes. The key benefits are listed below:

- Investor ability to access a broad range of investment products and services without the need to change firms and open new accounts. This requirement, driven simply by the current SRO framework, frequently results in lost performance and account history, which in turn harms investment outcomes;
- Consistent "touch and feel" for investors, including consistent client forms and statements, account opening processes and disclosures;
- Plain and simple investor access to dealing representatives' disciplinary records;
- Plain and simple investor access to the complaint resolution process, leading to better use of it;
- Easier access to a single investor protection fund to protect investors from loss due to firm insolvency; and
- Less overall investor confusion, particularly when an investor wishes to expand their investments from only mutual funds to include other securities, which could enhance clients' confidence in the investment industry.

Creation of a New SRO Through Consolidation of IIROC and the MFDA

To achieve this single SRO, IFIC supports the creation of a new SRO (**NewCo**) through the consolidation of IIROC and the MFDA. The new entity would require a reconstituted board and senior management. NewCo would incorporate the best dealer compliance and enforcement processes and programs from both IIROC and the MFDA. NewCo should have a forward-looking culture and a risk-based approach to achieving regulatory outcomes.

The new SRO could implement a program of regulation that is designed to protect investors and markets while minimizing the regulatory burden on industry by:

- establishing principles of regulation to focus dealers and dealing representatives on their

responsibilities to their clients and the markets;

- imposing requirements only to the extent they are necessary for the protection of investors and markets;
- designing regulatory requirements with the flexibility to accommodate a wide range of business models and client relationships; and
- employing a risk-based approach to the regulation of all investment products in a consistent and predictable manner.

While IFIC members believe that the best outcome of this consultation would be the creation of a new SRO through a consolidation of the MFDA and IIROC, if the creation of NewCo cannot be implemented in a reasonable time, or for any other reason cannot go forward, at least two alternative/interim measures should be considered to alleviate the immediate concerns that gave rise to this consultation.

The first is the IIROC proposal of November 2015. IIROC proposed that Rule 18.7 be rescinded, eliminating the requirement for a dealing representative to upgrade their proficiency by successfully completing the Canadian Securities Course and the Conduct and Practices Handbook Course within 270 days of being employed with an investment dealer. This change could be implemented quickly and with little cost. The result would be one SRO that has the jurisdiction and capability to regulate both the mutual fund dealer and investment dealer platforms.

Another option would be a take-over of the MFDA by IIROC. This could also be accomplished relatively quickly and with little cost through the addition of the MFDA staff and programs within IIROC as a separate dealer division. However, even if IIROC had the jurisdiction to regulate both platforms, there would still be two SROs. The benefits for investors stemming from a single SRO that we describe above could not be fully realized. In addition, the possible loss of revenue from MFDA firms that resigned from the MFDA to operate as single platform IIROC members could impair the financial viability of the MFDA. This could, in turn, create uncertainty for the industry and investors.

To be clear, IIFC is not recommending either of these alternatives. A swift implementation of NewCo would provide the best result for investors. It is for this reason that IFIC members recommend that the non-executive board members of each SRO take a leadership role in these consultations. With collaborative and willing partners, the chances of a successful outcome would be significantly enhanced.

A single SRO with complete national jurisdiction would be the best outcome, however the MFDA does not currently operate in all provinces and territories. Those provinces and territories where the MFDA does not operate will have to consider how their regulatory frameworks will effectively interact with NewCo.

Necessary Outcomes from a Restructuring of the SRO Framework

In order for investors to achieve the benefits of a single SRO, the SRO must be structured in a way that accomplishes the following outcomes:

- Small independent mutual fund dealer and investment dealer registrants should continue to be viable. These small independent firms play a significant role both in capital raising for small and medium-sized business, and in maintaining access to investments and investment advice for modest clients and clients in small communities and/or remote locations;
- Mutual fund dealers that want to keep their existing business models should be able to do so without any unnecessary increase in their current regulatory burden (e.g. current proficiency and capital requirements) or SRO membership fees. This may be achieved through separate divisions or otherwise in a single SRO;
- A single SRO should enable advisors to transition seamlessly to offering a broader array of products and/or services to their clients.

Including Other Market Participants in NewCo

IFIC members do not support the inclusion in NewCo of other categories of registration currently regulated directly by the CSA as a precondition to a consolidation of IIROC and the MFDA. The time and complexity involved in such an undertaking would be orders of magnitude greater than the consolidation of two existing SROs. In our view, this would create an unacceptable delay.

A necessary pre-condition to the future consideration of this more extensive consolidation would be determining whether Exempt Market Dealers (**EMDs**), Portfolio Managers (**PMs**) and Scholarship Plan Dealers (**SPDs**) want self-regulation. Without the willing collaboration of these other market participants, a successful consolidation with investment dealers and mutual funds dealers is unlikely.

Even with willing partners, the consolidation of this disparate group of market participants into NewCo, and then implementing NewCo's capacity to regulate them, would be a novel, complex and time-consuming undertaking.

At best, the MFDA proposal to include other categories of registration, currently directly regulated by the CSA, into NewCo would require a lengthy phased approach to be successful. The inevitable public confusion during this phased in approach would be magnified many times by the addition of EMD, PM and SPD clients.

IFIC members would support further discussion to assess the issues involved in the implementation of this larger self-regulatory mandate, but only after NewCo has been established for the regulation of investment dealers and mutual fund dealers.

Proposal to Transfer Market Regulation

IFIC does not support the proposal to transfer market regulation. No case has been made to justify the transfer of market surveillance, and there is no evidence that IIROC has failed to comply with its market surveillance obligations under the CSA Recognition Orders.

Arguably, the transfer of market regulation from IIROC to a statutory regulator could allow the new SRO to focus exclusively on mutual fund and investment dealer issues. It would however, add unnecessary complexity and delay. Federal and provincial proposals for a national regulator do not include consolidating the SROs as part of the initial launch plan precisely because of the of jurisdictional, policy and technical challenges that such a restructuring would face.

Cost Savings Considerations

Potential operating cost savings should not be a major factor in the development and implementation of a new SRO framework. A single SRO with jurisdiction to regulate investment dealers and mutual fund dealers would result in cost savings to dual platform firms. Deloitte estimated these potential savings to be approximately $1-2 million per dual platform provider per annum for 10 years.

It is important to note that there could be material membership fee decreases for large and medium-size MFDA dealers; there could also be material membership fee increases for small MFDA dealers absent specific action to address this.

Conclusion

IFIC's views on the CSA SRO Framework Consultation are anchored in the belief that there is significant value in the SRO model of regulation and that SROs are doing a good job regulating their members. The results of the CSA oversight reviews of the SROs and the SRO enforcement reports and statistics confirm this view.

We also provide our views based on the assumption that the CSA continues to have confidence in self-regulation. If the CSA no longer supports the SRO model, then the CSA must be transparent with those concerns. Fundamentally, self-regulation is a privilege granted by government. As long as the government has trust and confidence in the SROs to uphold their obligations, self-regulation works well for the benefit of governments, investors and the industry. We are confident that the SROs, and ultimately a consolidated SRO, would be able to manage the conflict inherent in self-regulation and to make policy, compliance and enforcement decisions based on the public interest.

The public interest must be the ultimate objective of this consultation. While perfection is not the standard, we believe a single SRO for investment dealer and mutual fund dealer firms and their representatives would better achieve this objective by reducing investor confusion, enhancing the investor experience and improving investor outcomes.

* * * * *

IFIC appreciates this opportunity to provide the CSA with our comments on this important initiative. Please feel free to contact me by email at pbourque@ific.ca or by phone at 416-309-2300. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Paul C. Bourque, Q.C, ICD.D
President and CEO

Enclosure: Appendix A – CSA Consultation Paper 25-402: *Consultation on the Self-Regulatory Organization Framework* Questions

General Questions		Response
A.	The CSA is seeking general comments from the public on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed in section 4 that should be considered. In addition, please identify if there is any other supporting qualitative or quantitative information that could be used to evidence each issue and/or quantify the impact of the issues noted in the Consultation Paper.	
B.	Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.	
C.	Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.	All the outcomes are important, however, IFIC considers the five most important outcomes are those that improve investor protection and otherwise benefit investors. We have ranked the targeted outcomes in accordance with those criteria. 1. A regulatory framework that provides appropriate investor protection (please see our response to 5.2 concerning the description of this targeted outcome). 2. A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors. 3. A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors. 4. A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules. 5. A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.

D.	With respect to Appendix F, are there other documents or quantitative information / data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.	IFIC believes that the best objective evidence of the governance and operations of the MFDA and IIROC can be found in the CSA Review Reports and the SRO's enforcement record. IIROC Recognition Order - 2008 BCSECCOM 275 IIROC Oversight Review Reports 2008 – 2020 https://www.osc.gov.on.ca/en/Marketplaces_iiroc-oversight-review.htm MFDA Recognition Order - 2004 BCSECCOM 311 MFDA Oversight Review Reports – 2010 – 2018 https://www.osc.gov.on.ca/en/search.htm?gquery=MFDA+Oversight+Review+Reports IIROC Enforcement Report 2019 https://www.iiroc.ca/news/Documents/IIROC2019EnforcementReport_en.pdf MFDA Enforcement Statistics https://mfda.ca/enforcement/enforcement-statistics/
Targeted Outcomes		**Response**
1	**A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.**	
1.1	What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients. b) Describe instances whereby those duplicative costs are necessary and warranted.	The Deloitte report, was prepared for IIROC and assesses the benefits and costs of regulatory consolidation in the investment industry. The report estimates an annual costs saving of $40-50 million across 25 dual platform dealers over a ten-year period if there is a single SRO. Some of the duplicative operating costs cannot be attributed to the regulatory framework but rather are the result of business decisions taken by the firms. a), and b) – see above

	c) How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?	c) To the extent business model changes are driven by competitive and other business considerations, the impact on operating costs should be offset by increased revenue.
1.2	Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	The targeted outcome is described appropriately.
2.	**A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.**	
2.1	What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories? b) Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services? c) What role should the types of products distributed and a representative's proficiency have in setting registration categories? d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?	In general, similar products and services should be treated the same way, regardless of the SRO; having a single SRO is likely the only way to avoid inconsistent approaches. For example, our members tell us that the definition of what constitutes income in a client's account varies between the MFDA and IIROC. IIROC permits dividends to be considered income when meeting a client's objectives, but the MFDA does not. In an era of extremely low interest rates, this difference will have significant implications for client outcomes. We also note that the review of client complaints varies between the SROs and with the CSA. The MFDA takes a different approach to the review of client complaints self-reported by MFDA firms than does IIROC for IIROC firm self-reported complaints. Exempt market dealers and portfolio managers have no requirement to self-report client complaints to the CSA. On the other hand, the differences between the MFDA and IIROC relating to how client securities are registered (client name vs. nominee name) and regarding directed commissions are defensible given the different business models overseen by the two SRO platforms. There should continue to be delineation of the registration categories based on products distributed, and a representative's proficiency should be commensurate with the registration category. Prior to a representative starting to deal in additional products, which requires registration in a new category, they should be required to complete the proficiency requirement for the new registration category. There currently exists a proficiency framework that supports the mutual fund, securities, and exempt market registration categories.

2.2	Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	The targeted outcome is described appropriately.
3	**A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.**	
3.1	What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations. b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories. c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories	a) Please refer to response 2.1. b) We note that the barriers to distributing ETFs are business barriers, not regulatory barriers, as noted in the Consultation. c) The CSA does a good job coordinating the identification and resolution of issues that span multiple registration categories.
3.2	Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	The targeted outcome is described appropriately.
4	**A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.**	
4.1	What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.	

	In addressing the question above, please consider and respond to the following, as applicable: a) How does the current regulatory framework either limit or facilitate the efficient evolution of business? b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancements, and how this has impacted the client experience. c) Describe factors that limit investors' access to a broad range of products and services. d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities? e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?	a) A dealer must become a dual platform dealer to allow some representatives of a firm to sell a broader range of products, beyond mutual funds and ETFs, which currently leads to additional costs as per the Deloitte study referenced in 1.1. b) Please see the response to 3.1(b). c) We agree that currently the client experience is subject to friction from moving platforms relating to the collection of KYC and loss of historical performance data for securities and accounts transferred. A single SRO should reduce or eliminate this friction.
4.2	Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	The targeted outcome is described appropriately.
5	**A regulatory framework that is easily understood by investors and provides appropriate investor protection.**	
5.1	What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.	The majority of the public has little knowledge or understanding of the regulatory framework. Nor should we expect such an understanding by every investor. An investor needs information about the regulatory framework when they have a complaint. When investors need this information, it should be accessible, simple and plain.

	In addressing the question above, please consider and respond to the following, as applicable: a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion? b) Describe the difficulties clients face in easily navigating complaint resolution processes. c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.	There are likely to be benefits to investors in reducing their confusion including: • better use of the complaint resolution process; • easier access to a single investor protection framework; and • less overall investor confusion, which should enhance clients' confidence in the investment industry, thereby leading to greater opportunity to benefit from it. There is some logic to the concept of a single SRO governing all retail-facing products and services (trading and portfolio management, as applicable, by securities dealers, mutual fund dealers, portfolio managers (for high net worth managed accounts only), exempt market dealers and scholarship plan dealers). However, in the Canadian context, this is not a practical approach. The first question is whether CSA directly regulated registrants want self-regulation. Conscription of registrants into an SRO is not self-regulation. Furthermore, this additional consolidation would add significant complexity to an already complex project and would require a much longer, phased approach for the new SRO to operate successfully. There would likely be substantial investor confusion during a phased approach as the SRO framework goes through several evolutions, which is contrary to the CSA's goal of reducing overall investor confusion over the short-medium term.
5.2	Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	As we noted in response to 5.1, the majority of the public has little knowledge or understanding of the regulatory framework. Nor should we expect such an understanding by every investor. As a result, we would suggest revising the targeted outcome to read: "A regulatory framework that provides appropriate investor protection."
6	**A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.**	
6.1	What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the	If the government and regulators have sufficient confidence in an SRO to grant a recognition order, the public should be able to rely on that and have confidence in the framework. The real question is whether the government and statutory regulators have confidence in self-regulation. There are legislative provisions for the oversight

	identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable: a) Describe changes that could improve public confidence in the regulatory framework b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved. c) Describe instances of how investor advocacy could be improved. d) Describe instances of regulatory capture in the current regulatory framework. e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?	of SROs to ensure the SROs continue to be capable and willing, and in fact carry out, their public interest duties in accordance with their recognition orders. There are regular CSA oversight audits of SROs and the results of these audits are made public. a) The CSA could enhance the level of oversight of SROs by conducting more targeted, risk based audits of their operations. b) We are unaware of any instances of the SROs underserving their public interest mandates. If there were such instances, we would expect the CSA to be aware of and disclose them in their periodic overview reports. c) Investor advocacy could be improved by ensuring Board members have relevant knowledge and experience of consumer issues. d) We are unaware of any instances of SRO regulatory capture. If there were such instances, we would expect the CSA to be aware of and disclose them in their periodic overview reports. e) The SROs publish annual reports of their enforcement activity. These results compare favourably to many CSA member enforcement results in terms of number of cases and penalties. The CSA members have the power to review any ruling or decision of an SRO, including discipline decisions at the request of any person affected by those rulings or decisions. If there are concerns with the number of cases, the types of respondents, the types of penalties, the timeliness of the process, or the quality of the SRO panel decisions, we would expect the CSA, as part of the review and oversight process, to ensure corrective action was taken to address these shortcomings.
6.2	Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	The targeted outcome is described appropriately. While improvement is always possible, we believe the current SRO regulatory framework promotes the public interest, has robust governance and effective compliance and enforcement processes.

7	**An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk.**	
7.1	What is your view on the separation of market surveillance from statutory regulators, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position. In addressing the question above, please consider and respond to the following, as applicable:	Prior to the mid-1990s, stock exchanges performed both market and member regulation. Member regulation was transferred by the exchanges to the Investment Dealers Association (now IIROC) and, when the Toronto Stock Exchange (TSX) demutualized and became a for profit public company, it was necessary to transfer market regulation to an independent regulator. The CSA considered a number of alternatives, but approved the creation of Regulation Services Inc. (RS Inc.) in 2002 to carry on the market regulation that was previously conducted by the TSX. That work was carried on by IIROC when the IDA merged with RS Inc. in 2008 and continued to be overseen by the CSA under a new recognition order developed for IIROC. This arrangement for market regulation, as approved and overseen by the CSA, works well.
	a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concerns?	a) While improvement is always possible, we believe IIROC delivers timely, efficient and effective market regulation services. The CSA, through a "lead" regulator model (the OSC for the TSX and CDN and the ASC and BCSC for the TSX Venture Exchange), conducts regular oversight audits of IIROC's market regulation activities, identifies deficiencies and ensures corrective measures, if necessary, are taken.
	b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.	b) The consolidation of market regulation in a single statutory regulator has the potential to avoid gaps, eliminate information silos, and support a single view of Canadian capital markets to better manage systemic risk. This approach must, however, be implemented by the provincial and federal governments. Unfortunately, this solution has not been implemented. The provincial governments would likely not agree to permit the consolidation of market regulation in a single CSA member. The Cooperative Capital Market System has proposed the creation of the Capital Markets Regulatory Authority (CRMA) to administer the proposed Capital Markets Stability Act to manage systemic risk, but not all CSA members are part of the cooperative system and there is no date for the CMRA launch.

7.2	Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?	The targeted outcome is appropriate. The current system achieves the outcome well. A single statutory market regulator could provide more effective systemic risk management, but the provincial and federal governments have been unable to provide a consolidated statutory alternative to the current SRO model.

Federation of Mutual Fund Dealers
Fédération des courtiers en fonds mutuels

October 23rd, 2020 VIA EMAIL ONLY

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Dear: Sirs/Mesdames,

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

The Federation of Mutual Fund Dealers ("Federation") has been, since 1996, Canada's only dedicated voice of mutual fund dealers. We currently represent dealer firms with over $124 billion of assets under administration and greater than 24 thousand licensed advisors that provide financial services to over 3.8 million Canadians and their families. As such we have a keen interest in all that impacts the dealer community, its advisors, and their clients.
We appreciate the opportunity to submit our comments on these important issues. We have combined targets and consultation question comments together under the respective 'Issues" headings.

General

- The current regulatory environment is seen as ill-suited to fundamental changes in the needs and expectations of investors. In particular, the current regulatory environment is seen as siloed and as not lending itself well to investors looking for a consolidated and seamless service experience.

- The Paper states, "In addition to each SRO having equal numbers of industry and independent board members, both IIROC and the MFDA have industry advisory committees that serve as a forum for advising the SROs on regulatory and policy initiatives, industry trends and practices, as well as voicing industry concerns directly to the regulators." The industry advisory committees should not be

grouped together as their relationship with their SRO, structure and reporting are very different. At IIROC there is independence from the SRO, there is transparency and accountability.

- The Paper also said, "SRO staff have developed specialized skills and expertise in their roles, assisting them in delivering oversight of the industry." The Federation has commented previously that more and ongoing staff education is required to ensure that staff do in fact develop and maintain the skills and expertise necessary in the execution of their roles.

- There can be no true investor confidence in the regulatory system unless there is distribution of disgorged funds to harmed investors nationally. It is vital to the trust and confidence people have in the capital markets and in a regulator's enforcement capabilities.

- The cost of regulation is perceived to trickle down to the investor, but it is small book investors who are viewed as being at greatest risk of being negatively affected by regulatory burden. Dealers suggested that the effect of regulatory burden - as evidenced by compliance costs associated with audits, technology platform updates and human resources requirements – drives firms to focus on clients whose books generate sufficient fees to fulfil regulatory requirements and meet the cost of business operations.

- We look forward to a discussion on the role and responsibilities that an investor obligates themselves to upon initiating a relationship with an investment professional. For example, exhibiting a modicum of effort towards acting in alignment with their financial plan, and pursuing some measure of self-education regarding their investments. Currently investors benefit financially from ignorance because admitting to being financially knowledgeable could very well limit potential compensation and reimbursement from losses (not related to market losses). The 'reasonable person' standard should also apply to the investor; complete financial ignorance is not 'reasonable'.

- We would suggest that a metric for regulatory success be developed. The impact of the regulators should not be underestimated or ignored.

- We note our agreement with the Capital Markets Modernization Taskforce[1], in particular;
    1. Term limits for key appointments
    2. A dispute resolution avenue for dealers who have issues with their SRO. We add that could include the provincial regulator, without adding a new regulatory body.

Issue 1: Duplicative operating costs for dual platform dealers

We think that the Issue as stated above would be more accurately drafted as *Overall regulatory cost for all dealers, inclusive of dual platform dealers*.

We think that Targeted Outcome: "A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value". would be more inclusive as *A regulatory framework that provides the lowest possible cost to all industry participants, while providing the maximum regulatory benefit to all investing Canadians.*

Contributing factors to duplicative costs include:
1. The requirement to print anything.
2. An SRO mandating the posting of letters out to all clients when an advisor has a compliance issue with one client.
3. System upgrades to accommodate promotional items tracking of pens and ball caps.
4. Operationalizing CFR conflicts.

There should be no instances where duplicative costs are necessary and/or warranted.

Issue 2: Product-based regulation

The Targeted Outcome as written is, "a regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules." We would suggest this be expanded to include "including the ongoing development of rules, and a harmonized application of those rules."

We would suggest that the industry would be better served by a blended approach, product and advice-based regulation. This would enhance robust future regulatory development around the oversight and alignment of commissions, advice, product distribution, and investor protection across all categories.

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[1] See https://www.ontario.ca/document/capital-markets-modernization-taskforce-consultation-report-july-2020/21-improving-regulatory-structure Self-regulatory organizations (SROs), 3. Strengthen the SRO accountability framework through increased OSC oversight

With respect to product arbitrage, since the formation of the MFDA there has been a slow but consistent migration from mutual funds to segregated funds and of those advisors giving up their mutual fund licenses. We realize that while segregated funds are not currently, viewed as securities, we feel it's important to continue to remind everyone that this is still an issue.

Issue 3: Regulatory inefficiencies

The Targeted Outcome states "A regulatory framework that provides consistent access, where appropriate, to similar products and services for advisors and investors." We think a definition of "where appropriate" would be beneficial.

We would agree with previous commenters who suggested that the CSA's costs would be reduced if there was only one SRO.

With respect to ETFs specifically, the Federation has been working with the industry broadly since 2005 in an effort to find a workable solution(s) to the processing, technology and market access challenges facing an MFDA dealer if their advisors want to sell ETFs. We have had some success; however, it seems that an elegant solution remains elusive. To-date there has been no will to facilitate a change that would remove some market exclusivity over the product.

Regarding regulatory inefficiencies, we would like to point out that the differing interpretations discussed in the Paper are not limited to inter-organizations, they apply to each organization internally and regionally. This is problematic.

MFDA Members are being held to a standard we believe is unreasonable, the standard that Members comply with the MFDA's published "recommendations". It has long been believed in the industry, and by CSA Members that "recommendations" were, as defined, "a suggestion or proposal as to the best course of action". If a dealer achieves what is intended by the recommendation, their own solution should be acceptable.

With respect to handling issues that span multiple registration categories we would suggest that for the benefit of the client, the integrity and efficiency of the industry, cooperative agreements between financial services regulators should be a requirement. Had these been in place, the largest application to the MFDA's Investor Protection Fund likely would have been avoided.[2]

Issue 4: Structural inflexibility

[2] See https://www.albertasecurities.com/News-and-Publications/News-Releases/2018/10/Alberta-Securities-Commission-Sanctions-W-H-Stuart-Mutuals-Ltd--M-Dianne-Stuart-W-Howard-Stuart and https://mfda.ca/mfda-investor-protection-corporation/w-h-stuart-mutuals-ltd/

We acknowledge the succession-planning challenges that IIROC dealers have in recruiting MFDA advisors and their frustration with the 270-day rule. As food for thought, here is what the OSC published in 2007 when they were asked by the IDA to remove the 270-day rule:

"The Commission has considered the suggestion to remove the 270 Day Requirement and decided not to do so at this time. The purpose of the temporary status of 'restricted representative' is to facilitate the transition of newly hired IDA salespersons who already have qualifications appropriate to the sale of mutual funds into fully qualified IDA salespersons. The effect of combining [the removal of the cap on the number of mutual fund only salespeople permitted at full-service dealerships] with the removal of the 270 Day Requirement would be to change the purpose of having restricted representatives at IDA members. It would become possible for individuals hired as restricted representatives to remain so indefinitely, allowing IDA members to have unlimited numbers of representatives qualified only to deal in mutual funds. However, as our securities regulatory system is presently structured, it is the role of the MFDA to act as the self-regulatory organization (the SRO) for firms and individuals whose dealer activities are limited to sales of mutual funds. The consequences of removing the 270 Day Requirement would be to permit a business model that would be inconsistent with the design of the existing regulatory system. Also, if a sufficient number of the MFDA's larger members were to transfer their operations to IDA affiliates, the ongoing viability of the MFDA could be undermined. We therefore believe that it is appropriate to maintain the 270 Day Requirement until such time as the roles of these SROs in our regulatory system is re evaluated."

If you determine to maintain two SROs, we recommend that any proposed rule changes go through the appropriate comment processes. Know, that should you eliminate the 270-day requirement, or allow IIROC advisors to redirect commissions to corporations, should you continue to blur the lines between the SROs and thereby the channels, the IIROC channel will erode the MFDA channel. While we can't speak for all stakeholders, we know that diminishment would not be productive for the industry or the investing public.

The current regulatory framework lags industry innovation, it is reactive. Being slow to acknowledge financial advice as a profession is one example. Changing the proficiency requirement for Liquid Alternative products is another.

With respect to equal access to advice for all investors, including rural or underserved communities, the Paper acknowledges that in those communities a client would likely find an MFDA rather than an IIROC advisor. The issue seems to be access to a wider variety of products rather than advice. There are online options so long as the client has access. Canada is not equal everywhere when it comes to technology.

You asked how changes in client preferences have impacted the business models. Clients want to be able to see all their investments on one statement, they would like to deal with just one advisor for all of their financial services needs. They want to be able to deal with their advisor remotely, especially at these times.

Regarding the Targeted Outcome "A flexible regulatory framework that accommodates innovation and adapts to change", there should always be an open door to industry participants with regulators when it comes to discussing ideas for the future. Without this collaboration the regulator becomes a barrier to entry, an inhibitor to progress and an agent not acting in the best interests of investors or the industry serving them.

Issue 5: Investor confusion

In the Targeted Outcome "a regulatory framework that is easily understood by investors and provides appropriate investor protection", 'easily understood' would benefit from additional clarity. Investors generally do not know what a regulatory 'anything' is beyond the desk of their advisor, so 'easily understood' needs defining.

The entire industry would benefit from a definition of "investor protection".

- The client assumes that somehow, they're going to get their money back (regardless of the reason for any loss).
- Regulators hope they're preventing harm and punishing harmful acts.

While on the home page on every regulatory site there are instructions on how to make a complaint, the same information is readily available on all dealer and advisor sites and is provided to every client individually. However, this information is only important to a client when they need it, and when they do, they usually don't remember where to go. It would be helpful if someone were to publish a flow chart, i.e. complaint to advisor → works, great; doesn't work → dealer → works, great; doesn't work, MFDA… → OBSI → Civil suit. Keep it simple.

Regarding investors' awareness of investor protection funds, they know when the advisor tells them, and it's a positive. However, when it's needed will they remember? Do they know how to access that as opposed to the other avenues available? Our industry is complicated to navigate.

Issue 6: Public confidence in the regulatory framework

With respect to the Targeted Outcome "A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes":

- The public can only have confidence in something it knows exists.
- A 'framework' alone is not a sufficient target. The framework must be supported by the resources required.

- "Effective" governance seems a low bar when we are including transparency, fair representation, oversight, etc.
- We deserve a moderate, reasonable, discussion-comes-first culture of compliance in the interest of investors and a healthy marketplace. We agree that it's important to have strong compliance processes, but we struggle under an enforcement culture.

Issue 7: Separation of market surveillance from statutory regulators

The Targeted Outcome "an integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement and management of systemic risk" is sound but in considering the separation above, it would be valuable to understand the rationale for the current structure. A tremendous amount of resources were directed into the IDA/RS merger. We would like to understand what, in practice, isn't working.

In conclusion, we again thank the CSA and individual regulators for engaging in this consultation on SRO Review. We look forward to the further development of an intentional framework that integrates and streamlines the many disparate aspects of advice and securities regulation across the country in the most cost effective and frictionless manner we can achieve collaboratively.

While the creation of a single SRO model solves many of the issues the entire industry faces generally, the myriad details and specific needs particular to the different channels will be an enormous challenge to integrate and differentiate between; to balance the enhancement of each and the whole in a manner that fosters a fair and competitive marketplace, through a prism of investor protection. We support the CSA in this process and remain available to discuss these issues in further detail and look forward to opportunities to do so.

Regards,

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October 23, 2020

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RE: CSA Consultation Paper 25-402: Consultation on the Self-Regulatory Organization Framework

Worldsource Financial Management Inc., an MFDA Dealer and Worldsource Securities Inc., an IIROC Dealer (together Worldsource) thanks the CSA for the opportunity to provide comments on this paper and commends the CSA for soliciting feedback from registrants in order to help advance the structure of the current regulatory framework.

Overview

Worldsource is a dual platform Investment Dealer and as a result has the opportunity of dealing directly, professionally and collaboratively with both the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA).

While we recognize the need for the introduction of many of the client focused reforms that are in the process of coming to fruition, such as Suitability, Know Your Product (KYP) and Know Your Client (KYC) etc., we also recognize the need for consistency in both interpretation, focus and implementation of reforms amongst all Canadian Self-regulatory Organizations (SROs).

To this end, we will focus our response to Consultation Paper 25-402 on the need for consistency between SROs on the following topics:

1. Ongoing Education Requirements
2. Product Based Regulation and Registration
3. Duplicative operating costs

1. Ongoing Education Requirements

There are three areas of significance between the two SROs with respect to Continuing Education:

A. The CE Cycle

- For IIROC the cycle begins on January 1 and runs for two years. Cycle 8 began on January 1, 2020 and ends December 31, 2021.
- In contrast, the MFDA "proposed" education "cycle" means any 24-month period beginning on December 1 of an odd-numbered year. For example, if the cycle had begun on December 1, 2019, it would end on November 30, 2021.

B. Continuing Education Content and Requirements

- IIROC licensed individuals who are registered to do retail business and give advice must complete a Compliance course (a minimum of 10 hours) and a Professional Development course (a minimum of 20 hours of study) during each CE cycle.
- In contrast, the MFDA proposal requires the completion of credits in the areas of Ethics (i.e. as part of the Business Conduct credit requirements) and Compliance. Compliance credits are mandatory and supplied by the regulator.
    - Dealing Representative, for each cycle, must complete eight Business Conduct Credits, 20 Professional Development Credits and two MFDA Compliance Credits in accordance with requirements under Proposed Policy No. 9.
    - Chief Compliance Officer, Ultimate Designated Person and Branch Manager, for each cycle, must complete eight Business Conduct Credits and two MFDA Compliance Credits, in accordance with requirements under Proposed Policy No. 9.

C. Tracking / Reporting

- IIROC Members must submit each licensed individual's CE status to IIROC, in order to track and report all registrants' status annually. IIROC maintains a record of the course completion reported by the Member as part of each individual's registration records. During the registration renewal process an attestation method is utilized for reporting to IIROC.
- In contrast, the MFDA proposal requires Members and Participants to file, using the SRO's CE tracking system, detailed reports of completed CE credits for each participant no later than 10 business days following the end of the cycle.

From a dual platform Dealer perspective, the most significant inefficiencies from these requirements arise from having two different CE cycles, where we interpret the SRO's intent behind their respective programs being largely the same. The differences in tracking and reporting requirements will inevitably create difficulties for dual platform Dealers and additionally will create confusion and discrepancies for advisors moving between MFDA and IIROC firms.

2. Product Based Regulation and Registration

While product overlap between Mutual Fund and IIROC Dealers exists, such as Mutual funds, Alternative Mutual Funds, Exchange Traded Funds and Exempt Market Products, there are several examples of the requirement for different registration requirements that govern the sale and offer of these products. For example despite the fact that Mutual funds, Alternative Mutual Funds and Exchange Traded Funds all fall under the auspices of National Instrument 81-102, for Mutual fund Dealers each of these products carry unique licensing criteria. This disparity in the licensing requirements of these products causes confusion amongst industry participants, increases surveillance and compliance costs and most importantly highlights the need for consistency between SROs and the Canadian Securities Administrators who created these specific requirements.

3. Duplicative Operating Costs

Worldsource, as a dual platform Dealer, experiences significant financial costs through the requirement to operate our lines of business separately, including having the appropriate staff to conduct the activities required by each regulator.

In addition to normal operating costs, we are obligated to pay dealer registrations fees to each regulator, as well as registration costs for employees designated to perform registerable activities as defined by either the IIROC or the MFDA.

The creation of a single SRO will enable Worldsource to reduce the financial burden placed on the firm by eliminating the requirement to maintain separate regulatory registrations. This financial savings is not limited to the costs noted above, but also to the systematic costs associated with maintaining separate lines of business. For example, Worldsource is currently required to maintain, and pay for, two separate back office-operating platforms. This results in both duplicate annual costs, as well as additional costs when Dealers are required to execute changes to each operating system.

A single SRO will eliminate the need to maintain separate back office platforms. In addition, one SRO will enable Dealers to maintain a single set of 'rules' with respect to Operations and Compliance. This will translate to a cost-savings for Dealerships by using one vendor, with one system. The cost savings is evident when the SROs create new similar requirements, yet a vendor charges the Dealer twice in order to update the different instances of a back-office platform.

The establishment of a single SRO will enable Dealers to save significant regulatory costs and reinvest any savings into better client servicing platforms. Worldsource's intention, and we believe the intention of other Dealerships, is to use these costs savings to reinvest in our Dealership in order to facilitate our goal of creating a better client experience.

A Final Consideration

In addition to the three areas of focus in our response, we believe that any new or amalgamated entity incorporate the best practices of each of the IIROC and the MFDA and combine those practices in order to create an SRO that provides clear, concise, and consistent policies and rule interpretation. For example, we believe that certain current rules by one regulator have provided significant benefit to Dealers, specifically with respect to the adoption of the Principal/Agent business structure and additionally with documented minimum standards for supervision. Though we acknowledge that a principles based regulator is far preferred over a rules based regulator, we also acknowledge that minimum compliance oversight thresholds do indeed level the playing field for all firms. Our preference would be the establishment of a baseline for all registrants with respect to compliance rules under the new SRO.

Conclusion

Worldsource is a firm that believes in providing both Advisors and Investors with a wide range of product choices, and Advisors with the freedom to provide unbiased advice. From our perspective, the consolidation to a single SRO would free up financial resources thereby allowing us to provide additional support to our Advisors that will ultimately benefit the end client. While we welcome change, we also feel that Canadians will benefit from a greater focus by SROs on a consistent and harmonized approach.

We would like to thank the CSA for the opportunity and forum to comment on these proposals.

Sincerely,
WORLDSOURCE WEALTH MANAGEMENT

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Vice President, Dealer Compliance

Richard Rizi
Senior Director, Investment Services

Cindy Jenner Cowan
Senior Director, Policy & Procedure

FAIR Canada
Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

October 23, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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CSA Consultation on the Self-Regulatory Organization Framework

FAIR Canada is pleased to provide our comments and recommendations on CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework (Consultation Paper)*.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. As a voice of the

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Canadian investor and financial consumer, FAIR Canada advances its mission through outreach and education, public policy submissions to government and regulators, proactive identification of emerging issues and other initiatives.[1]

Organization of Submission

This submission is organized as follows:

1. Summary of FAIR Canada's key submissions
2. Introductory comments
3. General question C - Issues 5 and 6 relating to investor confidence are the most important issues to be addressed.
4. General question B
5. Proposed merger of IIROC and MFDA
6. Issue 6: Public Confidence in the Regulatory Framework
7. Issue 5: Investor Confusion
8. Issue 4: Structural Inflexibility
9. Issue 2: Product-Based Regulation
10. Issue 3: Regulatory Inefficiencies
11. Issue 7: Market Surveillance
12. Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Our responses to specific issues set out in the Consultation Paper are presented in order of priority based on our assessment of the impact to investors. In our submissions for each issue, we provide specific suggestions on how to improve the regulatory system for investors.

1. Summary of key submissions

1) **The CSA review of self-regulatory organizations (SROs) should focus on ensuring self-regulation is serving the public interest**. The SROs' current practices in corporate governance, transparency and enforcement raise important concerns that require attention before other issues and proposals are considered.

2) **We strongly recommend that the CSA give investor issues the greatest weight in its review of the SRO framework.** Proposed changes should respond to the public confidence in the integrity and effectiveness of the securities regulatory system. To the extent that regulators rely on self-regulation in delivering their regulatory mandates, investors should have confidence that such reliance is appropriate.

3) **The accountability of SROs must be strengthened.** Currently there is a lack of public confidence in SROs and accountability on the part of SROs. The existing regulatory

[1] Visit www.-faircanada.ca for more information.

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framework and the SROs' practices have not adequately addressed the conflicts of interest that are inherent in self-regulation. The general perception is that SRO members and the industry have outsized influence on SROs' policies, priorities, and regulatory programs. The SROs public interest regulatory mandates should be defined, publicly disclosed, and included in the CSA's recognition orders. The effectiveness of SROs in meeting their public interest mandate should be assessed in the CSA's SRO oversight processes.

4) **SRO governance must be reformed to be more inclusive and representative of the broader public interest.** Strong governance is essential to deliver effective management and operation of an SRO, to minimize conflicts of interest, and to earn the confidence and trust of investors in regulated markets. Changes are needed to address concerns regarding the qualification and selection of directors, in particular independent directors.

5) **The SROs need broader stakeholder input into their strategic priorities and policy proposals**. SROs should be required to engage proactively with investor groups to ensure they obtain balanced input and comment on regulatory issues and proposals. Allowing for broader input would result in more informed and balanced perspectives being considered in policies. Current policy advisory committees and policy decision making bodies at SROs are dominated by industry representatives, to the exclusion of investor representatives.

6) **SRO enforcement programs must better address responsibility for failures in a firm's supervision and compliance systems**. SRO enforcement actions are rarely taken against investment firms or their senior executive management. To change business behaviour and improve investor protections, executive management of dealers must be held accountable for failures of supervision and compliance processes. If not, other investors could suffer harm.

7) **SRO enforcement programs should prioritize compensation of investors harmed by industry misconduct.** SROs should have the power to order disgorgement of profits and to direct payment of disgorged profits to harmed investors where appropriate. SROs should also prioritize how they can better ensure firms and dealer representatives provide fair compensation for losses of aggrieved clients in cases decided by hearing panels and cases resolved by a settlement agreement.

8) **The CSA should regularly assess an SRO's effectiveness in meeting its public interest mandate.** This should include assessing the SRO's governance in terms of the role and contribution of independent directors in providing a voice on behalf of investors. If a merger of SROs results in a larger, more powerful SRO, it will be even more important to strengthen CSA oversight.

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9) **The CSA must address the confusion, inefficiencies, and obstacles that the current SRO system creates for investors.** Why does the Consultation Paper focus the discussion of regulatory inefficiencies almost exclusively on industry concerns about costs? The obstacles investors face when dealing with the self-regulation system extend well beyond access to products and services. Investors must navigate a confusing and unnecessarily difficult client complaints system and have limited access to reasonable processes to obtain compensation for losses caused by industry misconduct. These inefficiencies and obstacles create significant costs for investors who rely on the regulatory system for protection and they deserve equal or even greater attention from the CSA.

10) **The proposed merger of SROs should be squarely addressed in the CSA's review.** The proposed merger of IIROC and MFDA is a major issue that is currently under discussion by the industry, and investors, including a government-initiated Task Force, the Capital Market Modernization Task Force (Ontario). The CSA needs to address these developments in its consultation.

11) **In considering any potential merger of the SROs, we recommend the CSA first propose a new self-regulatory model and SRO organization for public feedback and discussion.** It is important to complete the CSA's current review and make policy decisions on needed reforms to the SRO system before any formal application to create a merged SRO entity is considered by the regulators. Simply merging the two existing SROs under the current self-regulatory model is not an acceptable outcome given the shortcomings of the current SRO system.

2. Introductory comments

During the informal consultation process, FAIR Canada posed a fundamental question: how should the CSA address the inherent conflicts of interest between the SROs' mandates to regulate in the public interest and to promote investor protection while being responsive to the needs of their members, including both dealers and marketplaces? The scope of the CSA's review covers many of the issues FAIR Canada advocated for during the informal consultations**.** However, the Consultation Paper does not propose to re-examine the value of self-regulation from first principles as we suggested, nor assess whether self-regulation is working effectively in the public interest and protecting investors.

FAIR Canada proposed that the review should encompass a broader range of public concerns about the role and effectiveness of the SROs because the framework had not been assessed in many years. This review presents an opportunity to undertake a comprehensive review of the SRO system. We called for it to cover all elements of the system, including:

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- The rationale for using SROs and whether self-regulation is working in the public interest
- The scope of SRO regulation
- The SROs' corporate governance systems
- The SROs' mandates and responsiveness to the public interest
- The effectiveness of SROs in regulating markets and registrants, and protecting investors from abuses and unfair practices
- The CSA's oversight of the SROs

Considering current proposals to merger IIROC and the MFDA and create a new single SRO, a thorough consideration of these issues is even more important than before.

We believe the CSA should focus on ensuring self-regulation is working effectively in the public interest and in providing investor protections. The SROs' current practices in areas like corporate governance, transparency and enforcement raise important concerns. These concerns raise questions about the SROs' priorities and level of commitment to disciplining member firms and protecting investors. If the regulatory system is to continue to rely on SROs, they need to improve their practices and outcomes in these areas.

FAIR Canada also believes it is important for the CSA to clearly address the proposed merger of IIROC and MFDA as part of its consultation. It is a major public interest issue that the CSA's review raises but the Consultation Paper does not address.

Recently FAIR Canada made submissions to the Ontario Taskforce on Capital Markets Modernization (Modernization Taskforce) in response to their SRO proposals which are consistent with this response to the CSA. FAIR Canada agrees with the issues and concerns expressed by the Taskforce about the current SRO system and how it is governed and operates. We reiterate the comments we made to the Taskforce in this comment letter to the CSA, in particular our comments on the proposed merger. See sections 5 and 6 below.

We requested that the Taskforce endorse completion of the CSA's review of the SRO system before a proposed merger of IIROC and MFDA is approved and implemented. We believe that is essential to ensuring that a new SRO operates in the public interest and that the existing shortcomings in the SRO system are resolved.

In considering a potential merger of the SROs, we urge the CSA to first propose a new self-regulatory model and SRO organization for public feedback and discussion. Rather than simply integrate IIROC and MFDA as they currently exist, FAIR Canada believes that a new and different SRO based on updated principles and conditions of recognition by the CSA are required.

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3. General Question C

Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.

FAIR Canada submits that the needs of investors and the public interest should be the regulators' paramount concerns in its review. We strongly recommend that the CSA give investor confidence and investor protection the greatest weight in its review of the SRO framework. Proposed changes should respond to the public interest in the integrity and effectiveness of the securities regulatory system. This is particularly important given the inherent conflicts when relying on the industry to regulate itself.

FAIR Canada submits that issues 5 and 6 relating to investor confusion and public confidence are the most important issues to be addressed. Regulators have two core statutory mandates: to provide protection to investors from unfair, improper, or fraudulent practices; and to foster fair and efficient capital markets and confidence in capital markets. It is, therefore, important that investors understand the extent to which regulators rely on self-regulation by industry when delivering on their mandates, and that they have confidence such reliance is appropriate. It is critical that investor confidence and fairness issues be prioritized. Investors deserve much greater attention by regulators rather than the industry's focus on achieving efficiencies, cost savings and flexibility in the SRO structure.

Several of the concerns raised in issues 1 – 4 primarily concern costs and business opportunities for dealers and other industry participants impacted by the existing regulatory framework. While the goals reflected in issues 1 - 4 are important and may have some benefits for investors, they should only be pursued if they can be achieved in a way that improves public confidence. Our concern is that the industry may push for quick fixes to reduce costs and improve their ability to sell a wider range of products, while downplaying the need to fully address issues 5 and 6.

As the MFDA's paper[2] suggested, the CSA's review should consider whether changes to the SRO framework will:

- increase public trust and confidence in the SRO system
- enhance SRO governance
- increase the level of investor protection
- reduce investor confusion
- expand protection fund coverage
- reduce potential risks of conflicts of interest and regulatory capture

[2] *A Proposal for a Modern SRO, Special Report on Securities Industry Self-Regulation*, MFDA, February 2020

- increase SROs' accountability
- result in more effective oversight of SROs.

All these considerations speak to outcomes that reflect an investor's perspective and address the needs of all investors and public stakeholders.

In contrast, we believe the 7 outcomes set out in the Consultation Paper are not sufficiently clear or focussed on investors' needs. They are too vague to be meaningful for the purpose of identifying necessary or desirable changes to the regulatory framework for SROs. It would be preferable to focus on more concrete outcomes that are clearer to investors and provide practical solutions to the many issues discussed in the paper.

4. General Question B

B. Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.

FAIR Canada recommends that the CSA address the issues of the SRO enforcement programs' ability to provide for compensation of investors for losses due to misconduct of a firm or salesperson. This is noted under issue 6, iv) but is not meaningfully discussed. It would be useful to consider how requiring compensation might be achieved, the key issues that would arise in making this change and how the process should operate.

We also suggest that empowering OBSI to make decisions that are binding on firms be addressed more thoroughly. The issue is noted under issue 5 as one option for resolution of complaints. What are the CSA's current plans to address this problem and what considerations need to be addressed if decisions are to be made binding on SRO members?

5. Proposed merger of IIROC and MFDA

Investor impact: High
FAIR Canada notes that the Consultation Paper does not directly address current proposals to merge IIROC and the MFDA. We believe it is important for the CSA to clearly address and seek feedback on the proposed merger as part of its review. A merger is clearly an issue that significantly impacts the regulatory framework for self-regulatory organizations. The CSA should address the merger question given that IIROC has formally proposed a merger, the MFDA issued a concept paper on SRO consolidation and the Modernization Taskforce endorsed a merger in its recent draft report. The issue is currently the subject of debate in the industry, media and among investor advocates.

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Given the significant implications of the proposed merger, FAIR Canada is of the view that the CSA should address it directly as part of this review.

A fundamental question that the CSA needs to address up front is whether the objective of merging the SROs is principally to achieve cost savings and efficiencies for industry, or to develop an improved SRO framework that best serves the public interest and strengthens confidence in the regulatory system? We strongly believe the latter should be the overriding objective.

We suggest that the CSA should first address the question of whether consolidating SRO jurisdiction over all, or most, dealers would be in the best interests of the investing public. What changes to both the SRO framework and the governance and operation of SROs themselves are needed for such a change to best serve the public interest? Rather than just integrating IIROC and the MFDA as they currently exist and rationalizing any differences, FAIR Canada believes that a new and different SRO based on updated principles and conditions of recognition by the CSA should be developed for public consideration.

Merging IIROC and the MFDA could have a significant impact on how the investment industry in Canada is regulated. A merged entity, in addition to overseeing all trading on debt and equity marketplaces in Canada, would become the primary regulator of more than 107,000 sales representatives and about 260 firms across the country. In addition to the sheer size and scope of its responsibility, the merged entity would have an impact on the CSA's current approach to oversight. It would require rethinking how oversight could be effectively performed by multiple regulators overseeing a single, more powerful self-regulatory organization.

FAIR Canada is firmly of the view that before considering a merger, the shortcomings of the existing SRO system should be addressed. FAIR Canada has long expressed concerns about SROs' existing standards of corporate governance, transparency, regulatory operations, and enforcement programs. More independent directors who truly represent investors' interests and bring an independent perspective to each Board meeting are needed. The SROs need to listen to and consider investors' views more when setting rules and policies. Their enforcement programs must be more effective and hold firms and their executive management accountable for extensive or systemic compliance issues.

Sound operation and effectiveness of the SRO system is important to all investors because CSA regulators rely extensively on the SROs to protect our rights as investors and resolve complaints in a fair and timely manner. If a new SRO structure is put in place, getting the model right at the outset will be critical.

The CSA should ensure that a new SRO, if proposed, is an improvement on, not just an extension of, the current system. A more powerful SRO with a bigger role in regulating industry

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members while serving investors requires higher standards of governance and stronger oversight by the CSA regulators. Without these, it will be more difficult to ensure that the SRO meets its commitments to sound regulation and its public interest responsibilities. The current governance and oversight framework for IIROC and the MFDA would not be adequate to consistently ensure alignment with the public interest.

The CSA needs to ensure that any new SRO framework respond to the public interest and manages the inherent conflicts of self-regulation, as well as potential concerns around the growing hegemony of, and reliance on, the SRO structure within Canada.

6. Issue 6: Public Confidence in the Regulatory Framework

Investor impact: High
Outcome Statement: A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.

FAIR Canada supports this proposed outcome statement, but we suggest it is not sufficient to simply promote a clear and transparent public interest mandate. The outcome must focus on ensuring that the SROs' actions serve the public's interest, particularly in situations where the public's interest and industry's interest may conflict. We also recommend that the outcome move beyond just endorsing "robust processes" for enforcement and compliance. The desired outcome should focus on achieving meaningful, timely and responsive enforcement and compliance outcomes for investors.

Public Confidence in the Regulatory Framework

> *"Stakeholders noted concerns regarding a possible lack of public confidence in the current SRO regulatory framework. Some stakeholders stated that the SRO governance structure does not adequately support the SROs' public interest mandate due to an industry-focused board of directors and lack of a formal mechanism to incorporate investor feedback. In addition, these stakeholders expressed concern regarding regulatory capture and ineffective SRO compliance and enforcement practices contributing to the erosion of public confidence in the SROs' ability to deliver on their public interest mandate."*

FAIR Canada believes the issues cited above undermine public confidence in our SROs. Investors and investor advocates remain concerned that the conflicts of interest inherent in self-regulation have not been sufficiently addressed. There is also a general perception that SRO members and the industry have outsized influence on SROs' policies, priorities, and regulatory programs.

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The MFDA itself acknowledges this lack of trust in SROs in its recent paper on self-regulation.[3] Based on a survey of 2,000 Canadians with an investment account, the MFDA found only 48% trust the investment industry to make decisions that are in the public interest rather than their own. Further, 60% agreed that the current model for investment industry regulation in Canada is not working and think that government securities administrators should be involved more directly in regulating the industry.

The Modernization Taskforce came to a similar conclusion. In its recent consultation report it stated: "The Taskforce heard from multiple stakeholders that the current governance and oversight framework is inadequate for IIROC and the MFDA, does not consistently ensure alignment with the public interest, and results in unnecessary regulatory burden and cost on SRO-regulated firms."[4]

FAIR Canada submits that to improve public confidence, the SRO framework must ensure:

- SROs not only prioritize their public interest responsibilities, but are held to account on whether, and how, they are achieved,
- meet higher standards of governance,
- engage more broadly and meaningfully with investors and other stakeholders,
- deliver compliance and enforcement programs that more effectively respond to investors' needs, and
- be subject to higher standards of oversight by the CSA.

These issues are discussed below.

Public Interest Mandate

During the informal consultations with the CSA we recommended the nature and meaning of the SROs' public interest responsibility, and how the CSA can ensure that it is met, be raised for discussion. Despite making 17 references to the public interest in the Consultation Paper, the CSA does not articulate what the phrase means from its perspective.

The CSA has long taken the view that SROs must regulate to serve the public interest in protecting investors, which is reflected in their recognition orders. We believe that issues arise over how that mandate is interpreted by the SROs and CSA members, what it means in practice, and how it is assessed to ensure it is fulfilled.

The term public interest is hard to explain in most contexts, and perhaps even more so within the realm of securities regulation and SRO functions. The MFDA's paper suggests that, in the

[3] Ibid., MFDA, s. 3.3
[4] Consultation Report, Capital Markets Modernization Task Force (Ontario), July 2020, proposal 3

context of the securities industry, the term is further informed by investor protection, fair and efficient capital markets and confidence in the capital markets.[5] We endorse that view and believe SROs should aim to achieve those objectives.

The CSA should consider defining what "public interest" means in the context of the SROs and identifying key factors of the public interest to be met by the SROs. Clarity in what the mandate promotes would foster greater accountability and confidence in our SROs.

While an SROs' boards of directors should ensure that adopting a rule or taking a new initiative is consistent with, or supportive of, their public interest mandate, it is often unclear how or on what basis that determination is made. FAIR Canada recommends that the SROs describe how the public interest is expected to be achieved in the context of SROs' new rules and policies for public comment.

Suggestions for Reinforcing the Public Interest Mandate of SROs

- Define what an SRO's public interest responsibility is in its recognition order or set out key considerations for interpreting the term.
- Require SROs to provide guidance to boards of directors, committees, management and staff on interpreting their public interest mandate.
- Assess effectiveness in meeting the public interest mandate in the CSA's SRO oversight assessments, as part of assessing governance and overall effectiveness in meeting its mandate.
- Require SROs to assess whether the public interest test is met by proposed changes to rules and policies, in both public consultations and rule filings with the regulators.

Concerns with the existing Governance Structure

Strong SRO governance is essential to minimizing conflicts of interest and to earn the trust of investors.

There has been a conspicuous absence of directors with experience in individual investors' concerns on the IIROC and MFDA boards of directors. IIROC's board has tended to comprise mainly current and former financial industry members. After only a 2 year "cooling off period" a former industry member qualifies for appointment as an independent director. The MFDA has a shorter cooling off period of only 1 year. These time periods are too short and do not serve as a

[5] Ibid., MFDA, s. 3.1

useful proxy for independence. A better approach would be to create objective criteria for assessing independence and ensuring those criteria are applied.

We believe these concerns are also recognized by IIROC itself, which recently announced plans to improve representation of retail investor, senior and consumer issues on its board of directors. This initiative is welcome, but we think the issue still needs to be addressed in the CSA's review.

Strong independent directors are needed to ensure appropriate balancing of the public's and the industry's interests. A strong governance system would emphasize the need for truly independent directors who are willing to challenge the industry's view of issues, as well as any perceived deference by SRO management to the industry's views and interests. The role of independent directors is critical to avoiding "regulatory capture" of SROs by the industry they regulate.

The qualifications and selection process of independent directors should be strengthened. The nominations process for independent directors should be more transparent and robust, and run entirely by the Governance or Nominations Committee of the SRO's board. One option would be to require the use of an executive search firm to identify candidates based on pre-determined objective criteria. Management should not be involved in identifying potential candidates for any director positions.

Currently, IIROC's Corporate Governance Committee must be comprised entirely of independent directors, except if the Board chair is an industry director then he/she is a member. The MFDA's Corporate Governance Committee, on the other hand, is comprised of both industry and public directors and must be chaired by a public director. We recommend that the SROs' Nominations Committees should be comprised of and chaired by an independent director.

SROs should be responsible for their governance, subject to CSA oversight. Given the issues described above, we suggest that the CSA should have a more direct role through changes to the CSA oversight process.

That oversight could include, empowering the principal regulator responsible for overseeing an SRO with the ability to vet candidates for independent director seats through a fit and proper assessment process. While SRO directors are currently required to be fit and proper, the responsibility for making such determination is with the SRO, not the CSA.

We propose that the CSA regulators more clearly define the principles of governance that SROs must abide by. The conditions on SROs' governance structures in their recognition orders should be updated to reinforce the independence of boards and to ensure independent

directors truly bring perspectives to the board that are independent of the industry and reflect investor and consumer needs. Revised conditions could address:

1) the role and responsibilities of independent directors
2) the definition of independence for director candidates and nominees for independent seats on advisory committees and district or regional councils
3) the qualifications and experience required of candidates for independent directors
4) the nominating process used to identify candidates for independent directors.

The composition of SRO committees and district or regional councils should also be covered in the CSA's review. Those bodies should also be required to have independent members**.** Committees and district or regional councils wield considerable influence and have important disciplinary and decision-making powers. These bodies also form part of the consultative and decision-making process at SROs, and so form part of the governance structure.

Suggestions for Improving Governance of SROs

- The Chair of the board of an SRO should be an independent director.
- Redefine who qualifies as an independent director to ensure full independence from the industry and representation of investor and consumer interests.
- Reform the nominations process for independent directors to ensure it is robust, transparent and free from industry and management influence.
- Revise the conditions on SRO governance in their recognition orders to reflect the principles listed here.
- SROs should provide guidance to independent directors on their specific role and responsibilities within the governance system. Their role should reflect the specific responsibilities of non-industry directors in the SRO system including matters such as the SRO's public interest mandate and the need to properly manage conflicts of interest in SRO governance and operations.
- Require all SRO regulatory policy committees that advise the board, and district or regional councils, to have independent members.
- SROs' annual reports on their governance should address the board's role in ensuring that the organization meets its public interest responsibilities. The board's role in ensuring the SRO effectively carries out its mandate to protect investors should also be covered.
- The board should be required to expressly address why it determined that a rule or policy change it approves is in the public interest.

Formal Investor Advocacy Mechanisms

FAIR Canada agrees with the Modernization Taskforce that the SROs need broader stakeholder input into their priorities and policy proposals. SROs should be required to engage directly with investor groups, including FAIR Canada, to ensure they obtain balanced input and comment on regulatory issues and proposals. Allowing for broader input would enable more diverse voices to be heard.

SROs' public consultation policies and processes should be improved. The SROs have formal procedures for consulting on their regulatory proposals, through a public notice and comment process. These consultations are dominated by responses from their members, who have greater resources and access to subject matter experts. Investor groups, individual investors, and members of the public are at a significant disadvantage in raising their concerns. This not only undermines confidence in the SROs' public interest mandate, but it also leads to sub-optimum policy responses.

Internal discussions and comment through IIROC's and the MFDA's policy advisory committees, which are an integral part of the SROs' policy and rule development processes, are dominated by SRO members. We suggest requiring that all SRO regulatory policy advisory committees include independent representatives.

Recently IIROC announced that it would form an "expert investor issues panel" to obtain feedback from people with experience in investor and consumer issues. It is seeking input on how the panel will operate. We believe this can be a sound initiative and plan to provide input to IIROC on the panel's role and processes. However, it remains to be seen whether IIROC will seek to genuinely consult with independent investor advocates and appoint experts who truly represent the interests of retail investors.

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Suggestions for Improving Stakeholder Input to SROs

- Require SROs to engage with investor advocates in a similar way to how they engage with member firms on issues and proposed rule changes.
- Require SROs' regulatory policy advisory committees to include public or independent members to represent non-industry interests.
- Encourage SROs to hold roundtables on important issues involving all stakeholders.
- Ensure IIROC's new investor issues panel is comprised of well-qualified people who speak for investors, has a mandate to address issues proactively (as well as dealing with issues sent to them) and has access to IIROC's board of directors. The OSC's investor advisory panel (IAP) could provide a model in some areas.
- Require all SROs to establish similar investor advisory panels.
- Require such panels to report publicly on their activities.

SRO Compliance and Enforcement Concerns

The CSA should consider requiring several important changes in the SROs' compliance and enforcement programs as set out below

SRO compliance programs tend to focus on technical compliance with SRO rules rather than outcomes achieved. As part of compliance or other reviews, SROs should document findings where client outcomes do not meet public interest expectations, including situations where a firm or representative has been found to have technically complied with the rules. Technical compliance is still important, however, ensuring that firms' policies, procedures, and compliance practices deliver the results intended by the rules is more important.

For example, if a firm's retail account supervision, compliance and trade testing systems meet regulatory requirements but the firm still experiences a significant number of problems with unsuitable investments then additional steps should be taken to address the issue. Examination reports should include guidance on how the firm can improve outcomes.

IIROC and the MFDA rarely discipline investment firms or senior management in cases where investors suffer harm. SROs appear to impose sanctions mainly against dealer representatives, even in situations that call into question the firm's policies, standards of supervision or adequacy of its compliance program. In many cases, there is also a lack of transparency in the decisions regarding the accountability of the investment firm and its senior management. This

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includes whether the adequacy of supervision of dealer representatives (salespersons) was considered in the case, and any related findings.

Of the 78 disciplinary cases the MFDA brought last year, a member firm was sanctioned for supervision failures in only two cases. Similarly, of the 36 disciplinary actions pursued by IIROC in 2019, only two cases against firms were for supervision failures. Given the nature of most cases, it is surprising that there were not more findings of failures in supervision by firms and the senior management.

The following cases are examples of our concerns about this issue:

- IIROC – Sharon Crane: https://www.iiroc.ca/Documents/2019/702f7319-c141-44ae-88e6-6b272673e712_en.pdf
- MFDA – Keybase Financial Group: https://mfda.ca/reasons-for-decision/reasons2017100/
- MFDA – Peak Investment Services Inc.: https://mfda.ca/reasons-for-decision/reasons202038/

SRO enforcement must address broader failures in a dealer's supervision and compliance systems to effectively address compliance risks. FAIR Canada is concerned that, if issues in supervision and compliance systems and practices are not addressed; other clients of the firm may suffer similar harm. While the SROs play an important role in weeding out "bad apples," they should be similarly focused on fixing "bad systems."

Compensating investors for losses caused by misconduct

The SROs' enforcement actions do not provide compensation of investors harmed by misconduct. The rules that govern the enforcement process permit the SRO to impose penalties to punish improper conduct and deter similar conduct, but do not provide for compensation orders for victims of misconduct. The penalties that can be imposed do not enable hearing panels to order disgorgement of profits from misconduct be paid to clients who suffered damages as a result of the conduct, or order firms to pay compensation to such clients whether profits were earned or not.

Notices of decision on enforcement cases rarely state whether the firm voluntarily compensated the client for losses, which would usually be a mitigating factor in deciding the penalty to be imposed. Occasionally a firm will agree to pay compensation to a client as part of a settlement agreement on an SRO enforcement action but that is not the norm.

FAIR Canada has repeatedly flagged concerns over the significant obstacles investors face when they seek compensation for losses caused by misconduct. Investors must rely on complicated, confusing, and lengthy complaints processes, an OBSI claims process with no

power to make a binding decision[6], or civil lawsuits whose costs are generally prohibitive to most investors. In all those processes, investment firms have huge advantages over a client in knowledge, experience, and human and monetary resources. Those big advantages give firms a lot of power to resolve complaints in their favour – if they choose to offer any resolution.

Currently, too many SRO disciplinary cases result in minor fines for failure to meet the duties owed to investors, while investors end up eating their losses because of inadequate ways to recover them. If SRO enforcement programs are revised to address compensation for investor losses, it would go a long way towards addressing the problems with the current dispute resolution processes.

FAIR Canada recommends that the SROs prioritize compensating investors who suffer losses due to misconduct in their enforcement programs. Currently, FINRA states that its highest priority, when addressing misconduct, is returning money to harmed investors. It also mandates that its adjudicative tribunals and enforcement staff prioritize the compensation of investors for harm caused by member firms through its sanction guidelines and its policy on credit for cooperation in enforcement matters. This stands in stark contrast to the priorities and sanction guidelines of IIROC and the MFDA. The SROs should amend their rules to enable this outcome, including rules on the types of sanctions and remedies that they can impose after a hearing or through a settlement.

[6] MFDA and IIROC dealers must become members of the Ombudsman for Banking Services and Investments (OBSI), which offers an independent dispute resolution service for investors. Although the CSA requires registered firms to offer OBSI's services to clients with certain types of disputes with a firm, OBSI's decisions are not binding on the firms.

Suggestions for Improving SROs' Compliance and Enforcement Programs

- SRO compliance examinations and reviews should assess whether an investment firm's policies, procedures and practices achieve a rule's intended outcomes for investors, in addition to technical compliance with the rule.
- SRO examination reports should include guidance and suggestions on how the firm can improve outcomes, if needed.
- Investigations of all cases involving sales compliance violations should include an assessment of whether the investment firm's supervision and compliance systems were sufficient and whether they were adequately performed on the facts in question. Any material failures in supervision and compliance at the firm level should be prosecuted, particularly if charges are brought against an individual salesperson.
- SRO hearings to consider approval of a settlement agreement should be open to the public.
- Enforcement programs should prioritize compensating investors for losses due to misconduct over fines for violations. SROs should have the power to order disgorgement of profits and direct compensation for losses in cases decided by hearing panels and cases resolved by a settlement agreement.
- SROs sanction guidelines should include compensation for clients harmed by misconduct as a mitigating factor (or an aggravating factor if no or inadequate compensation was provided) in assessing appropriate sanctions.
- SRO policies on "credit for cooperation" in investigations should cover compensation of clients harmed as a factor in determining the degree of credit to be provided.
- SRO enforcement should address charging and penalizing senior management of dealers in cases involving a systemic failure to comply with rules, particularly KYC, KYP and suitability rules, or systemic problems in supervision or compliance systems.
- SRO enforcement notices should state that the SRO considered whether senior management of the dealer was responsible for failures to conduct supervision and compliance monitoring and explain the reasons for the SRO's determination on the issue.

CSA Oversight of SROs

FAIR Canada recommends that the regulators strengthen oversight of the SROs. The Modernization Taskforce also proposed strengthening OSC oversight of the SROs. If a merger of SROs results in a larger, more powerful SRO, it will be even more important to strengthen oversight of that SRO. The bigger the role an SRO plays in protecting investors and regulating the industry, the more important it will be for the CSA to ensure that its oversight system is comprehensive and effective in ensuring that the new SRO is accountable and responsive to the public interest.

It is vital for regulators to periodically carry out an overarching assessment of an SRO's effectiveness in meeting its public interest mandate and regulatory responsibilities. These broader oversight reviews should focus on higher-level issues such as the quality of governance and independence of directors, overall operational effectiveness and outcomes that promote the public interest, the level of public transparency provided by the SRO, and ensuring that investors' rights are respected.

Suggestions for Improving Oversight of SROs

- Create an oversight module for assessing overall performance of SRO based on its mandate and responsibilities. It should include onsite and offsite review processes.
- Ensure the module includes assessing performance of SROs' public interest mandate.
- Revise the governance module to assess the board of directors' effectiveness in ensuring the public interest mandate is met and public accountability is achieved.
- Revise the governance module to include specific assessment of independent directors' role and contributions, particularly on providing an independent voice from industry directors and on assessing performance of the organization's public interest mandate.
- Annual meeting with chair of the board and with select independent directors.

7. Issue 5: Investor Confusion

"Several stakeholders expressed concern that investors are generally confused by the current regulatory structure; specifically, the inability to access similar investment products and services from a single source, the complaint process,

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investor protection fund coverage, and multiple registration categories and titles."

Investor impact: High

Outcome Statement: A regulatory framework that is easily understood by investors and provides appropriate investor protection.

FAIR Canada does not consider this outcome statement to be described appropriately. While we agree with the objective of having a system that is easily understood, such a goal is an enormous undertaking given the current level of complexity and fragmentation. This complexity is hard to overcome because part of it stems from the constitutional divisions of powers, the multiplicity of governments and regulators involved in the framework, and numerous entrenched regulatory, institutional and business models which are difficult to change.
A more realistic objective would be to ensure that each new regulatory proposal should prioritize the investor's perspective and experience when designing it. Once adopted, feedback from investors should be sought on their understanding and experience with the proposal. We would also encourage regulators do undertake more investor surveys and focus group research as part of their rule-making efforts.

In addition, regulators and the SROs need to continue their efforts to address the use of misleading and confusing titles in the industry. The industry should market itself in ways that are consistent with their registration categories and proficiencies.

We also disagree that the outcome should only be to provide "appropriate" investor protection. The outcome should aim higher, such as providing protections that investors consider effective, and that provide fair and timely compensation when investors are harmed by misconduct.

Regulatory overlap

Investors are confused by the system generally. It is not simply the result of regulatory overlap from having two SROs or multiple categories of registrants. There are no easy fixes for making the system simple to understand. While some may argue that merging the two SROs would reduce complexity, it would only result in marginal improvements for investors. A bigger issue is how the industry markets itself, which tends to create gaps between investors' expectations and industry's legal obligations, particularly in situations where losses are incurred due to industry misconduct.

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SRO system structure

In summary, investors would be better served by a simpler, clearer SRO system with consistent standards, processes, rules, and interpretations. However, FAIR Canada reiterates that it does not support an SRO merger unless the public confidence issues noted under issue #6 are addressed in this CSA review and the CSA requires, or obtains agreement from, the SRO(s) to implement concrete reforms to their governance, transparency, responsiveness to and engagement with investors, compliance programs and enforcement programs.

Even if a single SRO is created, investors do not understand what the role of SROs is and what the role of the regulators is. Few investors understand what self-regulation means and how it works. It immediately sounds like a suspicious approach to setting standards and regulating the industry. That presents a double challenge to addressing investor confusion: first to explain the system and how it operates (including how SROs' roles differ from the regulators' roles), and secondly to explain how conflicts of interest can be effectively mitigated.

The average investor has little concept of self-regulation generally or knowledge of the SROs specifically. If a single merged SRO is established, it will create an opportunity to better inform investors because the new system will be simpler. Outreach, education, and promotion to investors will be needed.

This is an important issue because SROs are the front line of protection for investors and it is important for clients to understand this. SROs deal with many issues that are most likely to affect investors and their dealings with investment firms and advisors including client relationship management standards, sales compliance rules and supervision, complaints and misconduct, market surveillance and market conduct, etc.

Ideally a single set of basic information and investor education tools, such as website content, pamphlets and videos, should be deployed by all SROs, regulators, firms and industry organizations on what the SROs do for investors and how the system works.

Complaint resolution

> "*Many stakeholders noted that investors have difficulty understanding and accessing the complaint process to pursue recourse caused by misconduct. Specifically, they raised concerns regarding where to direct complaints, how to file a complaint and from which regulatory body or organization to seek redress. While investors can rely on many avenues of recourse in the current securities regulatory framework, they may not be able to efficiently access them or may choose not to access them. The avenues of recourse available to investors include:*

- *the internal complaint resolution process of the entity from which they purchased the security (e.g. customer service group and internal ombudsman),*
- *the independent dispute resolution services of the Ombudsman for Banking Services and Investments (**OBSI**)[32] notwithstanding that such decisions are not legally binding and are subject to compensation limits,*
- *making a complaint directly with the applicable SRO,*
- *an arbitration mechanism, or*
- *litigation.*

Additionally, in Quebec, the AMF also processes complaints filed by consumers and provides them with access to dispute resolution services."

FAIR Canada believes the current complaints system is unnecessarily complicated and fails to serve investors well. Investors need a clear, simple, timely and responsive system for resolution of complaints. Not only do investors find it hard to understand the complaints process), the system does not address their complaints effectively in many cases, especially if they are seeking compensation for losses caused by misconduct or non-compliance.

Ideally a consolidated complaints portal and process should be provided for filing all types of complaints with investment firms, SROs, and regulators. The system should be organized so that complaints are automatically routed to the right body. Further, a consistent process should apply to all types of complaints and be subject to service standards that apply consistently across organizations.

The complaints system imposes these burdens on investors:

- **Complicated complaint processes.** Complaint processes vary not only by the type of firm, SRO and product involved but also vary depending on the procedures in place at the firm, SRO and CSA regulator that may be involved. Current complaint processes are confusing for investors and difficult to navigate. They do not have ready access to useful help or guidance on filing complaints and descriptions of the process on many websites, including the SROs' sites are inadequate.
- **Challenges in obtaining compensation for losses caused by broker misconduct** If the complaint is escalated to OBSI, the investor must deal with yet another set of processes to file and pursue a claim. Even if OBSI ultimately finds that an investor should be compensated for losses, the firm might not comply with it.
- Firms often offer "low-ball" offers to investors in attempts to close the complaint. While firms are equipped to manage such negotiations, investors are often further disadvantaged in these situations.
- The range of processes, rules, forms, documentation, and other requirements involved in all these complaint and compensation claims files collectively impose a huge burden

on the least sophisticated party to sort out – the investor. It is very difficult to persevere to the stage where one might – only might – obtain a fair and reasonable resolution of the matter.

Suggestions for Improving Complaint Handling to Better Serve Investors

- Establish a universal online portal for all complaints that investors can access to file any type of investment complaint. The portal should filter complaints to SROs, regulators or marketplaces, leaving it to the industry and regulators to figure out how best to route complaints to the right organization.
- Use fintech to carry out initial screening of complaints and deliver them to the right organization.
- Set up a central complaint process advisory service. This should be provided by the SROs at least, and ideally include the regulators. It should include a website with clear step-by-step guides to filing a complaint, video guides (which could be posted on social media), a FAQ and access to advice by automated response, phone or chat. (Most queries could be answered on an automated basis.)
- Use data analytics tools to analyze the data on complaints filed. Use results as an input to provide compliance guidance to firms, risk assessment for compliance examinations and for regular reporting to regulators and the public.
- Mandate standardized, clear and transparent processes on handling complaints by firms, SROs and regulators, including timelines and content of responses.

Investor protection fund coverage

The current protection funds should be consolidated on terms that provide a uniform level of protection to investors. It does not make sense to have two different protection funds maintained by IIROC and the MFDA with different terms and conditions. A single fund would have a higher profile with investors and one level of protection would be easier to understand.

Significant gaps exist in the system because firms that are not SRO members are not covered. Yet those firms generally have a higher risk of insolvency, being mostly small, specialized dealers. Few investors are aware of this gap. Ideally, all registrants that deal with public investors should be obligated to participate in the investor protection fund, even if they remain outside the SRO system.

8. Issue 4: Structural Inflexibility

Investor impact: Medium
Targeted Outcome for Consideration: A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.

FAIR Canada does not consider this outcome statement to be appropriately worded. While accommodating and adapting to innovation is a laudable and necessary goal, we need to recognize there are many barriers to innovation. stemming from entrenched business models and compensation structures. One only must look at DSCs and how the industry resisted new regulatory approaches designed to protect investors to appreciate the point that existing business models also limit innovation.

Moreover, innovation is typically viewed from the perspective of industry, and not with the investor in mind.

Although many in the industry complain about the inefficiencies and inflexibility of the system, the industry is still resistant to changes that would benefit both firms and investors. For example, many want to retain the current full-service, discount and mutual fund dealer models and their respective customized rules for a long transition period to minimize the costs of adapting to a new system. Such plans again focus on dealers' needs and objectives instead of the investor's needs.

We are also concerned that the CSA's outcome statement does not address fundamental "access to advice" issues experienced by retail investors. The industry is increasingly focused on serving high net worth clients and people seeking wealth management solutions. Canadians with higher net worth and/or in urban settings tend to have access to a broader range of products and services through investment dealers, while less affluent Canadians and/or those living in rural communities tend to have access to limited services through mutual fund dealers.

The statement would be better worded as: A framework that accommodates regulatory and industry innovation while optimizing investment opportunities and protections for all investors. The current regulatory framework and structure of the industry have a negative impact on investors. Investors, particularly retail investors, would prefer a simpler system where most products and investment services are available through a single source. This finding is supported by IIROC's recent report *Enabling the Evolution of Advice in Canada*[7] and their

[7] *Enabling the Evolution of Advice in Canada,* IIROC and Accenture Consulting, 2019, https://www.iiroc.ca/industry/Documents/Evolution%20of%20Advice%20Report_EN.pdf

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investor study *Access to Advice*[8], which found that Canadians want access to a broader suite of products and services through one firm and account, as well as the ability to consume investment advice on their own terms.

Investors are not well served by a system that provides for many firms that sell mostly high fee mutual funds only. It is very difficult to reconcile the best interest approach – or even the existing suitability standard – for investment advice with a regulatory system that provides for dealers that only can offer a narrow range of products. MFDA-regulated mutual fund dealers have been able to offer ETFs to clients only recently, which are much lower cost products than mutual funds. The MFDA promulgated new proficiency and training requirements for that purpose.

More flexible rules on dealer structure and access could help to mitigate such limitations. The system should encourage firms to offer advisory services to a wider audience. That means the legal framework and the SRO system should be streamlined to avoid imposing additional processes and costs that impede access to services unless those processes are necessary to protect investors.

Suggestions for Improving Access to Investment Services

- Permit all SRO firms to offer access to all types of investment products offered to the public and to most types of investment services.
- Streamline account opening and contract procedures that are necessary to provide access to additional products and services (such as online trading, options, USD trading)
- Encourage wider provision of online services and self-help tools to reduce the costs of servicing investors and thus reduce fee and geographic barriers.

9. Issue 2: Product-Based Regulation

Investor impact: low to medium
Targeted Outcome for Consideration: A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.

FAIR Canada agrees that it is important to minimize regulatory arbitrage and that rules be applied and interpreted consistently among the CSA and SROs. The issues identified in the Consultation Paper regarding investor confusion about registration categories and use of

[8] *Access to Advice,* IIROC and The Strategic Council, January 2020, https://www.iiroc.ca/investors/Documents/Access-to-Advice-Presentation-FD_en.pdf

misleading business titles by salespersons are not captured by this outcome statement. We believe it is also important that the regulatory framework minimizes opportunities for investor confusion, as well as recognizing the reality that many investors, particularly average retail investors, would prefer a one-stop solution to meet their investment needs. As discussed above under Issue 4, the structure of the current system has a negative impact on investors.

Investors expect a system where similar investment products are similarly regulated and with similar levels of compliance oversight. Different investors buying similar or the same investment services and products should not be treated differently or have varying levels of protection based simply on the type of product or firm they are dealing with.

FAIR Canada also recommends that the CSA rethink the concept of "proficiency" in today's capital markets Given the increasing preference for one-stop solutions, Dealers and advisers must, in addition to any client-focused reforms, meet new and enhanced proficiency standards. Considering the range of products available, the interrelationship between markets, and product complexity and risk profiles, itis time to treat registrants as a profession rather than as licensees able to sell a limited set of products and services.

Suggestions for Improving Access to Investment Products

- Promote a uniform set of rules and standards governing the client relationship and providing investment advice as soon as possible.
- Move away from a product-based licensing regime, and replace it with enhanced proficiency requirements, supplemented by specific certifications as needed.
- Ensure that one-stop shopping for different products and services is truly appropriate for investors, and investors are clearly informed about important differences in their rights and protections depending on which products they purchase or services they use.

10. Issue 3: Regulatory Inefficiencies

Investor impact: low to medium
Targeted Outcome for Consideration: A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.

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FAIR Canada does not believe this outcome statement is appropriately worded. This section of the Consultation Paper covers concerns over product/service access, issues resolution, regulatory burden and inefficiencies, and duplication in some costs. The statement is too narrowly focused on access to products and services for some categories of registrants. Moreover, while this section also speaks to regulatory costs and other inefficiencies, the issue of costs is viewed solely from the perspective of CSA oversight or in terms of SRO overheads. What about the costs and inefficiencies from an investor's perspective?

"Where appropriate" is an important qualifier in this outcome statement. We assume that the qualifier reflects a concern that in some cases it would not be appropriate for some types registrants to sell certain products or provide certain services to investors. To the extent the CSA wishes to focus on the issue of consistency in access to products and services, the investor's perspective should be paramount

The inefficiencies and the obstacles the current system creates for investors merit equal attention from the CSA. The obstacles extend well beyond issues of access to products and services or to SRO and regulator processes that investors must navigate. Again, we question a discussion of regulatory inefficiencies that focuses mainly on industry's concern about costs.

11. Issue 7: Market Surveillance

Investor impact: low to medium
Targeted Outcome for Consideration: An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk.

Robust market surveillance programs are essential to protect investors and maintain market integrity. FAIR Canada supports a strong national and integrated market surveillance solution that relies on the latest technology and is adequately staffed to ensure all alerts and issues are analyzed and investigated. It is important for the market supervision program to also include an effective central complaints process (including gathering tips on potential concerns) and onsite examinations of trading operations at investment firms.

IIROC effectively operates a national market surveillance monitoring program across the full range of marketplaces that it supervises. They also have a role in monitoring trading in debt markets and publishes information on corporate bond trading on a website.

FAIR Canada supports IIROC's continued performance of market surveillance functions and related market supervision functions based on its track record. Its national, integrated market monitoring system appears to be working well and it is difficult to see how various provincial regulators could effectively operate a national surveillance program. Transitioning to a CSA-

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operated program would be difficult, costly and carry risk. We believe that the CSA's oversight processes are capable of ensuring that IIROC's program is operating effectively, that its surveillance tools are up to date with leading solutions and that its functions are adequately staffed to provide sound market supervision.

Market surveillance programs also require major investment in IT tools including an integrated platform for surveillance alert generation, exceptions reporting and trading analysis. Effective and timely analysis of anomalies in trading requires sophisticated data analytics and filtering programs that enable a wide range of market data to be analyzed across all marketplaces. IIROC has maintained state of the art surveillance systems that support a national consolidated solution for all equities marketplaces plus debt markets. Last year IIROC completed the implementation of a new, leading-edge surveillance IT platform that significantly improved its ability to supervise markets.

It is important for the regulators to have access to trading data and analytical tools to both conduct investigations of violations of securities laws and develop regulatory policy. The Consultation Paper notes the CSA is developing a market analytics platform (MAP) to support both market policy research and investigation of complex cases such as insider trading and market manipulation. IIROC is supporting the launch of MAP and is providing solutions to securely transfer equities and debt trade data to MAP daily.

12. Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Investor impact: low
Targeted Outcome for Consideration: A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.

This outcome statement is vague and difficult to clearly understand. We also question why the issue of dual platform dealers should be addressed by reconsidering the regulatory framework for self-regulatory organizations. It might be better to address the concerns of the 25 firms providing services on dual platforms in a separate initiative. Only a small subset of dealers (about 10% of all registered firms) would directly benefit. Many other dealers might see an increase in their operating costs, new compliance functions and information technology system requirements.

The issue of duplicative operating costs for dual platform dealers should not be a significant consideration in this review. It is not a priority issue compared to SRO governance and other public interest concerns.

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We wish to acknowledge the contribution of John Carson, Capital Markets Consultant, who greatly assisted FAIR Canada in reviewing the Consultation Paper and developing these comments and submissions.

We thank the CSA for the opportunity to provide our comments in this submission. Please note we intend to make our submission public by posting it to the FAIR Canada website. We would be pleased to answer questions or discuss our submission with the CSA to further explain our views.

For further information:

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Ian C.W. Russell FCSI
President & Chief Executive Officer

Adrian Walrath
Director

October 23, 2020

SUBMITTED VIA EMAIL
Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention: The Secretary
Ontario Securities Commission
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Me Philippe Lebel, Corporate Secretary
and Executive Director, Legal Affairs
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Dear Sirs and Mesdames:

Re: **CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework* (the "Consultation Paper")**

On behalf of our 114 IIROC regulated investment dealer member firms—small regional firms as well as large national firms—the IIAC welcomes the opportunity to provide comments on the Canadian Securities

Administrators' (the "CSA") Consultation Paper, and appreciates the CSA considering our input through the informal stakeholder consultations. Our members are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading, and underwriting in public and private markets for governments and corporations. The IIAC provides leadership for the Canadian securities industry with a commitment to a vibrant, prosperous investment industry driven by strong and efficient capital markets.

We applaud the leadership of the CSA in their examination of the current regulatory framework of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA"), (IIROC and the MFDA, collectively the self-regulatory organizations ("SROs")). The IIAC believes that SROs can be vital to contributing to vibrant capital markets through their expertise, responsiveness and innovation in rulemaking. SROs are also positioned to ensure the protection of investors through their continual monitoring of firms with regulator audits, market surveillance and through their enforcement powers.

However, the current SRO regulatory framework does not reflect transformations to the capital markets in the past 25 years since the MFDA was established, driven by technological innovation and client preferences. It has been clear for some time now that there is a pressing need to align the evolving integration of financial advice and products with an integrated regulatory structure. Regulation should be reflective of a client's needs and their desire for "one-stop access" to financial services and should not be based on transactions or products. As we will outline in our responses to the general and targeted questions below, the IIAC believes that merging IIROC and the MFDA into a consolidated SRO will best enable the CSA to achieve its regulatory objectives, articulated in the Consultation Paper. While the IIAC is advocating for SRO consolidation, it should not be categorized as a "simple merger". The IIAC believes that SRO consolidation provides an opportunity for stakeholders to examine and strengthen the governance structure of the consolidated SRO, as well as to review rules during the harmonization process, to ensure they are achieving their objectives. The IIAC believes that these important initiatives can take place after the consolidation of IIROC and the MFDA. An amalgamation of these two existing SROs, into a single entity is a more efficient approach. Building a new SRO structure from the ground up will create uncertainties for the financial industry during the years of consultations as all aspects of the structure are debated.

Consideration of whether there would be similar benefits to having CSA registrants come under the consolidated SRO should be carried out after an IIROC-MFDA merger. We recognize the increased complexity in potentially migrating portfolio managers ("PMs"), exempt market dealers ("EMDs") and scholarship plan dealers ("SPDs") into an SRO model given the significant differences in their business models and current rule structures. Attention will need to be given to how the rules and regimes governing these registrants can be carried over into the consolidated SRO in order to minimize disruption and avoid any added regulatory burden.

Our responses to the General and Targeted Consultation Questions are set out below.

General Consultation Questions:

1. **The CSA is seeking general comments from the public on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed in section 4 that should be considered. In addition, please identify if there is any other supporting qualitative or quantitative information that could be used to evidence each issue and/or quantify the impact of the issues noted in the Consultation Paper.**

   The IIAC believes it is beneficial to have a national consolidated SRO for Canada's capital markets. IIROC is recognized by all the provinces and territories and it is crucial for national firms to have this uniform regulation with consistently interpreted and applied rules. As we will discuss in our responses to the targeted questions below, we believe the current regulatory fragmentation results in inefficiencies and regulatory silos which may prevent regulators from identifying systemic risks.

   We strongly agree with the statement that SROs have specialized industry expertise that enables them to develop appropriate rules and respond to industry changes in a timely manner.

   However, we disagree that the benefits identified under a two-SRO framework are sufficient justification for maintaining the status quo, and we believe the same benefits can be realized under a consolidated SRO. A consolidated SRO can regulate IIROC and MFDA members that have unique business models. Within a consolidated SRO, the rules will need to provide flexibility in their application, and should consider a number of factors, including risk levels, products and services offered, and the sophistication of the clients. Consideration should be given to the varied needs of individual investors by avoiding a one-size-fits-all model. This would allow multiple ways for a requirement to be satisfied while maintaining appropriate protections for clients.

   Further, we agree it is important to investors that the SROs have investor protection funds, and we expect similar coverage would be available to clients under a consolidated SRO. We acknowledge that a small portion of high net worth clients may be unable to continue benefiting from having access to $1 million per account type coverage under multiple registration categories with the consolidation of investor protection plans under a consolidated SRO.

2. **Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.**

   We believe the most pressing concerns related to the current regulatory framework are identified in the discussions related to the seven targeted issues.

3. **Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.**

   As we will discuss below in our responses to the targeted questions, the IIAC supports each of the CSA's targeted regulatory outcomes. These outcomes are too interrelated to be prioritized between

each other. We believe each of the targeted outcomes can be achieved, and it should be the goal of the CSA to ensure any changes to the regulatory framework are able to address each area of concern.

4. **With respect to Appendix F, are there other documents or quantitative information / data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.**

   The IIAC references the study conduced by Deloitte LLP on behalf of IIROC with respect to ***An Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation*** in our response to targeted Issue 1. This study has relevant quantitative data that the CSA should consider.

Targeted Consultation Questions*:*

Structural inefficiencies:

1. **Duplicative operating costs for dual platform dealers**

Question 1.1: What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

The 25 dual platform dealers referenced in the Consultation Paper are IIAC member firms and contributed to our response to these questions. The IIAC agrees with the comments raised in the Consultation Paper that the current regulatory framework results in dual platform dealers incurring unnecessary costs that do not provide corresponding benefits to clients. By virtue of a firm having an IIROC and MFDA dealer, there are countless examples of how that firm must essentially run two separate operations within their firm in order to comply with the two SROs' differing requirements within the broad categories identified in the Consultation Paper (including separate supervisory regimes, compliance functions, IT/back-office systems, non-regulatory costs, and multiple fees). Despite recent coordinated efforts by regulators to harmonize certain rules between the CSA and SROs, dual platform dealers still cannot utilize firm-wide resources to satisfy requirements and, must silo the work. The harmonization of reporting obligations under CRM2 reports are an obvious example of potential cost savings and increased efficiencies.

Deloitte LLP, on behalf of IIROC, conducted an independent study of potential savings for dual platform dealers if there was an IIROC-MFDA merger[1]. The study assumes that dual-platform dealers will be able to consolidate their operations. Most IIAC members similarly believe that there will be opportunities for firms under a consolidated SRO model to adjust back-office operations. Deloitte LLP concluded that consolidation would result in aggregate industry savings of between $380 and $490 million over the next

[1] **https://www.iiroc.ca/industry/sro-proposal/Documents/Deloitte_Assessment_of_Benefits_and_Costs_of_SRO_Consolidation_Final_EN.pdf**

10 years by eliminating costs associated with systems and technology, corporate expenditures, and other expenses related to running two platforms to comply with overlapping regulation. It would be a significant investment of costs and resources for small and mid-sized firms, (in difficult and uncertain markets and business conditions); to determine precise expenses they incur from the duplicative regulation currently in place, and to be able to comment on the potential cost savings of SRO consolidation, with quantitative analysis, on an aggregate basis, similar to the results presented by the Deloitte study. Firms certainly anticipate these savings with the consolidation, particularly with respect to activities that can be performed centrally.

In addition to the duplicative costs noted above, IIROC and the MFDA have their own minimum capital requirements. While IIAC member firms are supportive of these requirements for investor protection concerns, IIROC's minimum capital requirements are generally significantly larger than the MFDA's. For some smaller IIROC firms that have considered expanding their business models, it could be unnecessarily prohibitive to require additional capital to satisfy MFDA requirements on top of the capital they have already set aside pursuant to IIROC rules.

Another expense which is difficult to quantify but should not be underestimated, is the cost associated with the redirection of firm focus and human resources from client services to satisfying two sets of regulatory requirements, such as multiple external audits and regulatory examinations. Responding to two sets of regulatory examinations is costly both in terms of labour and expenses for dual platform dealers. The regulatory examination process itself can be very lengthy and disruptive to a firm. Firms are required to divert resources from normal client-focused work, to overseeing examinations and responding to regulatory requests. It is very inefficient to have two regulators examining the same firm, potentially on different examination schedules, with varying priorities and with potentially different interpretations of how requirements are to be satisfied.

IIAC member firms do not believe that the duplicative costs identified are necessary or warranted as they result in no clear enhanced investor protections or other client benefits.

Client preferences further support reducing inefficiencies between dual platform dealers. Clients generally want flexibility in how they access advice, and access to a broader range of products. For clients of a dual platform firm's MFDA dealer who would like greater access to products like exchange-traded funds ("ETFs") and platform-traded funds ("PTFs"), there may be structural limitations to accessing those products, even where the same firm's IIROC dealer is able to offer them. Since that firm's IIROC dealer and MFDA dealer cannot share back-office functions, the clients of the MFDA dealer may have to transfer their account to the IIROC dealer to access those products. Transfers within a firm are functionally similar to transfers from outside of the firm, with associated regulatory hurdles. The client may then have to change advisors, and their performance history for CRM2 purposes would be lost. There can also be hard dollar costs associated with transferring because of how the current SRO framework is structured.

Question 1.2: Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

The IIAC strongly supports the CSA's targeted outcome for Issue 1 of ensuring a "regulatory framework that minimizes redundancies that do not provide corresponding regulatory value" and we believe it has been appropriately described. We believe merging IIROC and the MFDA into a consolidated SRO will best achieve the targeted outcome. The Deloitte study has identified significant cost savings that can be achieved. More importantly, the IIAC believes that the removal of the silos between IIROC and MFDA dealers within a firm can result in greater oversight of compliance and supervision and provide the firm with the resources and ability to develop a unified vision on how to best service all of their clients.

As noted above, we would anticipate a transition period during which the MFDA and IIROC rules continue to apply to the applicable registrants, even within the consolidated SRO. It will take time to review the rulebooks, harmonize the requirements, and ensure the rules provide flexibility in how they are complied with, considering a number of factors, including risk levels, products and services offered, and the sophistication of the clients. It will also take firms time to determine how to best move forward to a single platform operationally, with minimal disruptions to clients. Consideration should be given to the varied needs of the investor by avoiding a one-size-fits-all model. This would allow multiple ways for a requirement to be satisfied, while maintaining protections for clients.

2. Product-based regulation

Question 2.1: What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

The IIAC believes similar products and services should be regulated in a consistent manner. Clients should feel confident that regardless of where they seek advice, they will have comparable levels of protection from the consistent application of the rules, and be assured of strong cultures of compliance across registrant categories. The MFDA conducted a poll of "What Canadian investors want in a modern SRO" and found that 91% of Canadian respondents believe that financial products and services that are alike should be regulated in the same way[2]. Furthermore, regulatory systems should not be built around specific products or business models. Canada's capital markets are continually evolving and responding to clients' needs and expectations, as well as to technological innovations. The regulatory infrastructures should be sufficiently adaptable to be able to respond to these changes, rather than tied directly to products that may become less relevant within Canadian capital markets.

There are numerous ways in which clients may experience different treatment between registrant categories when accessing similar products, despite recent attempts to implement harmonized rules (i.e. CRM2, Client-Focused Reforms) between registrant categories. For example, there may be differences between how a security is registered (nominee vs. client name), the availability of fee-based or commission-based accounts, and the investor protection fund services available. Additionally, the

[2] https://mfda.ca/wp-content/uploads/InvSRO_Report.pdf

compliance culture in a firm may be influenced by the individual regulators' priorities; guidance from individual regulators on how rules are applied can impact fundamental aspects of investor protection initiatives like Know-Your-Product ("KYP"), and suitability. Further, in the event of a complaint about a product, the client has different recourses available depending on the registrant; for example, the MFDA does not have an arbitration process available; whereas IIROC does. These differences do not provide corresponding benefits to clients and may add to client confusion and decreased confidence in the regulation of Canadian capital markets.

Within a consolidated SRO, there could be advantages to representatives having access to a broader range of products and services that may not currently be accessible to certain registrant categories (subject to the representative having the sufficient proficiency). For example, while the MFDA has released Policy 8 permitting MFDA representatives who meet minimum proficiency requirements to recommend ETFs and PTFs, many MFDA firms do not have the back-office infrastructure necessary to offer these products. While there may be client and advisor demand for these products, it can be prohibitively expensive for an MFDA firm to implement the new systems required in order to offer them. If the MFDA and IIROC were merged under a consolidated SRO, those representatives may have better access to additional products which would result in improved client access to a broader range of products.

With respect to the CSA's question on proficiency and registration categories, in order to protect investors, we believe it is appropriate to require additional proficiencies for registrants related to variations in the complexities of products. However, the differing registration categories based on proficiency should still be within a single registrant category, to ensure consistent treatment of clients. For example, currently an IIROC dealer can have advisors who have additional proficiencies, enabling them to provide advice related to complex products like derivatives or futures. Clients who wish to obtain advice related to derivatives or futures would receive consistent treatment across all dealers as there is only one regulator overseeing these products and services. There is no need to have a separate SRO to govern these products and services merely because there are additional rules related to them or different proficiency requirements for advisors who can offer them.

The current regulatory framework can contribute to regulatory arbitrage when considering individual representatives: it may be more beneficial for these representatives to operate under one SRO or regulator rather than the other. Currently, there are differences in registration between IIROC and the MFDA, with the applicable provincial regulatory body overseeing MFDA registration. This can lead to regulator "shopping". We believe the consolidated SRO should be responsible for registration of individual representatives. IIROC and the MFDA each view the firm's supervision requirements of its representatives who engage in financial planning and/or insurance activities differently. For example, a representative for whom financial planning and/or offering insurance is an important component of its business, may consider the differences in how IIROC and the MFDA view those activities.

Question 2.2: Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

The IIAC has supported regulatory initiatives aimed at elevating and harmonizing standards across registrant categories to reduce potential regulatory arbitrage. We agree with the CSA's targeted outcome for Issue 2 to provide "A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules". As outlined above, we do not believe the current regulatory framework is designed to align with investor expectations to receive the same levels of protections and access to products and services across registrant categories.

The IIAC believes that the consolidation of IIROC and the MFDA will address some of the regulatory arbitrage concerns. There will still be potential variances between registrants under a consolidated SRO and those under the CSA when distributing similar products and services, however, the IIAC recognizes the increased complexity in potentially migrating PMs, EMDs and SPDs into an SRO model, given the significant differences in their business models, and their current rule structures.

3. Regulatory inefficiencies

Question 3.1: What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

With respect to policies that impact business operations, and that are interpreted differently by the SROs, IIAC members noted that the MFDA's has prescriptive requirements under Policies 2 and 5, compared to IIROC's principles-based approach to trade supervision and branch review under Rules 38 and 2500. These rule differences have impacted member firms' decisions on whether or not to make branch expansions. Although there may be other economic factors as to why IIROC branches are not in certain locations, for dual platform dealers considering expansion of their MFDA dealers, the MFDA requires physical visits to branches, and for larger firms, this can be a significant expense, also in terms of resources. In contrast, IIROC's approach is more risk-based. It can be prohibitively expensive to operate branches in more rural locations, which may reduce access or limit competition in some rural communities. Our member firms do not believe investor protection is enhanced as a result of the MFDA's rules, because other supervisory and compliance oversight requirements are already in place. The MFDA also has prescriptive trade review rules compared to IIROC's risk-based approach, and this impacts how firms set up their operations, including dual platform firms, who must establish different supervisory operating models to accommodate each.

The IIAC agrees with the issues identified in the Consultation Paper with respect to product and service access. We have outlined some of the concerns related to the impact of regulatory inefficiencies on product and service access in our previous responses (i.e. back-office system limitations for dual platform dealers). Below, we expand on additional rule variances between the SROs that have further exacerbated this issue.

IIROC firms are prohibited from acting as carrying brokers to MFDA dealers. This means that an MFDA firm cannot enter into an arrangement with an IIROC dealer in order to obtain access to the exchanges and systems needed to purchase and track ETFs and PTFs for clients. MFDA dealers cannot leverage the

existing infrastructure and institutional knowledge of IIROC dealers that currently trade in these products. Instead, they must seek out a third-party firm (non-IIROC dealer) to build the systems and infrastructure required to provide these services. This may be prohibitively expensive, and limit product access for advisors and clients. There are similar administrative regulatory hurdles for MFDA representatives accessing liquid alternative investments. If a representative has the required proficiency to recommend these products, the MFDA firm may not have affordable access to them because of operational considerations. There are also compliance-related supervisory proficiency requirements, and it may not be economical for firms to have multiple individuals supervising the sale of these products through both their MFDA and IIROC dealers, which may ultimately limit access to products on the MFDA side.

The inefficiencies resulting from our duplicative and fragmented regulatory system pose several concerns related to the identification of regulatory and systemic risks. Members note that if a complaint is made to an SRO about a firm or registrant, this information is not immediately shared with the other SRO, or with the CSA. The complaint may have to be filed on the National Registration Database. However, that is different from directly notifying other regulators. This may be appropriate, as the SRO has not conducted an investigation to determine if the complaint is valid, and if the complaint is elevated to an enforcement action, it will become public. An outstanding concern is that seemingly smaller issues that are not elevated to enforcement actions, could be indicative of a broader issue that can be potentially overlooked under the current framework. If there is one consolidated SRO, it may be able to detect problematic patterns of behaviour in firms or registrants, use this information to predict potential areas of concern in future, and intervene where necessary; in this way, it would serve to protect our community of investors.

The fragmentation of the regulatory examination process can similarly limit the regulators' ability to detect broader or systemic compliance issues. The CSA and the SROs may each have different priorities that they are focused on during a firm audit. This can lead to varied findings and missed opportunities to canvass the entire dealer community, in order to determine trends.

Further, the amount of time and resources required by the regulators to coordinate rules, and oversee the implementation of significant regulatory initiatives, reduces their capacity to focus on forward-looking initiatives.

Question 3.2: Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

The IIAC agrees with the CSA targeted outcome for Issue 3 and believes it has been described appropriately. We continue to believe that the consolidation of IIROC and the MFDA can address some of the regulatory inefficiency concerns. However, there will still be some fragmentation of the regulatory system which can impact the assessment of systemic risk, and some inefficiencies will remain, as rules and enforcement matters will still need to be coordinated between the consolidated SRO and the provincial regulators.

4. Structural inflexibility

Question 4.1: What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In our response to Issue 1, we highlighted how the current regulatory framework has limited dual platform dealers from evolving to meet clients' expectations of obtaining flexible "one-stop access" to a variety of products and services. Our members also noted that the significant unnecessary costs for dual platform dealers has been a barrier for those firms considering expanding their reach by incorporating mutual fund representatives into their businesses in order to better serve clients. Further, in our responses, we addressed how it can be challenging for firms to respond to changes in client preferences for increased flexibility in how they access services, due to restrictions imposed under the current regulatory framework. With respect to technological advancements, it can be very challenging for firms to work with each of the provincial regulators and the SROs to obtain necessary approvals. For example, IIAC member firms have been discouraged by such inefficiencies, including cases where an additional 12-month period has been needed to obtain approval from other jurisdictions, following an approval by the OSC.

In addition to creating barriers for firms, the current regulatory framework can significantly restrict an advisor's career trajectory. Many advisors are initially licenced under the MFDA. The MFDA does not require representatives to work as advisors full-time, which can be very important for a new advisor, who has not yet accumulated a sufficient book of business to support themselves financially. Further, the MFDA proficiency requirements are a lower barrier-to-entry than IIROC's. Over time, if the advisor wishes to expand their offerings, they may have to leave their firm and move to a firm that falls under a different registrant category. Changing firms can be very difficult for advisors, because in addition to concerns with respect to client retention, there is also a proficiency barrier between the MFDA and IIROC (the Upgrade Requirement). If there was a consolidated SRO, that advisor could remain a limited-licence mutual fund representative with access to ETFs and PTFs, and have the option to advance within their firm. The advisor could also decide to obtain any required proficiencies in order to further recommend additional products and expand their offerings within their firm. The IIAC urges the CSA to allow IIROC to grant exemptive relief from the Upgrade Requirement to its members who seek such relief, during the course of the industry consultations on regulatory reform.

The IIAC believes that, under a consolidated SRO, clients would have improved access to a broader range of products in rural or underserved communities. We noted how differences between requirements of the SROs with respect to branch review may be a contributing factor to firms limiting the number of branches they operate, and may impact decisions on the locations of the branches. In general, it may be MFDA dealers that are in more rural or underserved communities, and we have highlighted the back-office challenges for MFDA firms that seek to distribute low-cost products like ETFs, which limits access to such products for those investors who may have few other available options nearby.

Question 4.2: Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

The IIAC believes SRO consolidation would achieve the outcomes described by the CSA for Issue 4. Our response above notes how a consolidated SRO is positioned to respond to evolving preferences and technological innovations within our capital markets. Further, its public interest mandate will ensure that these changes are considered with investor protection as a core element.

Investor Confidence
5. Investor confusion

Question 5.1: **What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.**

The regulatory overlap within the current framework certainly contributes to client confusion. As noted in our responses above, clients expect to receive consistent treatment and seamless access to a broad range of products and services, irrespective of their firm's registrant category. Member firms note client dissatisfaction with administrative barriers that prevent the client from receiving such an experience. It is confusing for the client to be informed that they are unable to purchase products they are interested in as a result of which regulator their advisor is subject to, or for a client to understand why moving accounts within a dual platform dealer requires them to essentially open a brand new account (having to redo KYC and suitability assessment forms, and lose performance history, etc.).

With respect to the concerns related to complaint resolutions, the IIAC does agree it can be difficult for clients to understand how to correctly file a complaint, particularly if the client has multiple accounts across registrant categories. IIAC members inform clients of the complaint-handling process during account opening. Member firms also provide clients with brochures developed by IIROC, which outline the complaint process to further assist clients. The IIAC's recommendation to consolidate the SROs would reduce some of the confusion for clients as to what regulator the advisor is subject to. IIROC is also examining how to expand its powers to provide clients with support to recover losses and this may be a power that should be developed under the consolidated SRO as well. However, beyond these measures, the various complaint options may still be needed for clients, depending on the type of recourse they wish to pursue, and so some confusion may remain.

The IIAC agrees with the issues identified by the Consultation Paper on how the multiple levels of investor protection funds result in investor confusion and can delay their ability to recover losses. The IIAC has stated that we believe a consolidated SRO should provide coverage to all its member firms comparable in amount to the coverage provided individually under each SRO.

The Client Focused Reforms include rules related to the use of titles for advisors and we believe these changes will address any remaining confusion investors have. Firms do have obligations to manage client

expectations with respect to the firms' product and service offerings. We believe the enhancements to these responsibilities under the Client Focused Reforms will further inform clients and reduce confusion.

Question 5.2: Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

The IIAC strongly supports the CSA's targeted outcome for Issue 5; providing investor protection is a foundational goal for any regulatory framework. We believe our responses to the other Issues identified in the Consultation Paper demonstrate how the IIAC believes investor protections can be enhanced within a consolidated SRO. With respect to the CSA's objective to reduce confusion, the IIAC's support of the consolidated SRO would reduce that confusion by removing the barriers related to regulatory overlap, while retaining high standards of investor protection. While the consolidation would not address all concerns related to investor confusion with respect to the complaint process and investor protection funds, it would simplify both of these processes for many retail clients.

6. Public confidence in the regulatory framework

Question 6.1: What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

The IIAC disagrees with stakeholder comments in the Consultation Paper that suggest IIROC may not currently be fulfilling its public interest mandate. IIROC does have a strong governance and oversight foundation to support its investor protection mandate; however, we do support further enhancements to SRO governance and oversight, to improve public confidence and trust in the SRO regulatory framework. The IIAC believes it is critical that the SROs (and any future consolidated SRO) undertake a campaign to inform investors of their mandate and how its governance structures, rulemaking process and enforcement actions, and their commitment to serve the interests of the public.

It is concerning that there may be public misconceptions on the role of SROs and their relationship to the financial industry. The IIAC is of the view that an SRO's expertise, responsiveness, and innovation in rulemaking and enforcement, is a result of the direct relationship between the SRO, the securities industry, and dealer registrants. This relationship enables IIROC to be a more responsive regulator, to protect investors, and ensure market integrity. To safeguard against "undue" influence or regulatory capture, IIROC is subject to a number of oversight requirements pursuant to its various provincial recognition orders. These recognition orders outline requirements related to all aspects of IIROC's operations. Pursuant to IIROC's memorandum of understanding with each province, all non-housekeeping rules must be approved by the provincial regulators, essentially providing them with veto power. The IIAC has supported the Ontario Capital Markets Modernization Task Force's (the "Ontario Task Force") recommendation to expand the OSC's (or CSA's) oversight to include a veto on SRO rule interpretations

and guidance, as long as it is being exercised within a pre-determined period of time, to avoid unnecessary delays and confusion.

In addition to each provincial regulator's authority to approve IIROC's non-housekeeping rules, IIROC rules are required to be consistent with, or impose higher standards than the CSA's rules. SRO rules are often more detailed, which can provide higher levels of protections for investors (e.g. capital formula, supervision, and books and records requirements).

With respect to governance structure concerns, the IIAC believes it is crucial to recognize that a strong industry voice is needed on the Board in order for the SRO to respond effectively to the evolving financial landscape, and best serve the public interest. It is also critical to balance industry input with broad representation from independent directors. IIROC's Nominating Committee is only comprised of independent Board members. Currently, there is an even distribution between independent and non-independent directors on the IIROC Board. However, two of the non-independent representatives are required to be from marketplaces (i.e. stock exchanges), resulting in only five out of 15 Board members coming directly from IIROC firms. Many IIAC member firms with different business models are already concerned that their concerns are not always understood at the IIROC Board of Directors level, given how diversified the industry is, with many different types of business operations, regional locations, and business models.

In order to reduce potential bias with respect to independent directors, the IIAC has supported the Ontario Task Force's recommendations to introduce a suitable cooling-off period for individuals to qualify as an independent director if they have left the industry. We also support IIROC's recently announced expanded criteria for independent director positions, which opens these positions up to individuals with direct experience with consumer and retail investor issues. We believe the proposed recommendations related to the cooling-off period, IIROC's expanded independent director position criteria, and the equal representation of independent and non-independent Board members, will ensure proper representation, and enable a variety of voices to participate on the consolidated SROs Board of Directors.

The IIAC agrees with the investor concerns with respect to the lack of a formal communication channel within the SROs, to enable investor feedback to be incorporated into the decision-making process. In March of 2020, IIROC announced intentions to establish an Expert Investor Issues Panel to advise them on investor issues, and we believe this will be a positive change[3]. A consolidated SRO should incorporate an investor panel in its structure.

With respect to providing the CSA with additional oversight authority, the IIAC has supported the Ontario Task Force's recommendation to introduce an OSC (CSA) veto power over key appointments, including the Chair, President, and CEO, as well as term limits for those appointments. If the OSC (CSA) exercises a veto, the reasons for rejecting a candidate, and intervening in the candidate search process, should be made transparent publicly, to ensure that the decision to reject candidates is made carefully and without bias, avoiding unneeded disruptions to candidate searches.

[3] **https://www.iiroc.ca/documents/2020/a75ad083-294d-49b8-95c3-16f8942ef95f_en.pdf**

The IIAC believes that IIROC has a very robust enforcement process. However, we support additional initiatives to further strengthen enforcement, given its important role in investor protection. The IIAC has supported IIROC's efforts to expand its enforcement powers within the various provinces and territories, through changes to legislation. The IIAC also support IIROC's examination of new initiatives to better support investors who suffer losses. In addition, we would also like to participate in any review of IIROC's enforcement practices, especially related to concerns of transparency, for the benefit of both the investing public and member firms.

Question 6.2: Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

We support the CSA's targeted outcome for a regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes. The IIAC believes that the outcome is achievable within a consolidated SRO. IIROC is currently seeking to strengthen its governance, enforcement practices and investor advocacy feedback structures. These changes should be incorporated into the consolidated SRO. The IIAC has made a number of suggestions above that we believe will contribute to the desired regulatory outcome. In conjunction with the structural changes, a public outreach and education campaign will be necessary to prevent the perpetration of any investor misconceptions about the role of SROs.

Market surveillance

7. Separation of market surveillance from statutory regulators

Question 7.1: What is your view on the separation of market surveillance from statutory regulators, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

The IIAC supports IIROC (or the consolidated SRO in the future) retaining market surveillance responsibilities. The IIAC is not aware of any concerns expressed by the CSA with respect to the timeliness of market surveillance information sharing between IIROC and the CSA, relating to potential enforcement matters or systemic risk issues. Further, permitting IIROC (or the consolidated SRO in the future) to continue to perform market surveillance does not compromise the ability of statutory regulators to manage systemic risk, but instead results in a single national hub for information gathering. IIROC is recognized by each province, creating cohesion, and has been able to act as one voice internationally with organizations such as the Intermarket Surveillance Group. This enables them to focus on continual improvements to their surveillance systems and innovative compliance programs to monitor for future risks. IIROC has recently boosted their capacity and is testing AI systems to detect patterns of behavior for machine-learning in order to identify possible market abuse, such as insider trading and market manipulation. Further, surveillance responsibilities have been discharged by IIROC responsibly and effectively, as evidenced by IIROC's performance during the recent and unprecedented market volatility.

Importantly, the surveillance function has transformed IIROC into a more robust regulator, providing it with insights into investor behaviour, and an understanding of capital markets trends. We believe that this market surveillance function will have similar benefits for the consolidated SRO in the future.

Question 7.2: Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

The IIAC supports the targeted outcome for Issue 7 of ensuring "An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk." As discussed above, we believe this outcome can be achieved by the consolidated SRO retaining market surveillance responsibilities.

Given the efficient and effective manner in which market surveillance is being conducted nationally, there are not clear benefits to upending the structures and functions currently in place, and reconfiguring them under each provincial securities regulator.

The disadvantages of the existing SRO framework require action to be taken. The IIAC is encouraged by the CSA's consideration of this issue and we would be pleased to respond to any questions that you may have in respect of our comments. Thank you for considering our submission.

Yours sincerely,

PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

VIA E-MAIL October 23, 2020

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Background

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to provide written feedback to the Canadian Securities Administrators (**CSA**) on CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework* (the **Consultation**). PMAC represents over 285

investment management firms registered to do business with the various members of the CSA as portfolio managers (**PM**s). Approximately 65% of our members are also registered as investment fund managers (**IFM**s). PMAC's membership is comprised of firms of varying sizes and models, ranging from one-person firms to international and bank-owned firms. In total, our members manage assets in excess of $2.9 trillion for institutional and private client portfolios. Our members also range from the more traditional models to online advisers.

Portfolio Managers

PMAC's mission statement is "advancing standards". We are consistently supportive of measures that elevate standards in the industry, enhance transparency, improve investor protection and benefit our capital markets as a whole. We are also cognizant of the global market in which many of our mid-size and large members operate and are sensitive to any regulatory changes being misaligned with other international capital market jurisdictions.

This Consultation has generated discussion and debate among numerous stakeholders, which we view as a positive development. Some recent proposals, notably from the Capital Markets Modernization Taskforce (**CMMT**) and Mutual Fund Dealers Association (**MFDA**) contemplate the creation of a single self-regulatory organization (**SRO**) that covers all advisory firms, including PMs, exempt market dealers (**EMD**s) and scholarship plan dealers (**SPDs**). As we noted in our response to the CMMT, we believe that PMs, IFMs and EMDs should remain under the oversight of the CSA.

Throughout our submission, we will draw attention to the ways in which PM firms are unique from other registrant categories and we urge the CSA to take these unique features into account in considering reforms to the SRO framework. We believe that a failure to acknowledge the differences in registration categories, advice model and duty to investors could result in inappropriately prescriptive regulation that impedes a PM's professional judgement, hampers competition and innovation and, over the long term, does not benefit investors.

In addition, throughout our submission we will highlight the fact that the majority of PMs are also registered as IFMs; these two categories are intertwined and should remain under the same umbrella of regulation. They also often operate internationally, and are predominantly regulated under principles-based, direct government regulation in other jurisdictions. Any shift by Canada to a prescriptive, self-regulatory model fraught with burdensome rules-based regulation would put Canadian PM registrants at a significant competitive disadvantage globally.

PMAC members believe that direct regulation of PMs by the CSA is and historically has proven to be extremely effective and we fail to see how changing direction would better serve investors. CSA staff have developed a deep understanding and institutional knowledge with respect to the PM firms they oversee; the principles-

based approach to PM regulation is appropriate and effective and aligned with international regulation, and provides the flexibility required to respond to and promote the wide variety of business models and types of investors served by PM firms. Furthermore, we believe that direct regulation of PM firms by the CSA better serves the investing public, in contrast to delegation of regulation to an SRO.

KEY RECOMMENDATIONS

We note that the Consultation questions are heavily focused on products and distribution-based regulation. We have framed our responses to focus on what we view as significant public interest and investor protection matters. We provided the following key recommendations with respect to the future of SRO regulation in response to the CMMT Report and believe these are equally relevant to the CSA's Consultation. We will address each of these in greater detail below.

1. **Maintain regulation of PMs under the CSA:** We defer to others in the industry to opine on whether a merger of the two current SROs makes sense. PMAC strongly opposes PMs being regulated by a single or merged SRO; we believe the current regulation of PMs by the CSA is effective and that it is in the public interest to maintain direct regulation of these registrants versus delegating to an SRO.

2. **Address governance weaknesses inherent within SRO structures:** Improving governance and oversight of the SROs by the CSA will inspire confidence in the regulatory framework and Canadian capital markets.

3. **Prioritize the national/cooperative regulator with PMs and IFMs directly regulated by this entity:** Establishing the Cooperative Capital Markets Regulatory System (**Cooperative System**) is essential to harmonizing regulation across Canada, strengthening the global competitiveness of our markets, fostering a strong national economy and managing systemic risk.

General Consultation Questions

We have considered the questions in the Consultation and have used these to structure our comments. Please note that we have only referenced those questions on which our members provided specific feedback.

B. Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.

There are two issues which we believe are of paramount importance in considering the future of SROs in Canada that have not been specifically identified in the Consultation. The first is to continue to prioritize the Cooperative System and the second, to keep the regulation of PMs with the CSA. These will be discussed in turn below.

Prioritize the Cooperative Capital Markets Regulatory System

We commend the steps taken by the CSA in recent years to prioritize nationally harmonized securities regulation and believe that further progress toward this goal will have a variety of beneficial impacts on investors, registrants and the capital markets.

We believe that a national regulator such as the Cooperative System should be prioritized. PMAC has been a strong supporter of, and vocal advocate for, a national securities regulator since the association's inception in 1952. In recent letters to the Ontario and British Columbia Ministers of Finance, PMAC reiterated our support for the creation of the Cooperative System.

We believe that a national regulator is a better first step towards improving the regulatory system; for the reasons set out below, this is preferred over the creation of a new all-encompassing SRO. In our view, direct regulation is stronger regulation and better serves the public interest. Establishing the Cooperative System would be the most effective path to improving the regulatory framework. The Cooperative System would increase harmonization and enhance investor protection, and would reduce regulatory burden for the benefit of both investors and market participants.

Canada is the only developed country in the world without a national securities regulator, which puts Canada at a significant disadvantage in the global capital markets, due to the inefficiencies of the current model. Nine participating governments have signed on to the national regulator initiative and we are as close as we ever have been to the goal, but we need the provinces to make it a priority.

The Cooperative System would be capable of developing and implementing harmonized law and policy more quickly and efficiently than the current fragmented system. This is highlighted by the recent experience during the COVID-19 crisis, where blanket orders were required to be issued in multiple CSA jurisdictions to provide urgently needed relief to registrants. Harmonized rules across the country are in the best interests of issuers, registrants, and investors. Investor protection would increase with the benefit of a better framework to manage systemic risks and improve coordination with enforcement on a national and global scale.

Systemic risk considerations are a critical aspect of the health of our economy and the well-being of investors. We believe that systemic risk must be monitored and managed through seamless cooperation between the provinces and territories and that, to ultimately be nimble and effective, it must be overseen at the Federal level.

Regulation of Portfolio Managers should not be delegated to an SRO

Some voices in the current debate over the future of SROs in Canada, including the CMMT and the MFDA, have recommended a merger of the two existing SROs. We leave it to other industry participants to determine whether such a merger makes sense. Although the Consultation does not directly pose the question, the CMMT report suggested that, as part of Phase II of the SRO merger, PM regulation would be brought under the new SRO; the MFDA also supports having all registrants regulated by a single SRO. PMAC is strongly opposed to delegating the regulation of PMs from the CSA to an SRO.

Quite simply, regulation of PMs and IFMs by the CSA is working. CSA staff have the long-term experience in overseeing PMs and the specialized expertise to understand the unique features of the PM business and the fiduciary duty of care owed by PMs to their clients. The CSA's principles-based regulation is effective and appropriate for the variety of business models employed by PMs, whether they be investment counsellors, robo-advisers, family offices, global asset managers or large PM/IFMs. No market or investor protection reasons have been raised in support of delegating this effective regulation to an outside body, and we question the efficiency of doing so.

The SROs' regulatory structures were developed to work well with the investment dealer model, where firms are focused on distribution, and client relationships are based primarily on specific securities transactions. The prescriptive nature of SRO regulation is inappropriate for, and incompatible with, the business models and client types served by PM firms. This is recognized in the U.S., where a proposal for the SRO responsible for broker-dealers (the U.S. equivalent of securities dealers), the Financial Industry Regulatory Authority (FINRA) to take over oversight of investment advisers (the U.S. equivalent of PMs) was rejected, and oversight remains with the Securities Exchange Commission (**SEC**). Implementing a one-size-fits-all framework is complicated and will not improve investor protection at any level.

In our view, expanding the mandate of the SROs to include PMs would only serve the interests of the SRO, and not investors. Direct regulation is strong regulation – it minimizes conflicts of interest, and there are issues with investor outcomes that need to be solved before any consideration of mandate changes for the SROs. Mergers are not a magic bullet. Although a merger of the SROs may provide cost savings to affiliated dealers and with respect to the regulatory oversight of dealers, due to the economies of scale of a single SRO, it is not clear that costs savings would result if PMs and EMDs were included. We believe the CSA should consider what changes to the regulatory framework as a whole are necessary to ensure a sustainable system in the long term, and that assessment must take into account investor protection, systemic risk, market changes, technology, and future global trends.

Over time, CSA regulation has come more in line with international regulation, which is critical for maintaining Canada's competitiveness. As noted in the Consultation, many PM firms are also registered as IFMs and/or EMDs, all of which are directly overseen by the CSA. About 65% of PMAC membership is registered as both PMs and IFMs, and many are part of international firms. Reform proposals have been silent on the oversight of IFMs. PMs and IFMs are intertwined; dividing their regulation between a new SRO and the CSA would increase costs and regulatory burden, which is not in the best interests of investors and runs counter to the overall objective of any of the proposals.

Although some commentators point to the fact that there are IIROC firms in the business of discretionary management ("managed accounts"), in 2020, these amounted to only 15 out of 173 IIROC firms.[1] This is compared to approximately 850 PM firms registered with the CSA.[2] As set out in the Consultation, there are currently a total of 257 firms registered with the MFDA and IIROC, compared to over 1000 CSA-registered firms.[3] It is not clear how an SRO could more than triple in size (if PM, EMD and SPD regulation were moved to the SRO) and yet provide effective oversight of registered firms. However, the more important question is *why*?

We question the policy rationale for having an SRO oversee PM firms. In addition to needed reforms to the current SRO structure (as set out below in our comments on Question 6), it will be in investors' best interests for the regulation of PMs to remain with the CSA and, eventually, with a national regulator. We do not view the existing SRO regime as having been more effective in terms of investor protection compared with direct regulation by the CSA, and we are concerned that regulation of all registrants through a "Super" SRO risks lowering standards across the industry rather than elevating them. For example, while PMs represent 59% of Ombudsman for Banking Services and Investments (OBSI) members, complaints against them were only 3% of the total complaints regarding investments in 2019.[4] Currently, PMs are subject to the highest proficiency standards in the industry and subject to a fiduciary duty. We are concerned that a single SRO responsible for all registrants will result in a "one-size-fits-all" model of regulation, with the potential for proficiencies to be lowered over time if PM firms were to be included. We do not believe this to be in the best interests of investors. Regardless of which regulator oversees them, individuals managing client money on a discretionary basis should continue to evidence the highest levels of professionalism and educational experience to carry out the responsibilities that clients entrust them with.

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[1] See IIROC Dealer Members by Peer Group, September 2020, "managed accounts" category: https://www.iiroc.ca/industry/Documents/PeerGroupList_en.pdf

[2] Note this number includes IFMs registered as PMs. See Consultation at Appendix C

[3] *Ibid* at Appendix C

[4] OBSI Annual Report 2019, available at https://www.obsi.ca/Modules/News/Search.aspx?feedId=c84b06b3-6ed7-4cb8-889e-49501832e911&lang=en

There are a large variety of business models that are directly regulated by the CSA and a significant portion involve managing assets for pensions, foundations and other institutional clients. This is in contrast to SRO-regulated businesses being primarily focused on distribution and directed at retail clients. To continue to effectively serve investors and meet their evolving needs, regulation of PMs needs to be flexible and must accommodate a variety of business models. Having all of these entities regulated by a single SRO would add complexity and costs.

We encourage the CSA to carefully consider the business models employed and clients served by firms in different registration categories to determine which regulatory model will best promote the public interest and investor protection goals (including investor choice), as well as regulatory efficiency, harmonization and burden reduction. For PM firms, we strongly believe that the SRO model would be inappropriate.

C. Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.

In addition to our comments above, we are of the view that issues of regulatory arbitrage (discussed under Question 3 below), investor confusion (discussed under Question 4 below) and public confidence (discussed under Question 6 below) are of paramount importance. Based on extensive public comment in response to this Consultation, the CMMT Report and papers by IIROC[5] and MFDA[6], it is clear that the current system is in need of improvement. There has been a significant rise in investment fraud during the COVID-19 pandemic.[7] The economic consequences of the pandemic will make firms, individual registrants and investors alike more vulnerable.[8] Increased use of technology has the potential to make investors more susceptible to abuse.[9] The same is true with respect to Canada's aging population.[10] Such risks may undermine confidence in the capital markets. Canadians are increasingly suspicious of public institutions.[11] Strong regulation with a public interest and investor protection mandate will be imperative if regulators and registrants are to continue to function for the benefit of Canadian investors.

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[5] IIROC, *Improving Self-Regulation for Canadians* (**IIROC Paper**), June 2020, available at https://www.iiroc.ca/Documents/2020/IIROC_consolidation_FNL.pdf

[6] MFDA, *A Proposal for a Modern SRO* (**MFDA Paper**), February 2020, available at https://mfda.ca/wp-content/uploads/MFDA_SpecialReport.pdf

[7] See CSA, Canadian Securities Regulators Provide Update to Investors in Response to COVID-19, Press Release dated May 21, 2020; CSA, Investor Education in Canada 2020, at p. 8

[8] See Bank of Canada, Remarks by Governor Tim Macklem, Economic Progress Report: a very uneven recovery, September 10 2020

[9] See CSA, Investment fraud on the Internet

[10] See CSA, Investor Education in Canada 2020, *ibid* at p. 9

[11] See Edelman Trust Barometer 2020, Global Report, which measures trust in government, business, NGOs and media; CTV News, *Only 53 per cent of Canadians trust core institutions, report says*, January 20, 2020. Note that since the pandemic, there has been an increase in levels of trust in public institutions, but such gains are generally lost a year later: see Edelman Trust Barometer 2020, Spring Update, Trust and the Covid-19 Pandemic at p. 7

D. With respect to Appendix F, are there other documents or quantitative information / data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.

We refer you to the OBSI 2019 Annual Report referred to above, and previous OBSI Annual Reports for statistics with respect to complaints against PMs, which have averaged only 4% of total investment firm complaints in the last four years.

Specific Questions

Consultation Questions on Duplicative Operating Costs for Dual Platform Dealers

> Question 1.1: What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

In addition to a merger of the existing SROs, the MFDA Paper included a recommendation that PMs be brought under the same self-regulatory umbrella with investment dealers and mutual fund dealers. We strongly oppose this suggestion.

Although a small percentage of PMs have affiliated or related dealers overseen by IIROC, a significant number of PMs are also registered as IFMs and EMDs, all directly regulated by the CSA. Moving these multi-registered PMs to SRO regulation would create a duplicative regime, resulting in added regulatory burden, operational complexities and additional costs. For example, a PM/IFM would be subject to regulation by an SRO as well as the CSA.

As noted above, less than 10% of IIROC dealers operate as a managed account business. IIROC dealers may have individuals registered as Portfolio Managers in order to advise managed accounts at the dealer. The firm continues to operate as a dealer; in addition to advising managed accounts, the same registered individuals may conduct trades for clients on a commission basis. The account opening documents and KYC processes are subject to the prescriptive rules of the SRO. This is in contrast to PM firms, which act as a discretionary manager of client portfolios, with a fiduciary (portfolio-based) focus. These firms are subject to more principles-based rules; the investment mandate may be set out in an investment policy statement and investment management agreement which are customized to the client; the fiduciary duty permeates the entire firm culture, guiding every decision affecting a client, because the entire firm bears responsibility for decisions made on behalf of the client. This fiduciary duty is of utmost importance to investors.

Moreover, our members note that PMs could not function if they were required to adhere to prescriptive rules – this simply would not work for their business. For example, many PMs operate internationally under a CSA-type principles-based regime; any move to a more prescriptive SRO-governed model would not be aligned with these international regimes, and would likely lead to significant loss in the international competitiveness of these Canadian firms. Another example arises in the context of the recent amendments to National Instrument 31-103, the Client Focused Reforms (**CFRs**). PMAC referenced in our submissions on the CFR consultations specific examples where a prescriptive approach would be incompatible with certain PM models, such as the prescriptive KYC requirements. While these requirements are clearly beneficial with respect to retail investors, they are unworkable for conducting KYC with a global pension plan that has hired a PM firm for a specific asset class mandate. A carve-out for non-individual permitted clients was included in the final CFR publication. This is simply one example of many that could be provided of prescriptive rules designed to protect retail investors that add compliance costs without corresponding investor protection value for pension, foundation and other institutional clients. Maintaining the principles-based CSA regulation for PM firms is the best outcome.

Similar distinctions can be made between PMs with EMD registration (usually for the purpose of managing and offering proprietary funds to clients of the PM) and a firm registered solely as an EMD, for the purpose of selling exempt product to clients. Again, the presence of a fiduciary culture within the PM firm is an essential aspect of the business and the firm's relationship to its clients. We believe that it is important to carefully delineate the various business models, client types and offerings that various registration categories – and combinations of registration categories – bring to the Canadian markets and investors.

The Consultation refers to the availability of investor protection to IIROC and MFDA clients through CIPF/IPC. It is important to note that, since PMs don't have custody of the client assets, CIPF protections are available via their IIROC-regulated custodians and OSFI-regulated entities used by PMs. PMs (other than those principally registered in Quebec) are also obligated to make OBSI's complaints and dispute resolution services available to their non-permitted clients.

<u>Consultation Questions on Product-Based Regulation</u>

> Question 2.1: What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

d) How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?

To best serve the public interest, it is key that proficiency and regulatory standards remain high, regardless of the product, and regardless of the consumer demographic. There should be as much harmonization as possible in terms of product and distribution standards across various types of registered firms. All investors are entitled to expect their investment service provider to have appropriate proficiency and to act with integrity. We believe that discretionary advising should be limited to individuals with the highest proficiency, and must be subject to a fiduciary duty. However, investor protection is about more than establishing registration categories and required proficiency – it is about effectively overseeing compliance and addressing registrant misconduct.

According to IOSCO, "Regulators should seek to remove opportunities for regulatory arbitrage by looking for ways to reform their laws and powers, raise their own standards and foster better and deeper ways of collaborating."[12] To address regulatory arbitrage, it is imperative that regulatory standards be applied uniformly across the CSA and the SRO(s), both with respect to firms and individual registrants. Standards should be harmonized to the highest possible standard. A recent example of this is the CFRs, where requirements are being harmonized among the CSA and SROs, without regard to the distribution channel.

Regulators should have access to similar tools and these should be employed in a similar manner by all regulators. The CSA should design its SRO oversight program to evaluate whether the tools are being employed uniformly. This includes whether compliance deficiencies, including significant and/or repeat deficiencies, are being appropriately dealt with at the firm level. IOSCO states:

> … an SRO without robust and committed regulatory infrastructure can undermine a regulator's efforts to promote credible deterrence. Regulators should consider having regular dialogue with SROs, and/or inspections of SROs, to ensure they fulfil their regulatory mandates and provide information, on a timely basis, about suspected misconduct. Regulators could also encourage SROs to strengthen their governance and the quality of their compliance and risk management arrangements in ways that would enhance deterrence…[13]

In its letter regarding the scope of the CSA's SRO review, FAIR Canada states, "IIROC and the MFDA rarely discipline investment firms or senior management in cases where investors suffer. They generally settle for a sanction against the salesperson even where it appears that the firm's policies or standards of supervision were in question. In such cases there is a lack of transparency in decisions, notices etc. on settlements about the potential culpability of the dealer member and its senior management, including whether issues such as the

[12] IOSCO Publication: *Credible Deterrence in the Enforcement of Securities Regulation* (**IOSCO publication**) available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf, at page 14

[13] *Ibid* at page 19

adequacy of supervision of salespersons were considered, and what the related findings were."[14]

This is contrary to IOSCO's observation that "[s]ecurities laws and regulations that require regulated entities to monitor compliance within their own institutions can be an important force for deterrence. Regulated entities are likely to be well-placed to know where risks exist for their employees and/or clients to engage in misconduct. Laws and rules that require entities to construct and monitor controls systems can be strong deterrents to misconduct."[15]

In order to curb issues of regulatory arbitrage, we urge the CSA to carefully consider the public interest and investor outcomes in determining what changes may be required with respect to the regulatory tools available to SROs, their deployment of those tools and the CSA's oversight of SROs.

Consultation Questions on Regulatory Inefficiencies

> Question 3.1: What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.

Please see our comments under Question 2 and Question 5. We agree that clients should have choices in terms of the products available to them; however, we believe that the focus of the question should not be solely on the product being offered, but rather on the *quality of service* and duty of care to which clients are entitled in their interactions with registrants.

In the consultations that gave rise to the CFRs, PMAC called for a fiduciary standard of care across the industry. However, many industry participants rejected not only the fiduciary standard, but also the proposed regulatory best interest standard. As a result, we are concerned that without appropriate vigilance, standards may be pulled downward across the industry. All regulators must require the same high standards from registrants. As FAIR Canada noted, "the case needs to be made that SROs are able to carry out the regulatory responsibilities in question at least as

[14] FAIR Canada, *Submission to CSA on the Proposed Scope of the Review of Self-Regulatory Organizations*, March 27, 2020 (**FAIR letter**) available at https://faircanada.ca/submissions/submission-to-csa-on-the-proposed-scope-of-the-review-of-self-regulatory-organizations/, at para. 24

[15] IOSCO publication, at pages 19-20

effectively – if not more effectively – as the statutory regulators would be able to perform them."[16]

As noted in OSC Staff Notice 31-715 *Mystery Shopping for Investment Advice*, which looked at compliance with regulatory expectations for advisory practices among various registrant categories including registrants regulated by the CSA, IIROC and MFDA, "the results show a range of practices in use – best practices, compliant practices and non-compliant practices were all found…. Greater emphasis must be placed on improving the investor experience in the advice process through advisor practices that make it more accessible and understandable… Investors must be given better tools and support to seek out and receive good advice."[17]

Clients are entitled to information, resources and protection when things go wrong. The regulatory framework and recourse available to clients should not be overly complex. Products and services change rapidly, and the regulatory framework must have the flexibility to adapt to ensure consumer protection.

Consultation Questions on Structural Inflexibility

> Question 4.1: What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

As noted above, new products, services and methods of delivery are continuously being introduced to the marketplace. The regulatory framework must be flexible to evaluate and regulate new products, services and delivery methods as they emerge. More importantly, industry participants must understand the products they offer and the implications of how they deliver their services. According to the Consultation document, stakeholders had the following feedback regarding Structural Inflexibility:

- "the current regulatory structure is creating succession planning challenges for mutual fund dealers and their representatives due to the limited product shelf they can offer to clients";
- "investment dealers are limited in their ability to grow their business by attracting mutual fund dealer representatives due to the additional proficiency requirements";
- "in respect of the IIROC proficiency upgrade rule requirement that requires an individual to be qualified within 270 days of approval as a

[16] FAIR letter, at para. 5

[17] OSC Staff Notice 31-715 *Mystery Shopping for Investment Advice,* Conclusions 3, 7 and 8, at pages 8-9 and pp. 32-33

representative on the IIROC platform, that: (i) the requirement is a burdensome barrier…"; and,

- "the current regulatory structure prohibits mutual fund dealers from trading for clients on a limited discretionary basis which has prevented mutual fund dealers from creating certain business models".

In our view, lowering proficiency standards to allow registrants to offer additional products is not the answer – the wider the variety of products offered by a registrant, the higher the proficiency standards should be. As stated above, it is our belief that anyone offering discretionary advice must have the highest level of proficiency and be subject to a fiduciary duty.

Access to advice in rural communities and for individuals with smaller accounts is a concern – technology may present opportunities to diminish this gap. Regulators must carefully monitor the use of such technology to ensure investor protection. If only a small number of registrants are operating in a community, regulators' compliance oversight programs should be adapted to supervise these registrants for the particular risks that may arise (such as supervision of outside business activities and other potential conflicts of interest).

Consultation Questions on Investor Confusion

> Question 5.1: What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

The current regulatory framework is fragmented and complex. Many investors do not understand product availability and the duties owed to them. Investors have little understanding of the securities regulatory system. Although investor education is essential, the complexity of the system will continue to be an impediment to informing and empowering investors. We believe having a single national regulator would significantly improve the situation.

It would be desirable for investors to have more transparency with respect to the registrant they are dealing with. In the U.S., the Form ADV is used by the SEC to collect registration information for investment advisers. This form is published on the SEC's public website and provides this transparency to investors. In addition to information regarding the firm's business, ownership, clients, employees, business practices, affiliations, and any disciplinary events of the adviser or its employees, the form includes narrative sections written in plain English containing information such as the types of advisory services offered, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel. This brochure is the primary disclosure document provided to clients and is publicly available on the Internet, and must be updated annually for

clients.[18] Similar information should be available with respect to Canadian registrants, regardless of which entity regulates them or which products or services they offer.

There is also confusion around the use of titles in the financial services sector. As noted in OSC Staff Notice 31-715 *Mystery Shopping for Investment Advice*, 48 different titles were used by advisors on the four platforms investigated during the exercise.[19] The CFRs have introduced requirements around the use of misleading titles. Although some provinces have proposed legislation to regulate the use of certain titles, there is a lack of harmonization across Canada and it remains to be seen whether such regulation will be effective. In response to recent consultations on this issue, we urged the creation of a national registration regime and a database that can be used by investors to determine where and in what capacity their financial services provider is registered; to be effective, we believe that this database should include historical disciplinary information in plain language so that retail investors are able to understand the nature of the registrant's conduct / omission.

The improvement of systems such as SEDAR+ and making such information available in a user-friendly and accessible manner to the public would be an important step in diminishing investor confusion. We also support continued investor education initiatives and behavioural research studies, such as those undertaken recently by the OSC.

Consultation Questions on Public Confidence in the Regulatory Framework

> Question 6.1: What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.

PMAC highlighted the following in our submission to the CMMT. We believe that this context is important for this Consultation as well. The SRO model has been slowly disappearing internationally with Canada and the U.S. being among the few to continue to utilize SROs. If they are going to continue to exist in Canada, the inherent flaws with the SRO model need to be addressed. Our comments are not intended to be a criticism of IIROC or the MFDA, but rather what we would consider to be best practices with respect to the governance of SROs generally and in the securities industry in particular.

Investor protection and the public interest must be the primary mandate and focus of regulators, including SROs. The SROs' governance and accountability

[18] See SEC website: https://www.sec.gov/fast-answers/answersformadvhtm.html

[19] OSC Staff Notice 31-715 *Mystery Shopping for Investment Advice*, September 17, 2015, Conclusion 2 at page 8

frameworks should be significantly enhanced to address inherent weaknesses to which SROs are vulnerable, such as lack of transparency and the potential for conflicts of interest.

As we noted in our response to the CMMT report, we supported the following CMMT proposals with respect to the SRO's governance:

- SRO directors should have investor protection experience
- the number of independent directors should be higher than the number of directors from member firms
- the SRO Chair would be required to be an independent director

There is a concern that industry directors may have considerable influence on SRO boards and are, *per se,* in a conflict of interest. They may perceive that they are on the SRO board to represent the industry, and their own firm in particular. They are provided with confidential information that may be used to their advantage. For this reason, we believe that industry directors should not represent more than one third of any SRO board, and that all directors should be appointed jointly by CSA members.

We disagree with the notion of a "cooling-off" period for independent directors. It would be preferable if anyone previously employed in the securities industry is excluded from consideration as an "independent" director.

There is a risk that independent directors' voices can be silenced if they are in the minority. For this reason, as well as having an independent director act as Chair, PMAC would support a requirement that industry directors be prohibited from acting as committee chairs. In addition to directors having investor protection experience, we believe that investors must be independently represented on the boards of SROs.

We believe the above measures would be further enhanced by moving towards the following best practices:

- the definition of the "public interest" should be determined by the CSA
- firm term limits (9 years is suggested) for directors, with no "grandfathering" of terms
- the ability for independent directors to meet *in camera* at every board meeting
- conflicts of interest and codes of conduct to be independently audited
- independent directors to be provided with mandatory annual industry and governance education
- industry directors to be provided with mandatory annual governance education

As discussed above, regulatory oversight of SROs by the CSA must also be enhanced to ensure uniform standards of regulation, to identify and address regulatory gaps, and prevent regulatory arbitrage. We agreed with the following proposals made by the CMMT with respect to SRO oversight, although we believe such oversight should be performed by the CSA and not exclusively by the OSC, as was suggested by the CMMT:

- give the CSA greater tools to oversee the SROs
- link the compensation and incentive structure applicable to SRO executives to the delivery of the public interest and policy mandate
- require SROs to submit an annual business plan covering all activities to the CSA for approval
- provide for a CSA veto on any significant publication, including guidance or rule interpretations
- provide for a CSA veto on key appointments, including the Chair and the President and CEO
- establish term limits for key appointments

We believe that SRO officers and directors must be held to at least the same ethical and conduct standards (including those related to conflicts of interest) applicable to CSA Members (Commissioners).

In addition to these governance changes, we recommend that SROs' committees' and district councils' governance be reviewed and reformed. IIROC District Councils are made up entirely of industry participants in the local jurisdiction, and have considerable influence over registration, exemptions and discipline matters. This gives rise to a significant risk of conflicts of interest compared to direct regulation by the provincial securities commissions. Reforms should ensure that regulatory and disciplinary outcomes are consistent across District Councils, SROs and the CSA. If there is a decision to continue with the use of district councils, their structure should be modified to ensure that their membership is balanced and includes independent members and investor representation. Within the organization, the regulatory function must be culturally engrained – in order to foster public confidence and in order to fulfill its public interest mandate, it must not be viewed (and must not view itself) as an industry body, but rather as a regulatory body with a public interest and investor protection mandate. It must maintain consistent regulatory standards across Canada to effectively implement and enforce securities regulation. Policy development must be transparent and

undertaken from a public interest lens and not subordinated to the industry's interests.[20]

Conclusion

We are pleased that the CSA is taking on this review of the SRO framework and are encouraged by the public discourse that the Consultation has generated. The Consultation is timely given the current market conditions resulting from the COVID-19 pandemic and the challenges these events present to the registrant community and the investing public. This period of profound change represents a significant opportunity to focus on measures that best serve investors and our capital markets.

We urge the CSA to seize this opportunity to consider the changes needed to improve investor protection and market efficiency by strengthening SRO governance and oversight.

We believe that PMs should continue to be directly regulated by the CSA, until such time as the Cooperative System can be implemented. We believe that the Cooperative System will be the best long-term solution for the harmonized regulation of Canadian capital markets, leading to stronger and more resilient provincial and national economies.

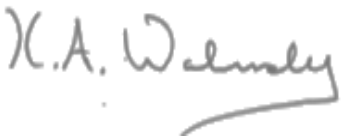
PMAC will continue to challenge any suggestion, by any entity, that regulation of PMs should be delegated to a self-regulatory body; we believe that direct government regulation is stronger regulation and is more appropriate for discretionary managed accounts guided by a fiduciary duty. Principles-based regulation is better suited to the variety of business models that exist in the PM space and is aligned with the global asset management industry. It is particularly critical in the institutional asset management sector, where prescriptive retail-oriented rules are nonsensical. A move towards more prescriptive rules-based regulation in the PM sector would add regulatory burden and have a significant negative impact on the competitiveness of the Canadian asset management industry.

[20] See CFA Institute, Self-Regulation in the Securities Markets – Transitions and New Possibilities, available at https://www.cfainstitute.org/-/media/documents/article/position-paper/self-regulation-in-securities-markets-transitions-new-possibilities.ashx?la=en&hash=2AE04650F1747DD0DD372F1C31EDC6F5C9E79613, at page 37

We would be pleased to discuss any of our comments with you at your convenience. Please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Victoria Paris at (416) 504-7491.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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RESPONSE TO CSA CONSULTATION PAPER 25-402 – *CONSULTATION ON THE SELF-REGULATORY ORGANIZATION FRAMEWORK*

October 2020

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INTRODUCTION

FP Canada™ is pleased to respond to CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization ("SRO") Framework ("Consultation Paper").

A national professional body working in the public interest, FP Canada is dedicated to championing better financial wellness for all Canadians by certifying professional financial planners and leading the advancement of professional financial planning in Canada. There are approximately 21,000 professional financial planners in Canada who, through CERTIFIED FINANCIAL PLANNER® certification and QUALIFIED ASSOCIATE FINANCIAL PLANNER™ certification, meet FP Canada's standards.

COMMENTS ON THE CONSULTATION PAPER

FP Canada supports the establishment of a single SRO. We believe consolidation of the existing two-SRO structure is long overdue and stands to create significant benefits for both consumers and industry participants. We urge the CSA to move forward with consolidation in a timely manner.

With respect to the issues with the current framework identified in the Consultation Paper, we generally agree with the concerns raised by stakeholders through the CSA's consultation process and support the CSA's targeted regulatory outcomes.

There are several issues identified in the consultation paper we wish to provide brief additional comment on.

Issue 2: Product-Based Regulation

We agree that the current environment, characterized by the existence of different sets of rules (and different interpretation of similar rules) for similar products and services, leads to confusion for many industry participants, and in some cases may be contributing to negative outcomes for consumers.

For example, based our experience overseeing CFP® professionals and QAFP™ professionals employed at SRO-registered firms, confusion or misinterpretation around the myriad of rules by dealers and their compliance staff may be limiting the ability of consumers to obtain critical financial planning services. For example, we have heard several instances over the years of some firms, based on their interpretation of existing rules, restricting the ability of CFP®professionals to hold out to consumers as such, or to provide financial plans to consumers due to concerns around how those plans would be treated by various regulatory staff, thus depriving consumers of critical financial planning services.

We believe a single, consolidated SRO, with a single set of rules and guidance, would provide much-needed clarity and consistency to firms and SRO staff, and would ultimately benefit consumers.

Issue 3: Regulatory Inefficiency

We agree with the concern raised by stakeholders that in the current two-SRO environment, there is a lack of efficient access to low-cost ETFs for registrants. As the consultation paper notes, "mutual fund dealers are not able to easily distribute [ETFs] because they have limited access to the necessary back-office and clearing systems servicing primarily investment dealers," and workarounds "are typically more costly for the investor."

In our view, with the growing popularity of ETFs, and the important role ETFs can play in the portfolios of mutual fund investors, this is a matter of public interest that should be quickly addressed. Given the outsized role that independent mutual fund dealers play in serving mass-market investors and investors in smaller geographic areas, it is imperative that they can offer their clients ETFs when appropriate, just as IIROC dealers can today. We strongly support SRO consolidation as a means to facilitate this.

Issue 5: Investor Confusion

We firmly agree that the current regulatory environment is confusing for investors. Investors generally do not, nor should they be expected to, understand the differences between the two SROs. Specific sources of confusion identified by stakeholders, including registration categories and titles, and the complaints process, are particularly problematic. We believe SRO consolidation can play a key role in mitigating these concerns, as discussed below.

Registration Categories and Titles

As mentioned, consumers do not generally understand the differences between various financial professionals and registration categories, the titles they use, or the products and services they are qualified and authorized to offer.

Reducing investor confusion is paramount to ultimately instilling public confidence in the regulatory framework (as per Issue 6 of the Consultation Paper). Consumers seeking help with investment decisions or other financial matters must understand the differences among the various financial services titles in the marketplace, and the products and services individuals are qualified to offer. Consumers cannot have confidence in a framework they fundamentally do not understand.

While recent legislation in Ontario and Saskatchewan that restricts the titles "financial planner" and "financial advisor" will provide a significant step forward for clarity related to financial advice generally, and financial planning more specifically, there is still much work that needs to be done to eliminate consumer confusion.

A single, consolidated SRO would be well-positioned to immediately begin to address this confusion. Under a single SRO, titles and qualifications for representatives could much more easily be addressed in a coordinated, thoughtful manner. In fact, to maximize investor clarity, we recommend that the SRO regulatory framework explicitly align titles to licensure. In other words, it should be clear to consumers based on an individual's title, what products or services they are actually qualified and authorized to provide. Further, a consolidated SRO could easily adopt the requirements established through Ontario's

and/or Saskatchewan's financial professionals titling legislation to ensure consistent use of "financial advisor" and/or "financial planner" titling requirements across Canada.

Complaints Process

A clear, easily-accessible complaints process is critical to consumer confidence in the regulatory framework.

While consolidation of the two-SRO structure alone will not solve all the confusion that exists today regarding where and how to file complaints, merging the complaints processes of the MFDA and IIROC into a single, seamless process would certainly help. Moreover, a single SRO would be better positioned to coordinate with other regulatory and professional certification bodies where appropriate, and to help consumers manage the complaints process.

Issue 6: Public Confidence in the Regulatory Framework

We agree with other stakeholders that there are ways to enhance public confidence in the current SRO regulatory framework.

Ensuring the efficacy of the public interest mandate is paramount to maintaining consumer confidence in the SRO model. It is crucial that such a mandate is clearly defined, embedded throughout the entire SRO, understood by all and unencumbered in its delivery. There should be no conflicts to the successful delivery of a public interest mandate, and we recommend that it continue to evolve and improve through continued enhanced governance and ongoing dialogue with the CSA and other stakeholders.

With respect to other specific SRO governance enhancements, we agree with the notion of establishing more formal investor advocacy mechanisms. To this end, we note that IIROC recently announced plans to establish an "Expert Investor Issues Panel" to enhance investor input into IIROC's mandate to protect investors and support healthy capital markets.[1] We suggest this initiative is a good step, and should be carried forward into a new consolidated SRO.

Finally, we would note that when it comes to fostering public confidence in the regulatory framework, one issue we feel has not been represented in stakeholder feedback to date is the positive impact consolidation can have on the standards and competencies of licensed individuals. Consolidation provides an opportunity for the new SRO to review existing, and establish new competency profiles, and enhance and unify standards as appropriate, for the benefit of both consumers and industry.

[1] *IIROC to form expert investor issues panel for valuable input on consumer issues*: https://www.iiroc.ca/documents/2020/a75ad083-294d-49b8-95c3-16f8942ef95f_en.pdf.

Issue 7: Market Surveillance

Notwithstanding the concerns raised by some stakeholders, we believe there is consensus around the notion of maintaining the market surveillance function within IIROC, and eventually a consolidated SRO.

It is not clear to us how moving responsibility for market surveillance from a single, national SRO to individual securities regulators would address the concerns of regulatory fragmentation and structural inefficiency identified by stakeholders in the consultation paper. In fact, these issues seem likely be exacerbated by such a transfer of responsibility (at least in the short to medium term).

Moreover, we firmly believe consolidation of the two SROs should move forward in a timely manner, and we are concerned that the process of transferring market surveillance responsibility to securities regulators could significantly delay this process, with questionable added benefit.

CONCLUSION

FP Canada would like to thank the CSA for the opportunity to provide comment. We would take this opportunity to reiterate our support for consolidation of IIROC and the MFDA into a single SRO. Given the significant potential benefits, we urge the CSA to move forward with consolidation without delay.

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October 23, 2020

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Re: CSA Consultation Paper 25-402 Consultation on the Self-Regulatory Organization Framework

CI Assante Wealth Management ("Assante") appreciates the opportunity to provide comments on the Canadian Securities Administrators ("CSA") Consultation Paper 25-402: Consultation on the Self-Regulatory Organization Framework ("the Paper") that was published for comment on June 25, 2020.

Assante supports initiatives that result in efficient and effective regulation and we thus applaud the CSA in its consultative process to determine if opportunities for self-regulatory organization

("SRO") efficiencies can be achieved. We believe that the CSA's targeted outcome of having a regulatory framework that minimizes redundancies that do not provide corresponding regulatory value is needed and appropriate, and we believe that this outcome is best achieved through the creation of a single SRO.

The CSA's current and more fulsome review of the SRO framework is welcome and we agree with the CSA's undertaking to revisit the current structure of the SRO framework and to seek additional comments from all stakeholders further to the CSA's informal consultation process that occurred in late 2019 and early 2020. As noted in the Paper, affected stakeholders articulated common themes and issues through the informal consultation process including, amongst others, issues surrounding duplicative costs, a lack of common oversight standards impacting dealers and multiple layers of regulation which have contributed to investor confusion.

About Assante

Assante is one of Canada's largest independent wealth management firms with approximately 900 professional advisors overseeing almost $46 billion of assets under administration. Assante's subsidiaries include Assante Capital Management Ltd. ("ACM"), an Investment Industry Regulatory Organization of Canada ("IIROC") member firm and Assante Financial Management Ltd. ("AFM"), a Mutual Fund Dealers Association of Canada ("MFDA") member firm. AFM advisors are currently licensed to sell mutual funds, guaranteed investment certificates and government bonds, whereas ACM advisors are licensed to sell equity securities, bonds, mutual funds, GICs and other securities that are subject to available regulatory exemptions.

Assante's Comments on the Paper

For the purposes of this submission, we will be responding to several of the issues noted in the Paper while also taking into account both IIROC and the MFDA's respective proposals of the current SRO framework in our comments.

Duplicative Operating Costs for Dual Platform Dealers

Assante commends the CSA for considering ways to improve securities regulation in Canada and reducing the regulatory burden on industry participants. As a dual platform dealer, Assante believes there are opportunities for increased harmonization and rationalization between IIROC and the MFDA, thereby fostering efficiencies across all industry participants while concurrently protecting investors and the capital markets.

As noted in the Paper, dual platform dealers, like Assante and others, operate separate compliance systems, both operational and administrative, to deal with the specific rules and regulations and incur separate fees for each respective SRO. We agree, as noted by some stakeholders in the CSA's consultation process, *"that dual platform dealers experience higher operating costs and difficulty in realizing economies of scale."* Maintaining two sets of operational and administrative systems hinders the ability for the dealer to innovate and provide greater services to their clients.

We believe that it would be important to better understand the magnitude of operational and administrative efficiencies that would be derived from a merger of the SROs, the creation of a "NewCO", or addressed by the SROs collaboratively. The goal should be to enhance efficiencies for the greatest benefit to the industry and the investor. With that goal in mind, we suggest that implementation of any new SRO structure and/or approach should happen in the relatively short term, recognizing the current momentum from the lengthy discussions to resolve the recognized operating inefficiencies of the current SRO structure. Resolving these issues in the short term will allow dual platform dealers to accelerate innovation and improve delivery of services for the benefit of clients.

Regulatory Inefficiencies

As noted in the Paper, regulatory inefficiencies also exist under the current SRO framework. With the existence of two SROs, there exists the requirement to adhere to duplicative regulatory oversight, including, but not limited to, rules and regulations, regulatory audits, continuing education (Policy 9 has been approved by the CSA but not yet formally approved by the MFDA) and regulatory filings. Also, as each SRO has different but substantially similar rules, dual platform firms are required to support concurrent operating systems and maintain different policies and procedures related to each SRO. The creation of a single SRO oversight structure would eliminate the duplicative mandates and would drastically reduce the amount of time that firm staff from various departments spend on adhering and responding to IIROC and MFDA regulatory matters.

For example, completing two business conduct audits consecutively (one by IIROC and one by the MFDA, one after another) can last anywhere from eighteen months to two years from the opening information request to closing letter. Add to this timeline the financial and operations audits by both SROs, and dual platformed dealers can conceivably be under audit for three years or more in their respective audit cycle. This results in an unnecessary duplicative burden on dual platformed dealers and offers no enhanced protection or other benefits to clients. This inefficient overlap should be considered in the context of the industry and regulatory discussion regarding the regulatory burden reduction initiative.

Structural Inflexibility

Stakeholders raised the issue of evolving business models, professional career advancement and succession planning being restricted by the current SRO framework and its structural inflexibility as it impedes advisors from adapting to changes to investor investment needs, goals and objectives. For dual platformed dealers like Assante, under the current structure, an advisor from its MFDA registrant who wishes to offer his / her clients a more diverse portfolio, including investment products such as equity securities and fixed-income products, would be required to temporarily assign their clients to another MFDA advisor at their dealer while the advisor pursues their IIROC registration or to an advisor at its IIROC affiliate during their IIROC registration process, a process that can take anywhere from three to six weeks to fully complete. Doing so causes an unwelcomed disruption to the longstanding trusted advisor – client relationship. Even once registered, the client would remain with the caretaker advisor until such a time that the

advisor and client complete new paperwork. This current structural inflexibility thus impairs the advisor's overall desire to continue to service their clients in an uninterrupted fashion and is not in the best interests of the client or to the client experience.

We do note that on October 8, 2020, IIROC issued a request for comment of proposed amendments to its Dealer Member Rules and corresponding amendments to the IIROC Dealer Member Plain Language Rule Book in order to set out in the rules the authority of IIROC Staff to grant exemptive relief to dealer members from certain client account documentation requirements. We applaud IIROC for undertaking this review and seeking opinions from the dealer community as this would be a step in the right direction, but the exemption qualifications would need to be clear and the process would need to be efficient.

In the above noted scenario, the new IIROC advisor would initially be registered under a restricted to mutual funds only registration category until they complete the additional qualifications (known as the 270-day upgrade requirement) to have the ability to offer the full suite of allowable IIROC products. Failure to upgrade within 270 days could result in the suspension of the advisor's license and consequently have a negative impact to their clients.

Removing the upgrade requirement in its entirety for any MFDA dealer that moves to the IIROC platform (under a restricted to mutual funds only registration category) could result in destabilization for those MFDA firms choosing to remain under the existing MFDA platform, including increasing their financial burden and significantly impacting investor protection. We believe that more research needs to be conducted on these potential outcomes as failure to address the issues related to the upgrade requirement will undoubtedly have an impact on the level of service received by investors currently advised by these MFDA firms.

In addition, the current structure imposes inequality with respect to the manner in which advisors are able to receive commissions derived from securities-related activity. Currently, where permitted, the MFDA allows commissions earned by an advisor to be redirected to an unregistered corporation; IIROC does not currently allow commission redirection. The new SRO would need to have a provision to deal with this inconsistency and unlevel playing field. As such, we believe that further research on the broader concept of an incorporated salesperson model, or something similar, would be of great benefit to the various constituents in this issue.

Investor Confusion

As noted in the Paper, we agree that investors are generally confused by the current SRO structure and the differences between the two, primarily as it relates to their oversight obligations and the roles that each play with respect to client complaint resolution processes and regulatory enforcement powers. Adding to this confusion, many dual platform dealers, like Assante, have affiliated IIROC and MFDA advisory practices operating from the same business location. Although there are disclosures provided to the client to mitigate potential client confusion, clients may not fully appreciate the difference in products and services offered by each dealer member and may not be able to reconcile the asymmetrical access to products and services under the one roof. Clients may also struggle to understand the specific investor protections that are afforded by

CI ASSANTE WEALTH MANAGEMENT

the SRO in relation to their client account, as compared/opposed to a client account held at the affiliated dealer governed by the other SRO. A single SRO solution would help eliminate much client confusion. In addition, even under a single SRO solution, a concerted education initiative should be undertaken to clarify, in simple terms, what protections are provided by the SRO, including dealer insolvency and the protections that are afforded to clients.

Conclusion

As a dual platform dealer, Assante appreciates the benefits of a single SRO structure. However, we believe this initiative must be considered and conducted in association with other regulatory initiatives to avoid, to the extent possible, any unintended consequences. Ultimately, any proposal that is implemented must ensure a client's interests are paramount, including eliminating duplicative operating costs and regulatory inefficiencies, such that dealers can accelerate innovation and improve delivery of services to clients, and enhance client experiences through the reduction of structural inflexibility and client confusion.

Assante appreciates the opportunity to provide our input on this initiative, and as always, we are available to discuss these comments if there are questions.

Yours sincerely,

CI ASSANTE WEALTH MANAGEMENT

Sean Etherington
President, CI Assante Wealth Management

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The purpose of this Supplement is to bring to the attention of the CSA and OSC a source of some additional important information that could be helpful when the Self-Regulatory Organizational (SRO) Framework separately reviews the SRO IIROC operations.

A few months ago IIROC contracted with the Navigator Company to do a review of the SRO IIROC client experiences after IIROC undertook to review the client's complaint with a financial institution.

Although the Navigator Company Report to IIROC would not in all probability relate to the CSA 25-402 Comment format requests, it could be a most valuable segment in assessing the character and level of satisfaction or dissatisfaction with the way the IIROC have been dealing with Complainants cases.

Regards
Peter Whitehouse
Financial Consumer Advocate
.==========.

October 23, 2020

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RE: CSA Consultation Paper 25-402: Consultation on the Self-Regulatory Organization Framework (the "Paper")

Fidelity Clearing Canada ULC ("FCC") appreciates the opportunity to provide comments on the Paper. We are also appreciative that the CSA has solicited feedback from all stakeholders including not only industry participants but the public in order to address the current regulatory framework.

FCC, founded in Toronto in 2009, provides Canadian registered brokerage firms and portfolio managers with trade execution, clearing, custody and back-office support. We are also registered with the Investment Industry Regulatory Organization of Canada (IIROC).

Summary

As expanded upon below, a single SRO that would continue to conduct national market surveillance is the desired outcome.

We applaud both IIROC and the Mutual Fund Dealer's Association (MFDA) as it relates to furthering an agenda focused on harmonization. However, utilizing an existing framework and infrastructure as a starting point, as opposed to building a new SRO from scratch achieves efficiency in cost and time and would result in a streamlined approach not only to proficiency requirements, registration, and products but to a vigorous and consistent enforcement regime.

While the Paper outlines and canvases many important and key considerations in examining the modernization and updating of the capital markets regulatory landscape, we have focused our response on the following key areas.

Investor Confusion/Investor Confidence

The potential benefits to clients are one of the main reasons for a single SRO framework.

As industry participants, we understand that regulation is what dictates which registrant can offer which product, though at times this is still confusing. For the general public, it's even more so. Having the ability to go to one registrant in order to invest in the security of their choice not only makes sense, it allows for consistency.

As a result of having to invest with more than one registrant (in order to have access to all products), clients have accounts at numerous institutions, none of which have identical account opening documents, disclosures, statements or complaint handling processes.

While IIROC has a governance structure that is solid as it relates to investor protection, the existence of the current investor protection frameworks doesn't help the client confusion situation. Increased governance protocols for a single SRO will only bolster that which exists.

All of this creates administrative burden on clients and stress. It ultimately contributes to people wanting to "do it themselves" believing that the time and confusion trade-off in order to obtain advice just isn't worth it. This slowly eradicates confidence in our industry.

The on-the-face-of-it benefits to the end client speak for themselves but true value in erasing/minimizing client confusion is that it will bolster investor confidence in an industry that has seen some dark days.

Structural Inefficiencies

1. Redundant operating costs for dual platform dealers

   The redundancy experienced by dual platform investment dealers is significant. It equates to increased infrastructure resulting ultimately in increased financial costs. This often results in requiring duplicative staff with competing priorities as required by each regulator.

   Perhaps not initially but eventually, a single SRO will eliminate the need to maintain separate back office platforms. One SRO translates to a single set of regulations; the domino eventually leading to one vendor and additional cost-savings.

2. Product regulation

   As noted above, the universe of investment products available to the end client is vast. A single SRO would provide a platform to take a consistent approach at evaluating the benefits and risks

of these numerous securities as opposed to focusing on the risks of a single product, such as mutual funds, which may or may not be risky within the field of products.

In addition, both the MFDA and IIROC registrants offer similar, and in some cases, identical products (consider Mutual Funds, ETF's and Exempt Market Products). Along with this comes the requirement for different registration requirements that govern the sale and offering of these products. Notwithstanding that all these products fall under National Instrument 81-102, for mutual fund registrants each of these products carry the requirement to be adequately licensed. The inconsistency in licensing requirements of these products causes confusion amongst industry participants, increases surveillance and compliance costs and most importantly highlights the need for consistency under a single SRO.

3. Regulatory arbitrage

   A single SRO, by design alone, will initially reduce and can eventually contribute to a larger reduction of regulatory arbitrage.

Conclusion

With much respect to all proposals regarding what a new framework would and could entail, time, cost savings and efficiency is of the essence. Discussions, consultations and task forces have examined our current SRO framework over the past twenty years. As our capital market landscape becomes more complex and cost-effective regulation paramount to a robust and even playing field, a single lens and consistent approach is ideally achievable through a single SRO.

The consolidation of that single SRO regulating all retail-facing securities dealers and mutual fund dealers simply cannot take years to implement; investor confidence doesn't increase the longer we delay.

Sincerely,

Fidelity Clearing Canada ULC

Paige Wadden LL.B.
CCO & VP, Risk Oversight

aviso wealth

October 23, 2020

SUBMITTED VIA EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention:

The Secretary
Ontario Securities Commission
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consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework* (the "Consultation Paper")

Aviso Wealth Inc. ("Aviso Wealth") appreciates the opportunity to provide comments with respect to the Canadian Securities Administrators' (the "CSA") Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*.

Aviso Wealth is an integrated wealth management company which includes an IIROC dealer, Credential Qtrade Securities (CQSI); two MFDA dealers, Credential Asset Management and Qtrade Asset Management; an Investment Fund Manager, NEI Investments; and an insurance agency. Aviso Wealth is owned 50% by Desjardins and 50% by the Provincial Credit Union Centrals and The CUMIS Group Limited (Co-operators Life Insurance Company).

Aviso Wealth occupies a unique place in the wealth management landscape. We partner with the majority of credit unions across Canada to provide wealth management services to their members. At present, this network comprises over 1,700 active branch locations in all urban centres and many rural locations, with CQSI having approximately 500 IIROC registered representatives ("Registered Representatives") and our MFDA dealers having approximately 2,400 mutual fund representatives ("MF Representatives"). We

partner with credit unions because they do not wish to operate their own dealer, and do not have the scale required to do so. An integrated wealth management platform supports our credit union partners' wealth initiatives by providing the tools, training and products required to enhance and differentiate their members' wealth management experience. A consolidated SRO will further allow for integration of wealth management for our credit union partners and our shared clients.

Of the 1,782 active coast-to-coast branch locations across our credit union network, 81% reside *outside* the large urban centres (Toronto, Montreal, Ottawa, Vancouver, Calgary, Edmonton, and Winnipeg). Through their partnership with Aviso Wealth as their dealer, credit unions serve many smaller and rural communities across Canada that otherwise may have limited local access to investment advice. Credit unions serve all members in their communities, regardless of wealth level, thereby helping bridge the advice gap by ensuring more Canadians have access to advice.

The representatives and, in turn, clients of these credit union branches would benefit greatly from the clarity, simplicity and efficiencies gained through a single SRO. A consolidated SRO would also provide material benefits to Aviso Wealth that would accrue to our entire credit union network. It would allow us to consolidate all our representatives under one dealer and provide a streamlined client service experience while maintaining an uncompromising level of investor protection. These benefits are outlined in more detail below.

General

We support the review of the current regulatory framework which includes the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA"): collectively, the self-regulatory organizations ("SROs"). The current SRO regulatory framework in Canada requires investment dealers to be members of IIROC and mutual fund dealers to be members of the MFDA, except in Québec where mutual fund dealers are directly regulated by the Autorité des marchés financiers ("AMF"). The current regulatory framework with both the MFDA and IIROC has been in place for over twenty years and, in that time, the delivery of financial services and products has continued to evolve.

Much has been written about the effectiveness of regulation in Canada and the fractured nature of regulation due to responsibility residing at the provincial and territorial levels. Each of the provincial and territorial regulatory authorities has its own priorities and programs, which has caused concern over the nature and effectiveness of Canada's financial industry. Having two major SROs, which substantially conduct the same activities, significantly reduces the effectiveness of financial services regulation in Canada.

The Consultation Paper poses the question of whether a merged SRO should govern all retail-facing products and services such as portfolio managers, exempt market dealers ("EMDs"), and scholarship plan dealers ("SPDs").

IIROC and the MFDA both have published their recommended ideal structure for what a new Canadian SRO should look like. The IIROC proposal is a straight merger of IIROC and the MFDA. The MFDA proposal is more complicated and includes: an IIROC and MFDA merger; all currently CSA-regulated retail-facing entities (portfolio managers, EMDs, SPDs, etc.); and the transfer of the IIROC surveillance group to the CSA.

Regarding the MFDA's recommendation that all retail-facing activities should fall under a new SRO, Aviso Wealth's view is that this may be a reasonable framework, but requires a deeper analysis to understand its impacts. Our view is that this would be much more complex to implement than a strict IIROC/MFDA merger and would require a longer time frame to be successfully launched. We therefore do not support this model; however, we would take the approach that it could be implemented as a second phase.

Aviso Wealth's position

Aviso supports a single SRO that regulates retail-facing securities dealers and mutual fund dealers. We support a model that is simple, continues to protect investors, and can be implemented in the near term. In the event that the CSA develops an entirely new SRO structure without leveraging existing frameworks, there could be years of debate before any tangible action is taken, and this would be to the detriment of both the financial industry and investors.

A single SRO has many potential benefits for clients and advisors, for Aviso Wealth and its credit union partners, and for the industry.

Client benefits

Clients would be served more efficiently and effectively. In the case of a client who has invested in mutual funds and proposes to invest in individual securities, they would no longer be required to switch dealers in order to be serviced by a different representative with increased proficiency, or to stay with their representative who increases their proficiency. For example, a client could switch between a MF Representative and a Registered Representative without having to fully repaper the account, receive a new account number, familiarize themselves with new policies applicable to their account, become used to different account statements, agree to new account terms, etc. The administrative complexity, time and cost of closing accounts, transferring assets and opening new accounts is burdensome for both clients and dealers.

Clients will continue to be well protected by a consolidated SRO. Clients' understanding of the regulatory system in Canada will be enhanced through a single, simplified complaint resolution and investor protection process. We believe there will be far less investor confusion because the process, systems, and paperwork will be the same. We believe that the simpler it is for the investor, the more it will support financial literacy and public confidence in the system in Canada.

In our evaluation, there will be no investor protection issues if a single SRO is approved by the CSA. Both MF Representatives and Registered Representatives will continue to be proficient and effective in transacting in suitable products and services on behalf of their clients. A single SRO will continue with strong corporate governance, solid oversight programs, and an appropriate rule-making framework.

Advisor benefits

A single SRO benefits Advisors because it will give them the opportunity to transition more seamlessly from being a MF Representative to a Registered Representative who may offer more complex products and services. This provides Advisors with area simpler career path and does not cause them to leave their firm, and possibly their clients, when changing registration categories.

Industry benefits

We understand that a merged SRO will sustain the regulations and operating processes that exist today. However, we vigorously support the idea that a new SRO is an opportunity to embrace fresh thinking to enhance and optimize the regulatory approach. The industry requires a nimbler, future-looking, and supportive regulatory framework to meet the needs of the investing public. The new SRO is not about maintaining legacy ways but about meeting the ever-changing needs of the Canadian investor.

The current SRO regulatory framework does not reflect the recent transformations in the capital markets driven by technological innovation and client preferences. It has been clear for some time that there is a pressing need to align the evolving integration of financial advice and products with an integrated regulatory structure. Regulation should reflect clients' needs and their desire for "one-stop access" to financial services, and should not be based on transactions or products.

A new SRO is an opportunity for the industry and the public to have a consistent approach in regulating certain matters and to be forward-thinking when looking at the evolution of advice in Canada.

Dealer benefits

One SRO would result in cost savings for our credit union partners and for Aviso Wealth. Instead of operating their wealth business activities under two regulatory entities, credit unions can operate with one set of administrative processes, under just one regulatory entity. The cost of running two platforms is substantial and unnecessarily burdensome.

Expected cost savings for credit unions and for Aviso Wealth relate to elimination of duplicative costs in legal, regulatory, tax, operations, compliance, and technology matters. The cost savings, which will increase over time, will allow us and our partners to invest further in our business, improving the client experience as we do. Further, we would be able to improve client access to the right representative and service offering at each point in their investing lifecycle within a model that is highly risk controlled for the client and the firm.

Aviso Wealth would have a greater ability to keep up with the accelerating pace of change in technology advancements, as well as operational and compliance demands. These changes require significant investments of time and capital, and the pace of change will only increase. In our view, making these investments across multiple dealers is unnecessarily duplicative and economically untenable. Running separate dealers imposes a burden on Aviso Wealth, our credit union partners and our clients.

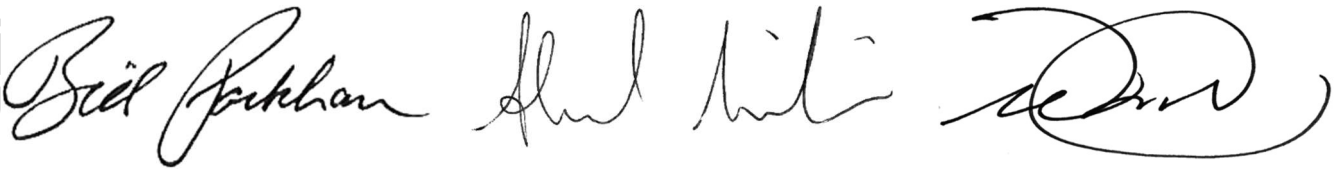
A single SRO would allow us to operate one dealer platform and focus our efforts and improvements and future growth plans. We expect that these efficiencies and savings would allow Aviso Wealth to ensure that our resources are dedicated to areas such as client support and product and system innovation.

Conclusion

The current SRO framework requires immediate action be taken. Aviso Wealth supports the CSA's consideration of this issue. We would be pleased to respond to any questions that you may have in respect of our comments. We also have asked and obtained support from our credit union partners in connection to our comment letter. We have attached their signed support to this letter.

Thank you for considering our submission.

Yours truly,



William (Bill) Packham
President & CEO

Alexandra Williams
Senior Vice President,
Head of Service, Operations and Compliance

Wanda Frisk
Senior Vice President,
Head of Credit Union Wealth Management

affinitycu.ca
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Affinity Credit Union

October 15, 2020

Attention:

The Secretary
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Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
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consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework. We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Mark Lane, CEO
Affinity Credit Union

alterna savings

October 15, 2020

Attention:

The Secretary
Ontario Securities Commission
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M[e] Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
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To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.
Along with Aviso Wealth, we support the review of the current regulatory framework.
We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Robert Paterson
President & CEO

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October 16, 2020

The Secretary
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consultation-encours@lautorite.qc.ca

Submitted electronically

To whom it may concern,

The purpose of this letter is to provide support of Aviso Wealth's comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework.*

Founded in 1941, BlueShore Financial currently has nearly $7 billion in assets under administration with approximately 40,000 members. BlueShore's award winning Financial Spas® are designed to provide a high-quality experience to our members in 12 locations, and financial planning services are a key component of our business model.

As Chief Executive Officer, and SVP, Retail & Business Banking, we have reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework. We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Chris Catliff
President & CEO

Reg Marrinier
SVP, Retail & Business Banking

Cambrian CREDIT UNION

October 16, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
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Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
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Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Cambrian Credit Union Limited

David Mortimer
President & Chief Executive Officer

COASTAL COMMUNITY CREDIT UNION | TOGETHER, LET'S DO GREAT THINGS

October 21, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Adrian Legin
President and CEO, Coastal Community Credit Union

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cccu.ca
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October 23, 2020

Attention:

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Me Philippe Lebel, Corporate Sec.
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To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

On behalf of Thrive Wealth Management, a financial planning company owned by Conexus Credit Union, a review of Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper has been completed.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit unions, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Jill Huls, MBA, CFP
Chief Executive Officer

Thrive Wealth Management
A CREDIT UNION COMPANY
703 Circle Drive East
Saskatoon, SK
S7K 0V1

ConnectFirst Credit Union

DIVISIONS

Mountain View Financial
First Calgary Financial
Chinook Financial
Legacy Financial

October 21, 2020

Attention:

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consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our formal signed support of Aviso Wealth's comment letter and are hopeful for a future where Canada's investment regulatory framework can consolidate to provide the strength, simplicity and clarity required for an elevated investor experience.

Sincerely,

Paul Kelly
CEO
Connect First Credit Union Ltd

Wellington Holbrook
Chief Operating Officer
Connect First Credit Union Ltd

October 14, 2020

Attention:

The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

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Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Jay Corrado
CEO
CUSO Wealth Strategies Inc.

FIRSTWEST CREDIT UNION

October 20, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Launi Skinner
CEO, First West Credit Union

6470 – 201 Street | Langley, BC | V2Y 2X4 | t: 604-539-7300
firstwestcu.ca

October 16, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

M^e^ Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Daniel Johnson, B.Comm, C.Dir | Chief Executive Officer

Innovation Credit Union

306.741.0708

Interior Savings

Corporate Office
#300-678 Bernard Avenue
Kelowna, BC V1Y 6P3
Tel: 250.869.8200
Fax: 250.762.9581

October 22, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Kathy Conway, FCPA, FCA
President and CEO
Interior Savings Credit Union

libro.ca
4th Floor
217 York Street
London ON N6A 5P9

T 519-672-0130
F 519-672-7831
1-800-361-8222

October 15, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Stephen Bolton
President & CEO

Toronto Corporate Office
3280 Bloor Street West
Centre Tower, 7th Floor
Toronto, ON M8X 2X3
(416) 597-4400
meridiancu.ca

Meridian™

October 14, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Bill Maurin

President & CEO
Meridian Credit Union Limited

Corporate Office
#1900- 13450 102 Avenue
Surrey, BC V3T 5Y1

t 604-517-0100

toll free 1-877-506-0100

futurestrong.ca

prospera CREDIT UNION

October 15, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

M^{e} Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Gavin Toy
President & Chief Executive Officer

GT/

Robert Moreau
Chief Executive Officer

October 22, 2020

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

M^{e} Philippe Lebel, Corporate Sec. and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Chief Executive Officer

Robert Moreau

Édifice MARTIN-J.-LÉGÈRE 295 Saint-Pierre Blvd. West, P.O. Box 5554, Caraquet NB E1W 1B7 Tel: 506 726-4717 robert.moreau@uni.ca **uni.ca**

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Vancouver BC V6A 4G2
T 604.877.7000
vancity.com

October 15, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

VANCOUVER CITY SAVINGS CREDIT UNION

Christine Bergeron
Interim President and Chief Executive Officer

Access
CREDIT UNION LIMITED

October 22, 2020

Access Credit Union
Unit #2, 23111, PTH #14
Winkler, MB R6W 4B4

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Larry Davey, MBA, ICD.D
President and CEO
Access Credit Union

Diamond North
CREDIT UNION

diamondnorthcu.com

October 22, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Randall Kerluke

VP of Retail Services

DUCA
Do more. Be more. Achieve more.

DUCA Financial Services Credit Union
5255 Yonge Street, 4th Floor, Toronto, ON M2N 6P4
416-223-8838 | www.duca.com

October 21, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Douglas S. Conick.

Doug Conick CPA, CA
President & CEO DUCA Credit Union Ltd.
Chair, DUCA Impact Lab
Email: dconick@duca.com
Office direct: 416 590 2390

Powell River
4721 Joyce Avenue
Powell River, BC
V8A 3B5
Tel: 604-485-6206
Fax: 604-485-7112
1-800-393-6733

Texada Island
2021 Legion Road
PO Box 268
Van Anda, BC
V0N 3K0
Tel: 604-486-7851
Fax: 604-486-7671
1-800-361-9933

Bowen Island
106-981 Dorman Rd
PO Box 190
Bowen Island, BC
V0N 1G0
Tel: 604-947-2022
Fax: 604-947-2082
1-866-947-2022

Cumberland
2717 Dunsmuir Ave
PO Box 138
Cumberland, BC
V0R 1S0
Tel: 250-336-2272
Fax: 250-336-8424

Courtenay
14-1599 Cliffe Ave
Courtenay, BC
V9N 2K6
Tel: 250-336-0905
Fax: 250-338-2644
1-866-336-0905

Administration
4448A Marine Avenue
Powell River, BC
V8A 2K2
Tel: 604-485-0978
Fax: 604-485-1231
1-866-585-0978

www.firstcu.ca

First CREDIT UNION

October 21, 2020

Attention:

The Secretary
Ontario Securities Commission 20
Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Linda Bowyer
President & CEO
First Credit Union

FirstOntario
CREDIT UNION

October 23, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Lloyd Smith, CEO
FirstOntario Credit Union Limited

G&F FINANCIAL GROUP
life beyond banking™

October 16, 2020

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec G1V 5C1

To Whom it May Concern,

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Jeff Shewfelt
Co-CEO

Bill Kiss
Co-CEO

/lb

CORPORATE
7375 Kingsway
Burnaby BC V3N 3B5
gffg.com
604-419-8888

kawartha
CREDIT UNION

October 16, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Kawartha Credit Union is one of the larger credit unions in Ontario. We currently have 14 mutual fund representatives dealing with Credential Asset Management and 2 IIROC registered representatives dealing with Credential Qtrade Securities. Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Robert Wellstood
Chief Executive Officer

mainstreet CREDIT UNION

October 19, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402
Consultation on the Self-Regulatory Organization Framework

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Janet Grantham
President and Chief Executive Officer

Mainstreet Head Office
1295 London Road
Sarnia, ON N7S 1P6
www.mainstreetcu.ca

T. 519.542.0483
F. 519.542.3778
TF. 866.380.8008

NORTHERN SAVINGS
CREDIT UNION

October 20, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

To Whom it May Concern:

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,
NORTHERN SAVINGS CREDIT UNION

Robert Marshall

R.D.(Bob) Marshall
President & Chief Executive Officer

/rdm

Corporate Office
138 Third Avenue West
Prince Rupert, BC V8J 1K8
tel 250.627.3600
fax 250.627.3602

Masset
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Prince Rupert
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Prince Rupert, BC V8J 1K8
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Queen Charlotte
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Terrace
4660 Lazelle Avenue
Terrace, BC V8G 1S6
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Noventis
CREDIT UNION

Noventis Credit Union
Box 1139 Gimli, Manitoba R0C 1B0

T 204 642 6450
F 204 642 6474
E info@noventis.ca

October 21st, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

M^{e} Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Kevin McKnight, CPA, CGA, MBA, CCD

Chief Executive Officer

Prairie Centre
CREDIT UNION
We'll help grow your money.

October 23, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Jillian Carlson, B.Sc.Ag. PFP,CPCA
Vice President Wealth and Insurance
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Eston Branch
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Harris Branch
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Morse Branch
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Outlook Branch
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Rosetown Branch
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Spiritwood Branch
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Administration Office
Box 940
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Centralized Loan Support
Box 339
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P: 306-867-9914

SCU

October 19, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel,
Corporate Sec. and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar,
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-encours@lautorite.qc.ca

To Whom it May Concern:

Re: Aviso Wealth comment letter in response to CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

Our credit union executive leadership team has reviewed Aviso Wealth's comments in response to the Canadian Securities Administrators' Consultation Paper.

Along with Aviso Wealth, we support the review of the current regulatory framework.

We strongly endorse the position expressed by Aviso Wealth with respect to the preference for a simpler regulatory model that continues to protect investors, and that can be implemented in the near term. We agree with the rationale that a single self-regulatory organization is likely to deliver tangible benefits to our members, our advisors, our credit union, and to all industry participants.

We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Glenn Friesen
CEO
Steinbach Credit Union

335 Main St
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October 16, 2020

Attention:

The Secretary
Ontario Securities Commission
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M[e] Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
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consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Glenn Stang, CEO

Weyburn Credit Union

PO Box 1117 Stn Main, Weyburn SK S4H 2L3
T 800 667 8842 F 306 842 4964
info@weyburncu.ca \ weyburncu.ca

Monday, October 19, 2020

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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consultation-encours@lautorite.qc.ca

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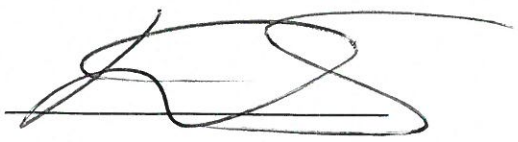
We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,



Don Shumlich
Chief Executive Officer

October 23, 2020

Attention:

The Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Sec.
and Executive Director, Legal Affairs
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consultation-encours@lautorite.qc.ca

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We are pleased to provide our signed support of Aviso Wealth's comment letter.

Sincerely,

Kerry Hadad
Chief Executive Officer
Your Neighbourhood Credit Union

Manulife

Rick Annaert
SVP, Head of Advisory Services
President & CEO, Manulife Securities

October 23, 2020

Sent via e-mail to: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumers Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

ATTN:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel
Corporate Secretary and Executive Director
Legal Affairs
Autorité des marchés financiers
Place de la Cite, tour Cominar
2640, boulevard Laurier, bureau 400
Québec

Re: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

Dear Sirs and Mesdames:

I am writing in response to the Canadian Securities Administrators' (CSA) consultation paper on reviewing the regulatory framework for the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA), collectively the self-regulatory organizations (SROs).

About Manulife

Headquartered in Toronto, Manulife is a leading international financial institution with $1.2 trillion in assets under management (as of June 30, 2020). Operating as John Hancock in the United States, and Manulife elsewhere, we help more than 30 million customers in 22 countries with their financial decisions. Through our work force of more than 35,000 employees, and over 98,000 agents, here in Canada and around the world, we provide financial advice, insurance and wealth and asset management solutions for individuals, groups and institutions. We serve one in five Canadians offering a wide range of protection, estate planning, banking and investment solutions through a diversified, multi-channel distribution network. Manulife Financial Corporation is a publicly listed company trading on the TSX, the NYSE, the HKEX and the Philippine Stock Exchange.

Our wealth and asset management arm, Manulife Investment Management Limited (MIM) provides a range of investment fund products and services including acting as a portfolio manager and investment fund manager and commodity trading manager. In addition, MIM, together with its affiliates and

subsidiaries, provides comprehensive asset management solutions for institutional investors and investment funds in key markets around the world. This investment expertise extends across a broad range of public, private and alternate asset classes, as well as asset allocation solutions.

Manulife Securities consists of Manulife Securities Investment Services Inc., a mutual fund dealer and a registered Exempt Market Dealer, Manulife Securities Incorporated, an investment dealer, and Manulife Securities Insurance Inc., an insurance agency, each of which is a wholly owned subsidiary of Manulife. Manulife Securities advisors provide Canadians with access to stocks, bonds, mutual funds, and other investment products as well as a suite of life and health insurance solutions.

Overview

Manulife applauds the leadership of the CSA in conducting this timely review. We strongly support the initiative to better align our industry's regulatory framework with the changes that have occurred in the business environment, client needs and expectations, and registrant demographics.

Our comments below are intended to compliment those submitted by the Investment Fund Institute of Canada (IFIC), the Investment Industry Association of Canada (IIAC), and the Canadian Exchange Traded Funds Association (CEFTA), all of which we generally support unless in contradiction with the content herein.

A single SRO Model

Manulife supports the creation of a new SRO (NewCo) formed by the consolidation of IIROC and the MFDA with oversight of all advisory firms servicing retail clients, including Exempt Market Dealers (EMDs), Portfolio Managers, and Scholarship Plan Dealers (SPDs). Exempt market dealers and portfolio managers, such as institutional asset managers, that only provide services to non-retail clients (pension plans, insurers or other asset managers) should not be captured under this new oversight model. We believe this will significantly contribute to the key retail investor benefits identified by IFIC in their submission letter.

While we further expect this new single oversight model to result in greater harmonization and reduced regulatory burden on Dealers, particularly dual platform Dealers registered with both IIROC and the MFDA, it is important that this oversight model remain flexible to the financial models of small independent mutual fund dealers and investment dealer registrants. The current MFDA regime supports strong competition in the investment fund market, which is a key focus that should be maintained so as to limit the unintended consequence of investors being left with fewer or more expensive choices to financial advice.

Moreover, we strongly agree with the position put forward by IFIC to maintain IIROC's mandate of promoting confidence in capital markets by setting, monitoring and enforcing rules governing trading activities on Canadian equity marketplace and monitoring debt market activity. There is value to having equity and debt market regulation and supervision performed by one entity rather than multiple entities. If a harmonized SRO continues to have this mandate, the SRO should continue to regulate institutional asset managers to the extent that their equity and debt market activities are already supervised by IIROC.

An Achievable Plan

It is necessary to modernize our industry's regulatory framework without further delay and better align it to the evolution of our industry's business models and investors' expectations. However, we acknowledge that regulatory reform requires substantial and complex coordination between provincial and territorial securities commissions, regulators and industry stakeholders. As such, we encourage breaking down the goal of establishing a SRO that oversees all retail advice channels into smaller, outcome-focused stages.

Benefit to Consumers

Consolidating the SROs (and expanding the SRO to the other advice categories) will deliver increased harmonization and reduced regulatory burden for Dealers which will reduce duplicative operating costs. As a highly competitive industry, we expect these cost savings will be passed on to consumers and therefore better consumer access to financial services. We also expect consumers to benefit from a standardized process in accessing advice and from a simplified and consolidated complaint management process.

Conclusion

Manulife is appreciative of the opportunity to participate in this review and we would be pleased to respond to any questions you may have towards our comments.

Yours very truly,

Rick Annaert
SVP, Head of Advisory Services
President & CEO, Manulife Securities

October 23, 2020

VIA EMAIL

Canadian Securities Administrators (**"CSA"**)
% The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
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Email: comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Dear Sirs/Mesdames.

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

TMX Group Limited (**"TMX"** or **"we"**) welcomes the opportunity to comment on the CSA's public consultation on the self-regulatory organization (**"SRO"**) framework (the **"Consultation Paper"**) that was published on June 25, 2020. We appreciate the efforts taken by the CSA to reflect on how the evolution of the financial services industry has impacted the current regulatory framework in Canada.

TMX Group and SROs

TMX's key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange, TSX Venture Exchange, TSX Alpha Exchange, the Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX companies provide listing markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

The TMX equities exchanges retain the Investment Industry Regulatory Organization of Canada (**"IIROC"**) as a regulation services provider to monitor the trading activities on our equities exchanges by enforcing compliance with the Universal Market Integrity Rules. Given our familiarity with IIROC operations, we focus our comments on Issues 6 and 7 in the Consultation Paper.

Issue 6: Public Confidence in the Regulatory Framework

Targeted Outcome Statement (Issue 6)

TMX supports the targeted outcome statement for this section of the Consultation Paper: "*A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes."*

We believe that IIROC is operating squarely within this framework. We believe that a MFDA-IIROC merger would not necessitate any fundamental changes in the CSA's oversight of the amalgamated SRO in order for the operations currently performed by IIROC to continue to meet this targeted outcome.

Summary of Stakeholder Comments

In response to stakeholder comments summarized in this section of the Consultation Paper, we disagree with the implication that inadequate oversight of the SROs is resulting in unmanaged conflicts of interest with a risk of loss of confidence in the SROs' ability to meet their public interest mandate. In our view, IIROC, including its governance structure, is heavily regulated by the CSA and further intervention by the CSA in IIROC's governance processes would be an unnecessary burden.

An example of a concern raised by a stakeholder is that the CSA does not appoint or have veto rights over SRO board members or key executive staff and that the CSA does not hold a seat on the SRO Board. In our view, permitting the CSA to veto key SRO appointments and enabling the CSA to appoint any directors to an SRO board of directors would be extremely burdensome and time consuming to manage, without commensurate benefit. TMX would have significant concerns if this kind of CSA intervention were applied to IIROC's Board selection process. From a governance perspective, we understand that IIROC already has a sophisticated skills matrix that it uses when it identifies candidates for its board. We expect that the IIROC Board matrix would include, at a minimum: industry experience - large dealers and smaller, independent dealers as well as marketplaces; directors who are independent from members and marketplaces; individuals with one or more of financial, legal, governance, technology and operations expertise; representatives from different Canadian geographic locations, appropriate representation of women, Black people, indigenous people and people of colour. This is just a sample list of the various skills, expertise and experiences that IIROC would likely seek for its Board. We do not believe that CSA staff or management would be better placed than IIROC's Board and management to select the IIROC Board members, and are concerned that creating a new process to require IIROC's thirteen regulators to jointly appoint IIROC Board members could add significant delay to IIROC's director onboarding process, with no commensurate benefit. Finally,

we submit that the CSA struck the proper balance between its need for regulatory oversight and IIROC's need for commercial and operational flexibility when the CSA set out in the applicable recognition orders detailed criteria for IIROC's board composition. Given that the IIROC board members ultimately owe their fiduciary duty to IIROC when they are considering IIROC business, we do not understand the benefit that would accrue to IIROC if the CSA were to select certain IIROC directors.

In conclusion on this topic, we disagree with the notion that the regulatory oversight related to the governance of SROs needs to change. We believe that the current governance structure at IIROC, for example, appropriately manages potential conflicts of interest and that IIROC is able to fulfil its public mandate efficiently and effectively under its current corporate governance framework.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

Summary of Stakeholder Comments

This section of the Consultation Paper states that certain stakeholders raised concerns about possible information gaps and fragmented market visibility resulting from market surveillance functions being separated from the CSA. This section of the Consultation Paper contains very little information about the rationale that could support the stakeholders' comments. Contrary to the stakeholder comment references relating to Issue 7, TMX does not share these concerns. Based on our first-hand knowledge of IIROC's equity market surveillance work, we believe that maintaining the equities markets surveillance operations at IIROC is important for the continued fair and efficient operations of the Canadian public equities market.

Before we address the specific stakeholder comments that are raised in this section of the Consultation Paper, we believe that it is important to reiterate the benefits and strengths of the SRO model that were identified during the CSA's information consultations and are summarized in the Consultation Paper. In our view, these benefits, and IIROC's continued exemplary performance, support the position that IIROC, or its successor organization, should continue to fill the equity market surveillance role and that no further intervention by the CSA is required. The Consultation Paper states that numerous stakeholders agreed that the national structure of an SRO is important in light of the provincial and territorial regulation of the securities industry in Canada. TMX agrees that a national SRO provides consistency and efficiencies that would be lost in a more fragmented model. We also agree that IIROC's use of advisory committees and industry-related expertise enables it to stay abreast of trends that support policy formation.

IIROC's Surveillance Mandate contributes to Market Efficiencies

To support our perspective that IIROC's operations are integral to our capital markets and that maintaining equities trading surveillance at IIROC is important, we provide data that shows the efficient operations of IIROC in recent times of market stress and volatility.

In March 2020, the Canadian equities markets saw extreme and elevated levels of trading activity due to investors' reactions to the Covid-19 pandemic and related economic events. Despite this atypical market activity and amid business continuity plans that saw a large number of staff shift from an office environment to work-from-home, our markets functioned well and without disruption. IIROC continued to process the messages from Canadian marketplaces in real-time and maintained its ongoing surveillance of the market despite the fact that the number of orders processed in March were significantly higher than in previous months, as is shown by TMX trading statistics:

- The number of orders processed by TSX on an average day in March was over 3.5 times greater than the number of orders prior to March
- March daily volumes on TSX were over three times greater than prior to March
- TMX equity marketplaces reached a daily peak number of messages in March that was double the previous daily peak

The above data, and the fact that the market functioned well and without disruption, is illustrative of the resiliency of Canada's trading ecosystem, which includes dealers, marketplaces, post-trade infrastructures, and IIROC in its role as market surveillor.

It is also relevant to note that a number of trading "safety nets" were used during the first quarter of 2020. These market mechanisms that were built to manage extreme volatility, functioned as designed and helped to moderate unnecessary market turmoil, thus protecting investors. We provide statistics related to these market mechanisms below, as a reminder that not only did IIROC's surveillance capabilities match unprecedented trading volumes in the first quarter of 2020, but that tools that are designed to be used only on an exceptional basis to moderate activity during periods of extreme volatility were successfully engaged earlier this year:

- Four market-wide circuit breakers (**"MWCBs"**) were triggered in March. (The last time a MWCB was triggered was in October 1997 when the Canadian market reacted to the Asian economic crisis.)
- 72 single-stock circuit breakers (**"SSCBs"**) were triggered on TSX in Q1 2020. (By comparison, 10 SSCBs were triggered during all of 2019.)

We believe that the above data is illustrative of the efficiency that IIROC brings to the market and supports our view that the equities market surveillance function should remain at IIROC. Similarly, in our discussions with clients that are regulated by IIROC, we have not heard support for the proposition that the CSA should take over market regulation functions. Rather, we have heard skepticism that the group of provincial regulators could operate market surveillance as effectively as IIROC.

Targeted Outcome Statement (Issue 7)

Question 7.2 in the Consultation Paper asks if the targeted outcome for Issue 7 is described appropriately: "*An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement and management of systemic risk*."

We believe that this targeted outcome statement is overly broad as currently written.

One concern is the use of the phrase "management of systemic risk", which we submit should be removed from a targeted outcome statement that is related to the oversight and operation of SROs. Based on our view of securities law, it does not seem to be the CSA's role to "ensure...management of systemic risk". The Ontario *Securities Act* first added a reference to systemic risk three years ago, when it was amended to include in its purpose section, "... to contribute to the stability of the financial system and the reduction of systemic risk"[1]. We believe that this purpose is most directly related to the OSC's oversight of entities such as clearing houses whose systems have been designated to be systemically important. We also note that having a purpose to contribute to the reduction of systemic risk is very different from ensuring that systemic risk is managed. It is also important to note that, unlike the Ontario Securities Commission, few CSA members include any reference to systemic risk in their governing legislation. The fact that the majority of CSA members do not reference systemic risk at all in their legislation raises the question of whether reduction of systemic risk should be used in any CSA targeted outcome statement.

Further, we believe that the term "systemic risk" is not being used correctly in the targeted outcome statement. Systemic risk in a financial context denotes the risk of a cascading failure in the financial sector, caused by linkages within and between the components of the financial system, resulting in a severe economic downturn.[2][3] While TMX fully agrees that the fair and efficient operation of our public equity markets facilitates vital capital formation activities and is integral to investor confidence, we do not believe that it is correct to imply that marketplace trading activities are possible triggers of systemic risk, properly understood. For these reasons, we submit that reference to systemic risk be removed from this targeted outcome statement.

We accept that the other aspects of this targeted outcome statement are appropriate. In particular, we agree that marketplace data can be used to support policy formation and is necessary for the enforcement of securities law. We also accept the proposition that the regulatory framework should foster timely and efficient access to market data. It is worth noting that this statement does not further define "timely". This is appropriate because not all market oversight requires access to real-time data. For example, data that would assist IIROC or the provincial securities regulators in investigations related to market manipulation or insider trading is compiled from trading records

[1] *Securities Act* (Ontario), R.S.O. 1990, c.S.5, section 1.1(c)

[2] https://www.cfainstitute.org/en/advocacy/issues/systemic-risk

[3] See also the definition of systemic risk in the *Payment Clearing and Settlement Act*, S.C. 1996, c. 6, section 2.

over multiple trading sessions, thus making the ability to efficiently access data much more relevant than the speed at which the raw data is originally received.

In summary, we submit that this target outcome statement could be improved by removing the reference to systemic risk, for example: "An integrated regulatory framework that fosters timely, efficient access to marketplace data and effective market surveillance, to ensure appropriate policy development and enforcement of securities laws and SRO rules".

TMX Response to Issue 7, Comment 1

> Comment 1: "*The MFDA expressed concerns regarding the ability of statutory regulators to effectively monitor systemic risk and inform market structure policy without sufficient expertise and direct access and control over market data.*"

Consistent with our discussion of systemic risk in the section above, we submit that the MFDA's use of the term "systemic risk" is incorrect in this context. An SRO regulates the operations and the standards of practice and business conduct of its members or participants. The statutory regulators then oversee these SRO activities.[4] The statutory regulators are not using the SROs to monitor systemic risk.

The MFDA's second concern is whether the CSA has sufficient expertise and sufficient access and control over market data to inform the development of market structure policy. TMX does not share the MFDA's concern. We strongly support data-driven policy formation, and we have seen enhanced capabilities over the years at IIROC and with the CSA members, to structure themselves in a way that enables them to use data and analytics to support policy formation. In response to the comment on "sufficient expertise", we have found that certain staff members in the CSA have considerable experience and expertise on equities market structure matters, including by participating in international policy development, and we have found that the skill sets at IIROC and the CSA are complementary in this regard.

TMX Response to Issue 7, Comment 2

> Comment 2: *"An investor protection fund raised a question about the integration of member and market surveillance in an SRO and the potential for conflicts that could possibly arise between the obligations respecting the disruption to markets and maintaining market integrity versus exposure to the investing public.*"

We find this comment confusing given that IIROC as an SRO already performs both a member conduct oversight function and a market surveillance function. IIROC's oversight of trading activity and member conduct is designed to support fair, efficient and orderly markets as well as foster appropriate member conduct toward clients. In both cases, investors are the beneficiaries of IIROC's oversight. We do not consider member and market regulation to be in conflict.

---

[4] See for example, *Securities Act* (Ontario), R.S.O. 1990, c.S.5, section 21.1(3) and *Securities Act* (British Columbia), RSBC 1996, chapter 418, section 26(1).

TMX Response to Issue 7, Comment 3

> Comment 3: *"The MFDA also questioned the appropriateness of the current market surveillance structure and whether the CSA ought to play a larger role. The SRO noted that IIROC and the CSA enforcement processes might be less effective, inefficient, and more costly as a result of the duplication of surveillance and data analysis efforts between IIROC and the CSA."*

TMX supports the application of intelligent regulation and efficient oversight. We are not aware of a duplication of efforts in the area of investigations and enforcement actions as between IIROC and the CSA. To the contrary, our understanding is that for matters of provincial jurisdiction such as insider trading, IIROC's systems alerts and analytic tools are being used to identify potential misconduct, and arrangements are in place between IIROC and the CSA to enable the provincial regulators to further investigate and refine elements of a potential enforcement action. If there are existing inefficiencies in this area, these could be addressed by enhanced communication and a clearer delineation of roles.

In conclusion on this Issue 7, TMX would strongly resist any actions that would move the equity market surveillance function from IIROC to the CSA. We believe that an appropriate targeted outcome related to market surveillance can be achieved while retaining market surveillance functions within the amalgamated SRO.

Conclusion

We thank the CSA for providing us with the opportunity to comment on the Consultation Paper. As staff reviews the comment letters and as the CSA prepares for a potential merger of the MFDA and IIROC, we urge the CSA to be vigilant in protecting the existing efficiencies at IIROC, in particular as regards IIROC's market surveillance role. We would be pleased to discuss our comments with you.

Sincerely,

Deanna Dobrowsky
Vice President, Regulatory

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October 23rd, 2020

The Secretary
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
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The comments below are submitted on behalf of Learnedly, an education provider for Canadian financial professionals.

Regulators,

Thank you for the opportunity to comment.

These are admirable measures to address inefficiencies in our industry. There are a lot of them. And not just because there are two self-regulatory organizations (SROs), but also because there are 13 provincial and territorial regulators.

We get it. Modernizing provincial securities legislation is kind of a difficult thing. Not to mention, people's livelihoods are at stake. Plus, change can be scary.

An SRO merger / amalgamation / consolidation / re-build makes a lot of sense. There *are* a lot of overlaps and redundancies that can lead to cost savings. Whatever you land on, please take Scholarship Dealer Plans with you!

IIROC's recently published assessment by Deloitte estimating that an IIROC / MFDA consolidation would save investors $490 million over 10 years is an impressive number. It should be enough for regulators to move from "if" to "how" on SRO reform. But don't overlook the other inefficiencies that could create even more cost savings than an IIROC / MFDA consolidation.

Advisor proficiency is one of them.

The current regulatory framework has removed the competitive elements from industry proficiency and licensing. In turn, this has allowed IFSE Institute and CSI Global Education to offer education at unjustifiable prices.

There are too many examples to list in this comment letter, but we would like to offer one…

If a licensed mutual fund representative wants to transfer to an IIROC investment dealer, CSI Global Education charges the full price of the Canadian Securities Course (CSC), even if that student had previously purchased CSI's mutual fund licensing course, which overlaps entirely with the CSC curriculum.

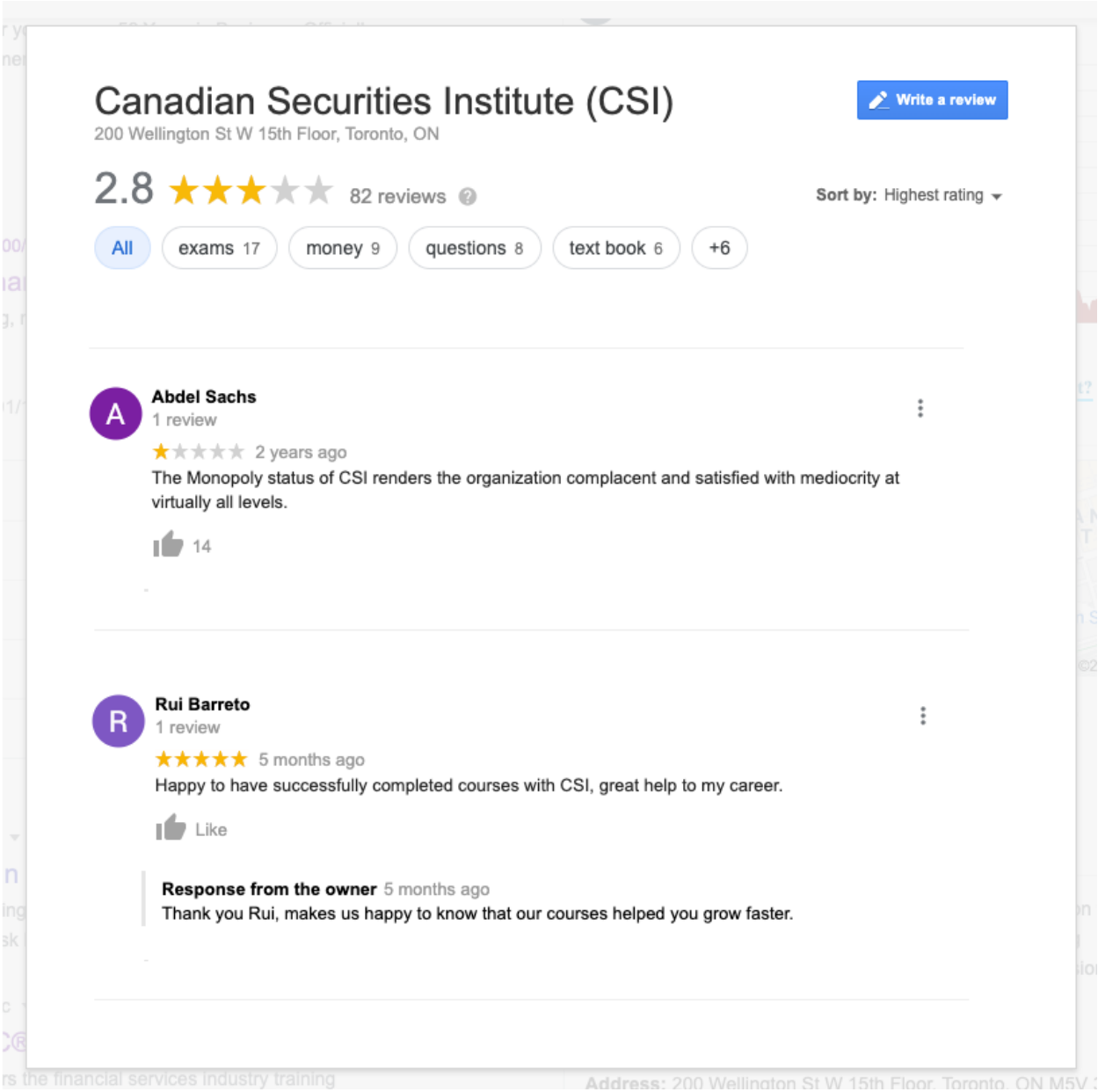
This same redundant expense has been happening for the last two years with Alternative Investment Fund proficiency. MFDA licensed advisors are having to purchase the CSC, at full price, just to offer alternative investments to their clients. CSI could at least discount the cost of the CSC for those who have already purchased their mutual fund licensing course. That is the right thing to do.

This is efficiency at its worst. And it has been happening for years because the regulatory framework has allowed for it.

To be fair, efforts are currently underway by IIROC to open the market for alternatives course providers to CSI, but not before 2025. There are people within the SRO that are genuinely working to make this happen, but they have not been given sufficient resources. (IIROC's Proficiency Assurance initiative started more than 10 years ago, when CSI was acquired by Moody's Analytics).

Complaints about CSI have been made for years. And they are best summed up by Abdel Sachs' Google Review:

"The Monopoly status of CSI renders the organization complacent and satisfied with mediocrity at virtually all levels."



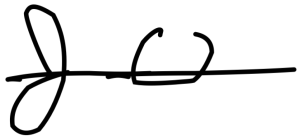
And while Abdel's comments are in contrast to the more favourable CSI reviews, some of the five-star comments seem a bit suspect.

With every comment letter, it feels as though we have to dig deeper to convey just how problematic proficiency is in our industry. And as long as legacy training companies are protected, our industry will continue to overspend by tens of millions of dollars annually on training that does little to excite or engage professionals

The industry needs to usher in a new generation of professionals. For that, it needs affordable and accessible education. Not expensive and stale dated education.

Expensive education doesn't separate the good from the bad. It segregates the haves from the have nots.

It's time for proficiency reform.



John Waldron, Founder
Learnedly
John.waldron@learnedly.com

October 23rd, 2020

Dear Sir/Madam,

Re: SRO Consultation

Thank you for the opportunity to comment on the SRO Consultation Paper. Our research team has done extensive scientific research on both the Investment Dealers Association of Canada (IDA) and its successor the Investment Industry Regulatory Organizations of Canada (IIROC). Twelve years of research on the IDA and IIROC's enforcement of complaints provided valuable insights for our comments on the SROs consultation. Our comments will be limited to the IIROC's enforcement and investors' protection mandates.

Who are the Victims?

The following results are victims' demographics data collected and coded from IIROC's tribunal cases. In brief, a significant proportion of victims were elderly, women, with poor investment knowledge, and limited net worth. As can be seen in Figure 1 and 2 below, the majority of victims were females and close to 50% of the victims who suffered from financial exploitations were retired.

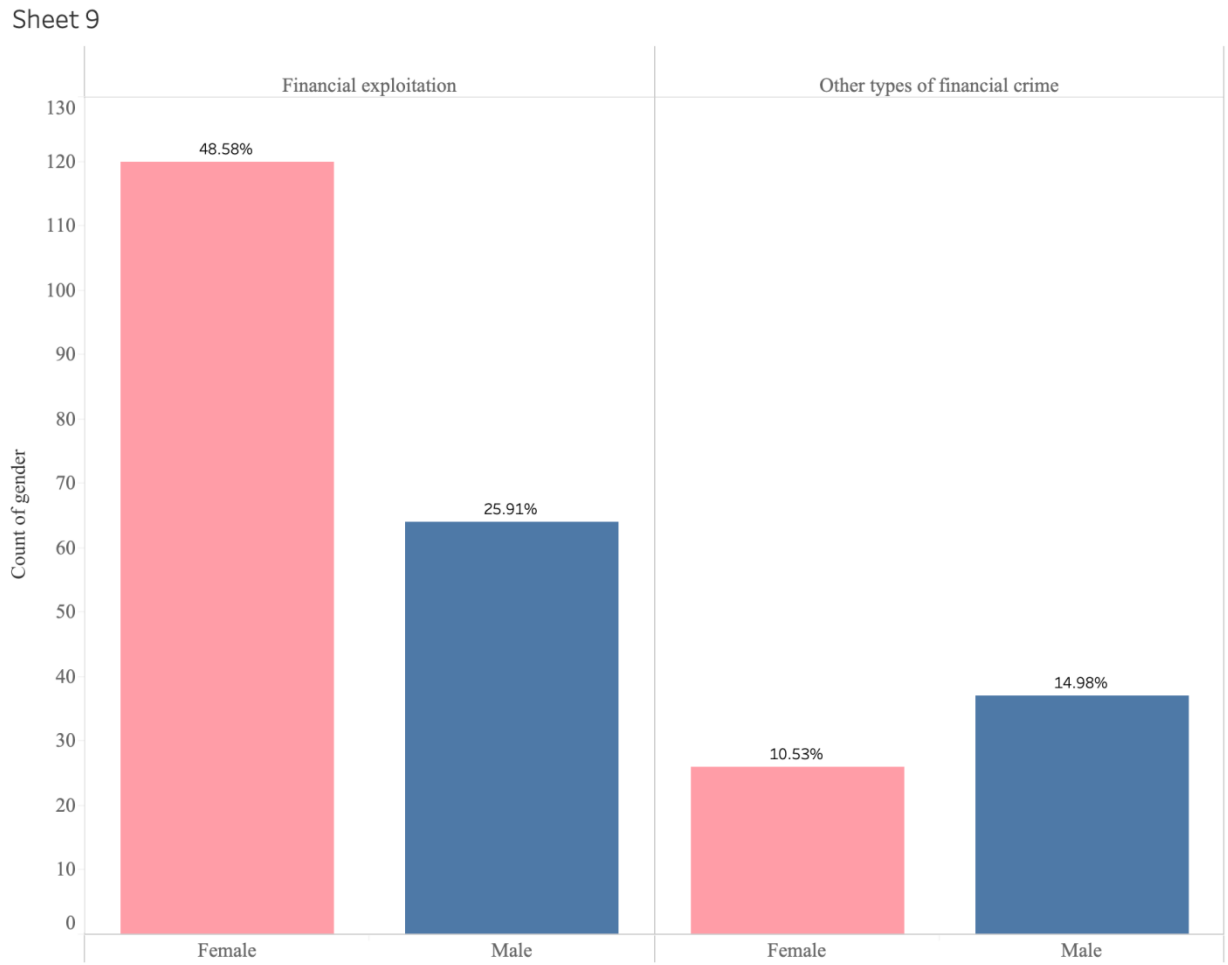


Figure 1: Investors by Gender

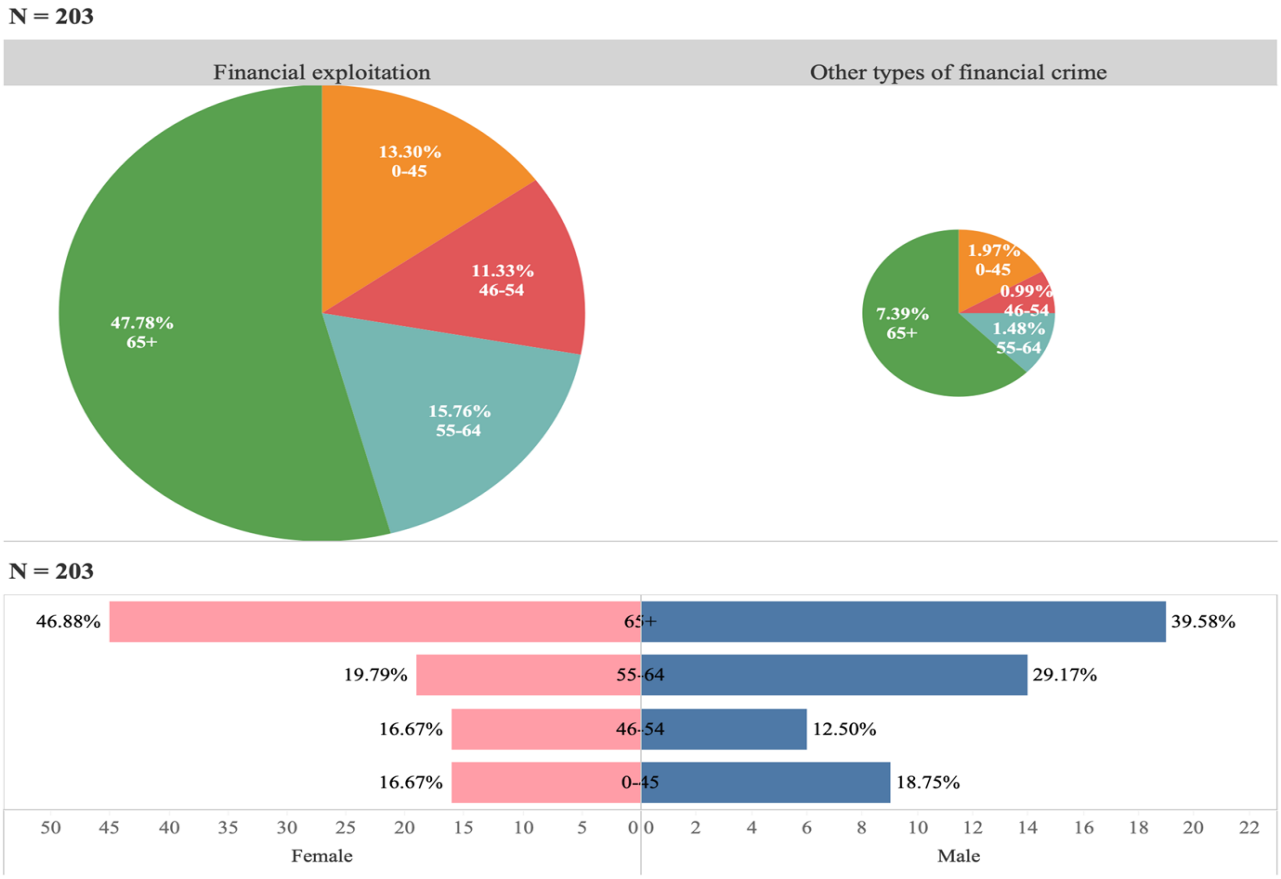


Figure 2: Proportion of Age Groups by Types of Exploitation and Gender

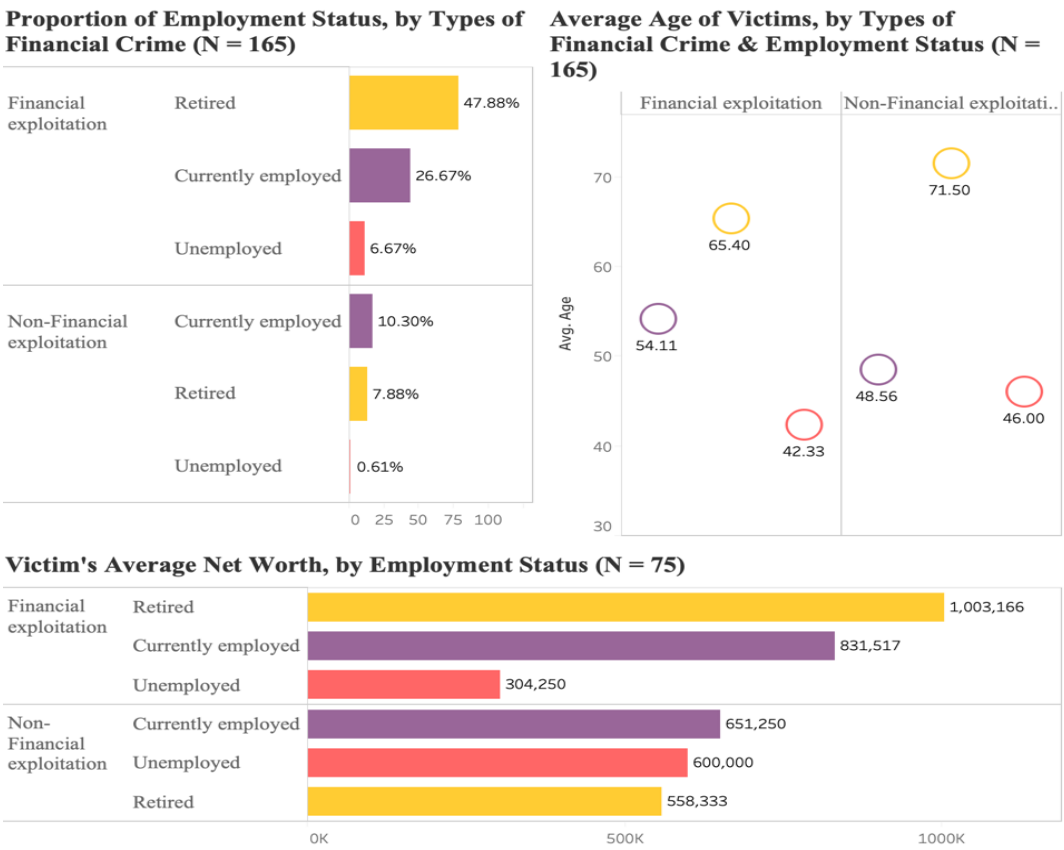


Figure 3: An overview of the Victims' Demographic

F
N = 161

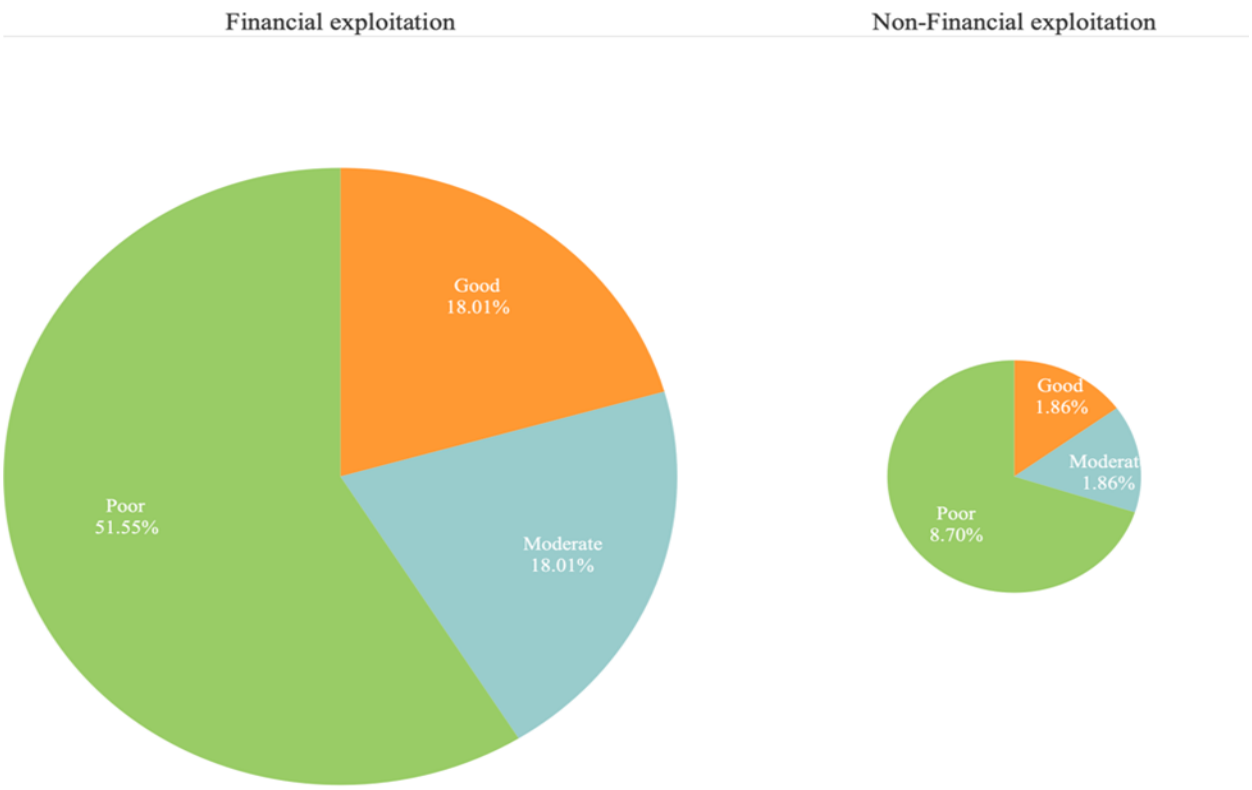


Figure 4: Victims Investment Knowledge

Fraud Victimization Prediction

We have predicted with 86% accuracy that the individuals who are more likely to become victims of investment scams are classified as females, have poor financial knowledge, know their advisors from the past, and are retired. Investors who are characterized as having limited financial literacy but a long-time relationship with their advisors have reduced probabilities of being victimized. However, male investors with low or moderate-level investment knowledge were more likely to be preyed upon by their investment advisors. While not statistically significant, older adults, in general, are at greater risk of being victimized.

A confusion matrix was used to further evaluate the classification model. In a confusion matrix, the number of correct and incorrect predictions is summed up based on the predicted and observed classes. Figure 5 presents a heat map of the prediction. Figure 5 shows that the model has an 83.66% (i.e., True Negative + True Positive) accurate prediction and a 16.34% (False Positive + False Negative) incorrect prediction of people who are likely to be victims of investment fraud. A more in-depth examination of the confusion matrix illustrates that the model predicted that 40.17% (True Negative) of the people who were predicted to be victimized were victimized. At the same time, the model predicted that 43.49% (True Positive) of people would

not be victimized, and they were not. Only 9.42% (False Positive) of the time did the model predict that investors would be victimized when they were not victimized. Only 6.93% (False Negative) of the time did the model predict that investors would not be victimized when they were victimized. Hence, the model is highly accurate in predicting investors who are likely to be victimized by their registered representatives.

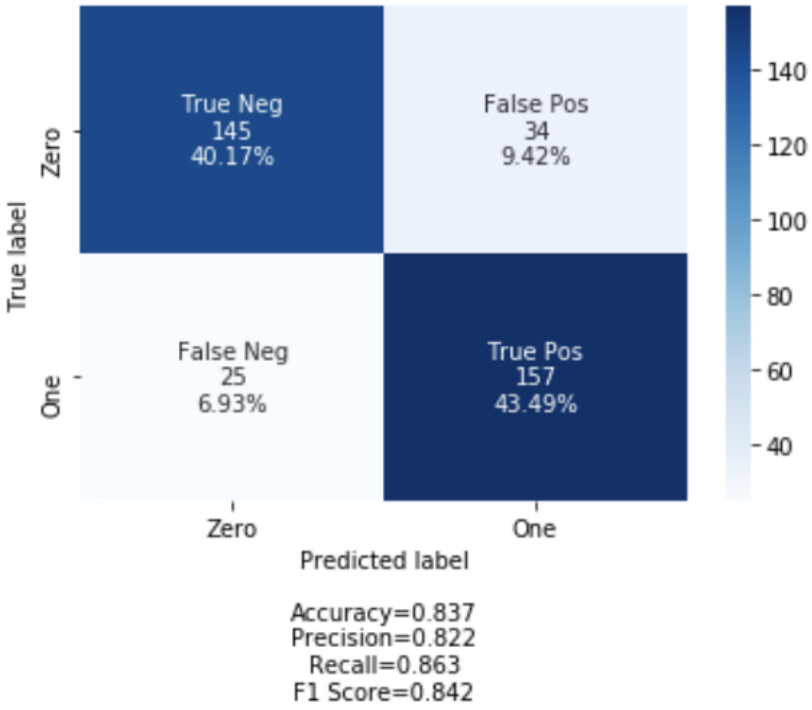


Figure 5: Confusion Matrix

The Receiver Operating Characteristic (ROC) curve is extensively employed to demonstrate the performance of a predictive model. The ROC is a plot of the true positive rate against the false positive rate (Yang & Berdine 2017). As seen in figure 6, the Area Under the Curve (AUC) score is 0.85. An AUC score of 1 indicates a perfect classifier, while a score of 0.5 represents a weak classifier. The predictive model has a higher discriminative capacity when the ROC curve stays as far away from the dotted line as possible (Yang & Berdine 2017). An ROC score of 85% indicates that the model has a very good probability of predicting fraud victimization. Together, the machine-learning predictive model illustrates that investors with certain demographic traits, namely retirees, females, individuals with low levels of financial literacy, and those who know their register representatives from the past are more likely to be victimized than the general population.

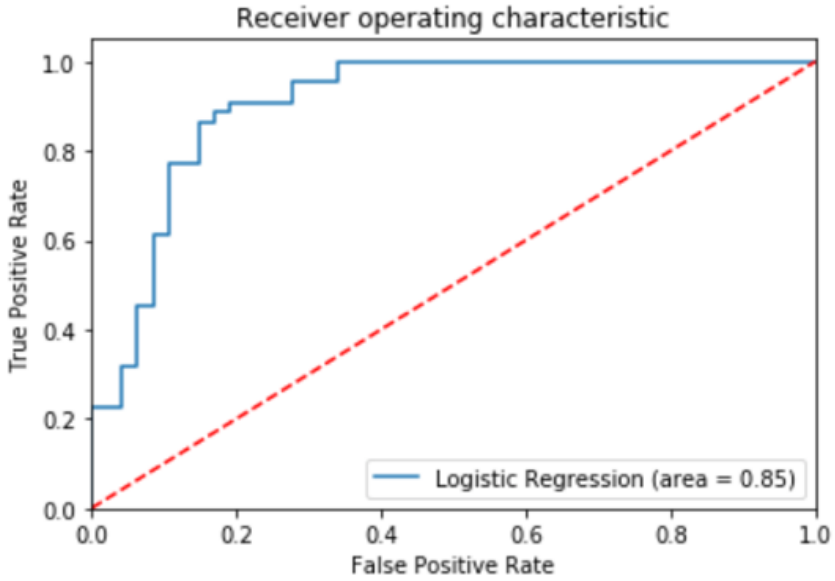


Figure 6: The ROC Curve

SRO Enforcement

Offences

We conduct a side-by-side comparison of the IDA and the IIROC's enforcement performance. The results are presented in the Tables 1 and 2 and Figure 7 below. Improper sales practice offenses continue to be a concern for regulators. As can be seen in Figure 7, improper sales practices offenses under the IDA's regime comprise 46.8% of all offenses, compared to IIROC's 46%. These are not surprising figures. Considering that sales and suitability-type offenses are the most rewarding when trades are successful, it is highly likely that the commission base trades will encourage rogue trading in these accounts. Note also that the IDA dealt with more quasi-criminal offenses (14.8%) than did the IIROC (7.9%). It could be that the IIROC has forwarded more cases with criminal elements to the RCMP and to the provincial securities commissions for criminal prosecutions, or alternatively, these cases were few and far between. An important caveat to these findings is that they are based only on the cases heard by an IIROC's hearing panel and the corresponding relevant files issued by the SRO.

Offences committed under IIROC **Offences committed under the IDA**

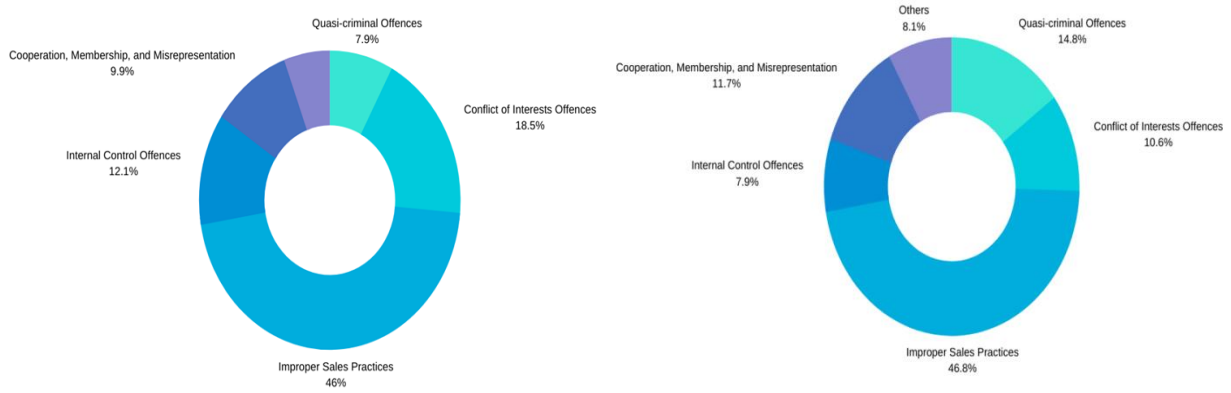


Figure 7: Side-by-Side Comparison of Offences under the IDA and IIROC's regimes

Tables 1 and 2 below show offense type by rule violations. The much more serious unsuitable recommendations and discretionary and unauthorized trading offenses remain problematic areas for regulators. Our main concerns with these findings are that securities traders under both regimes have repeatedly been found to involved in unauthorized purchased of securities and to have manipulated the accounts of their clients and internal controls to either maximize their commissions by exceeding their risk limits or to make the accounts less risky or maybe both (e.g. see Reurink, 2016, p. 20). Although such "rogue trading" is not a new phenomenon, their rate of occurrence raises questions on SROs' ability to deal with more serious infractions and whether this is symptomatic of a larger industry-wide problem. Unsuitable investments because of its dubious particularities can be measured in shades of grey and difficult to prosecute due to a lack of evidence (Lokanan, 2015a). The evidentiary burden can explain why such cases are resolved through regulatory proceedings with no further actions being taken. The reference to 'no further action (being taken) due to lack of evidence' raises in sharp detail the old question of 'light-touch regulation' failing due to scarcity of competent manpower, and motivation to see a case through with the attendant risks of aborted costs and damaged reputations for failure to 'convict' (Lokanan, 2015a). So is there a 'risk tariff' of a successful prosecution, and where does discretion reside to prosecute 'high risk 'cases, a classic moral issue (a case of 'Quis custodiet ipsos custodes?')

Table 1: Summary of Offenses Committed by Individual Offenders in Cases Heard by IIROC

	Offense Type	**N**	**(%)**
	A. Quasi-Criminal Offenses		
A1	Fraud	22	1.6%
A2	Forgery	43	3.2%
A3	False endorsement	3	0.2%

A4	Misappropriation of funds	28	2.1%
A5	Securities Act breach	9	0.7%
	Total	**105**	7.9%

B. Conflict-of-Interest Offenses

B1	Unauthorized or improper use of information	6	0.4%
B2	Unauthorized or improper disclosure and/or use of client information	3	0.2%
B3	Undisclosed or unauthorized accounts	1	0.1%
B4	Undisclosed personal business	60	4.5%
B5	Undisclosed personal business with client	146	10.9%
B6	Attempt to settle client claim for compensation	19	1.4%
B7	Failure to ensure client's orders are given priority	12	0.9%
	Total	**247**	18.5%

C. Improper Sales Practices

C1	Unsuitable recommendations	148	11.1%
C2	Failure to know your client	80	6.0%
C3	Failure to update NAAF	33	2.5%
C4	Order not within bounds of good business practice	75	5.6%
C5	Churning	8	0.6%
C6	Discretionary trading	76	5.7%
C7	Unauthorized trading	53	4.0%
C8	Unauthorized distribution of sales literature	19	1.4%
C9	Unauthorized third-party instructions	35	2.6%
C10	Outside business activities	43	3.2%
C11	Misleading client with false information	44	3.3%
	Total	**614**	46.0%

D. Internal Control Offenses

D1	Capital deficiencies	5	0.4%
D2	Failure to establish and/or maintain adequate internal controls	21	1.6%
D3	Failure to supervise	111	8.3%
D4	Failure to obtain a minimum required margin	2	0.1%
D5	Record-keeping violations	22	1.6%
	Total	**161**	12.1%

E. Cooperation, Membership, and Misrepresentation

E1	Failure to cooperate	64	4.8%

E2	Misrepresenting credentials to association upon registration/transfer	10	0.7%
E3	Allowing an unregistered person to trade	1	0.1%
E4	Conducting business while suspended	1	0.1%
E5	Misrepresentation	56	4.2%
	Total	**132**	9.9%
	Other	76	5.7%
	Overall Total	**1335**	100.0%

Table 2: Summary of Offenses Committed by Individual Offenders in Cases Heard by IDA

Offense Type		**N**	**(%)**
A.	*Quasi-criminal Offenses*		
A1	Fraud	36	2.1%
A2	Forgery	53	3.1%
A3	False endorsement	5	0.3%
A4	Misappropriation of funds	90	5.3%
A5	Securities Act breach	67	4.0%
	Total	**251**	14.8%
B.	*Conflict-of-Interest Offenses*		
B1	Unauthorized or improper use of information	6	0.4%
B2	Unauthorized or improper disclosure and/or use of client information	6	0.4%
B3	Undisclosed or unauthorized accounts	24	1.4%
B4	Undisclosed personal business	7	0.4%
B5	Undisclosed personal business with client	84	5.0%
B6	Attempts to settle client claim for compensation	47	2.8%
B7	Failure to ensure client's orders are given priority	6	0.4%
	Total	**180**	10.6%
C.	*Improper Sales Practices*		
C1	Unsuitable recommendations	222	13.1%
C2	Failure to know your client	79	4.7%
C3	Failure to update NAAF	22	1.3%
C4	Order not within bounds of good business practice	71	4.2%
C5	Churning	8	0.5%
C6	Discretionary trading	232	13.7%
C7	Unauthorized trading	55	3.2%
C8	Unauthorized distribution of sales literature	17	1.0%
C9	Unauthorized third-party instructions	54	3.2%
C10	Outside business activities	33	1.9%
C11	Misleading client with false information	0	0.0%
	Total	**793**	46.8%

	D. Internal Control Offenses		
D1	Capital deficiencies	4	0.2%
D2	Failure to establish and/or maintain adequate internal controls	10	0.6%
D3	Failure to supervise	51	3.0%
D4	Failure to obtain a minimum required margin	18	1.1%
D5	Record-keeping violations	51	3.0%
	Total	**134**	7.9%
	E. Cooperation, Membership, and Misrepresentation		
E1	Failure to cooperate	39	2.3%
E2	Misrepresentation credentials to association upon registration/transfer	7	0.4%
E3	Allowing an unregistered person to trade	19	1.1%
E4	Conducting business while suspended	3	0.2%
E5	Misrepresentation	130	7.7%
	Total	**198**	11.7%
	Other	138	8.1%
	Overall Total	**1694**	100.0%

Fines

As can be seen in Figure 8, the average fines per decision fluctuated more under the IIROC than under the IDA regime. One possible reason for this is that the IIROC handled more cases and imposed harsher fines than the IDA. A closer look at Figure 9 indicates that the average cost per investigation has decreased under the IDA regime. Except for the costs incurred in 2012, where a staggering number of 64 cases were presented to the IIROC hearing panels, the average cost decreased steadily until it began to rise again in 2017. The high costs incurred per case in 2012 can be attributed to the excessive resources spent by the IIROC to hear roughly twice the number of cases of the previous years. These findings have implications for self-regulation in Canada's capital markets. If one is to measure the effectiveness of self-regulation in Canada's securities industry by using the proportion of fines imposed on market participants as a yardstick of effective regulation, then it is evident that the IIROC has been more active than the IDA (Lokanan, 2015a, p. 477).

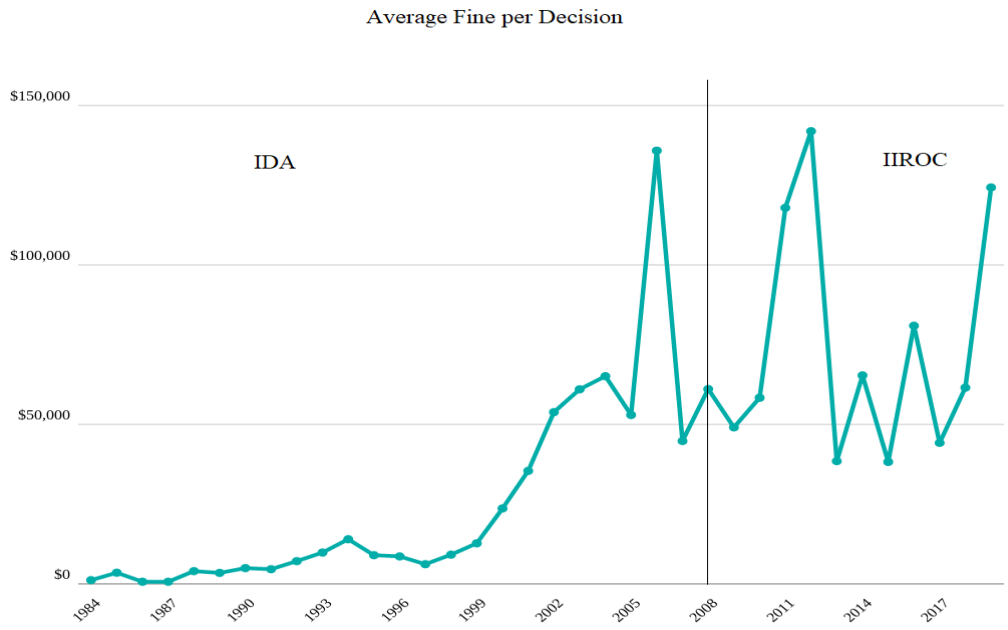


Figure 8: Yearly Average Fines

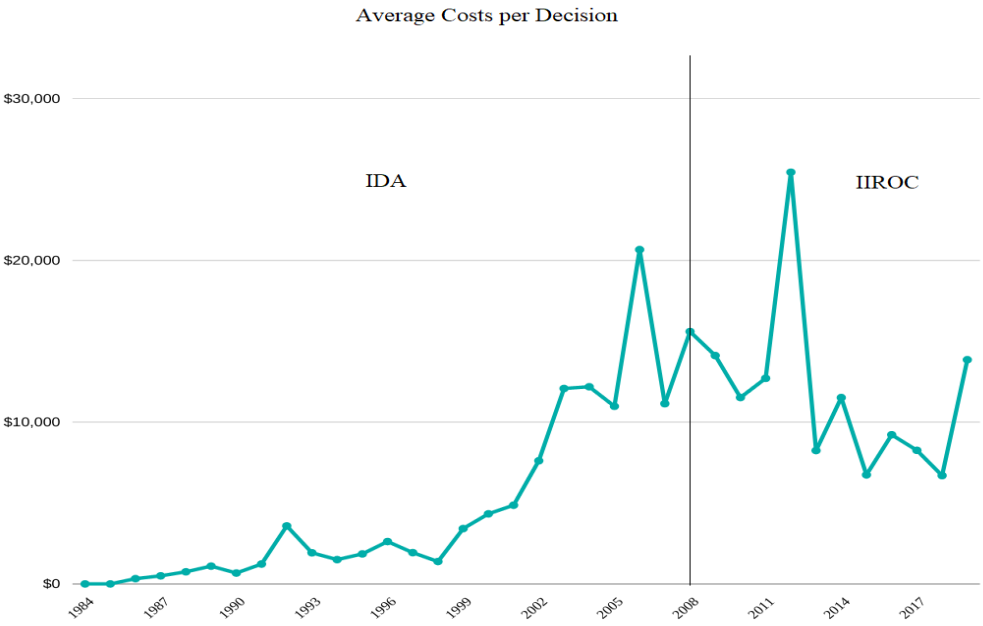


Figure 9: Yearly Average Costs

Aggravating and Mitigating Factors Considered by IIROC

Figures 10 and 11 present the mitigating and aggravating factors considered in penalty impositions. No prior records and credit for cooperation were the top two mitigating factors, while harm to the client and deliberate misconduct were the top two aggravating factors considered by the IIROC's hearing panels. Of serious concerns, however, is that experience representative who was involved in activities that led to economic loss to the client and the member firms were frequently overlooked as aggravating factors.

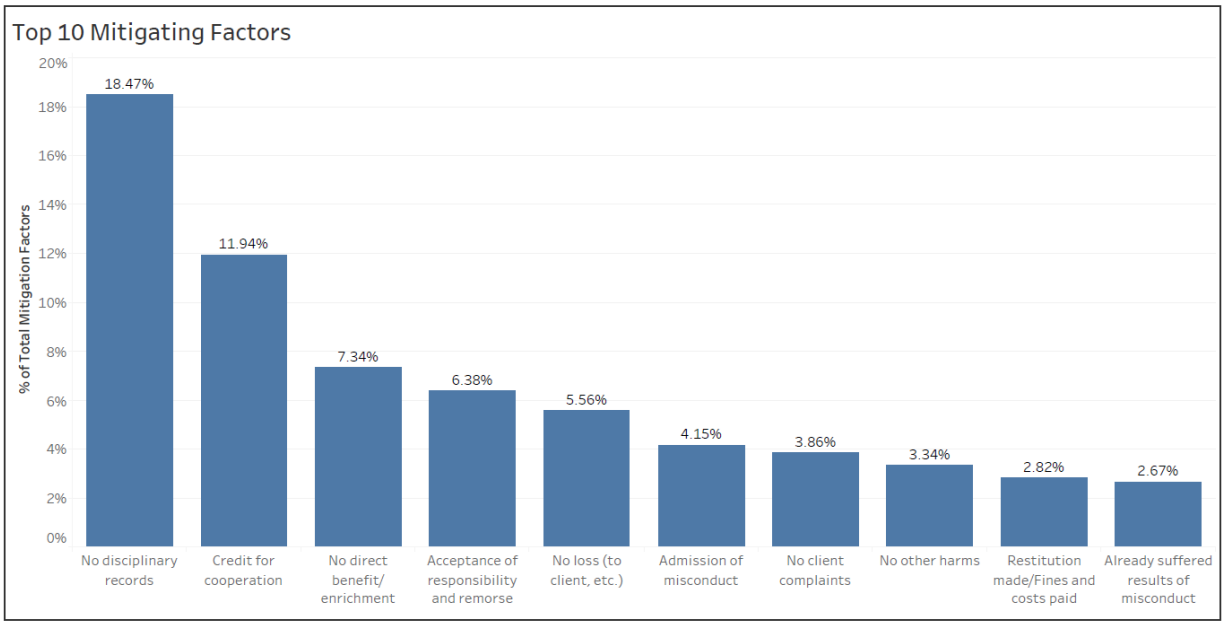


Figure 10: Ten Most Frequently Mitigating Factors Considered in Penalty Imposition

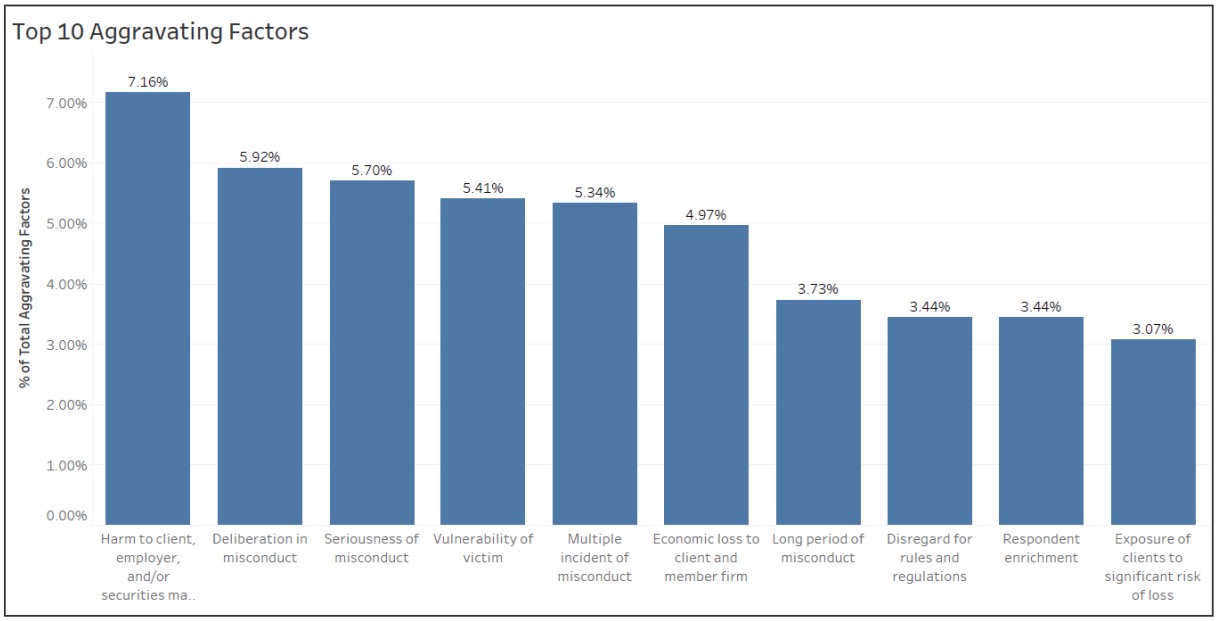


Figure 11: Ten Most Frequently Aggravating Factors Considered in Penalty Imposition

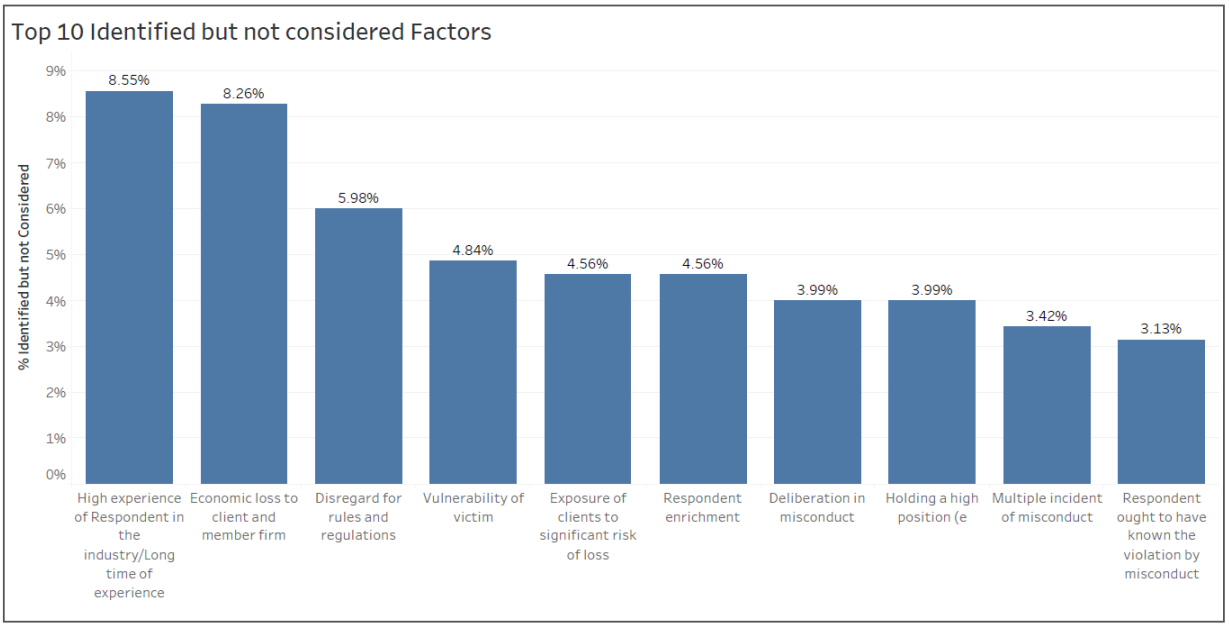


Figure 10: Top Ten Aggravating Factors Identified but Not Considered

A Way Forward

The findings presented here support the claims made by both proponents of self-regulation and by critics that the self-regulatory system in Canada needs immediate attention. It seems somewhat obvious that on paper a self-regulatory system would track more complaints than a more coercive state-led enforcement system might (at least based on raw data), but that tells us very little that is worth noting - particularly given the Canadian context in which there are all sorts of reasons to expect lax criminal and state regulatory enforcement in the financial industry in the first place. The role of self-regulation in Canadian finance seems to be largely symbolic in the larger context of securities regulation in Canada. Successful self-regulation in Canadian finance is important because government regulation is so completely ineffective (Lokanan, 2015a). Canada is unique in having its "patchwork" system of provincial regulators. It is also notable for lax criminal enforcement for crime in the sector (p. 458). The findings presented here raise in sharp detail the old question of 'light-touch regulation' failing due to scarcity of competent manpower, and motivation to see a case through with the attendant risks of aborted costs and damaged reputations for failure to 'convict. There is a clear need to better understand the efficacy of SROs vis-à-vis enforcement and to that end, I have made a compelling case that regulatory capture might be particularly problematic for SROs operating in the security sector (Lokanan, 2017).

We are proposing a framework that is more responsive to victims and one that will hold individuals accountable to the law and ethical standards. In a market that is characterized by regulatory flux, regulation that is responsive is a feasible alternative to entice compliance from market participants. In brief, a responsive regulatory approach will entice compliance through a combination of persuasion and punishment techniques. I have outlined a responsive approach to securities regulation in the following article: Securities regulation.

We advocate for an SRO that is accountable, one that protects investors from unscrupulous registered representatives, and one that has the will to prosecute cases that harm the public interest. Canada needs an SRO system that puts investors and the public interests first. To help achieve these goals, I would like to highlight some of the key recommendations made to the Capital Market Modernization Taskforce below.

Recommendations for Effective Self-regulation in the Securities Industry

Focus on Dealer Members

It is apropos for brokerage firms to design an internal regulatory system that inculcates a culture that values trust, transparency, and professionalism, while the challenge for regulators is to make sure that these values and practices are applied. It is more likely than not, that regulators will succeed when they use strategies that are responsive to the culture of the firms. In regulating securities trading, regulatory agencies must take into account the professional and organizational culture of the firms and their compliance policies (Lokanan, 2015b). We are hoping that this recommendation will be considered in the IIROC/MFDA unification.

While it is true that the individual financial advisors of the firms are the ones often involve in allegations, their motives could always be tied back to the dealer firms. The policies or the environment the dealer creates for its employees such as setting unrealistic sales targets or high commission on certain investment options either forces or motivates them to sell unsuitable and high-risk financial products to their clients. The most tragic part of this situation is that when the sold investment option fails, the agent's financial status does not allow them to take full responsibility for the losses incurred by the client, thus only a small percentage of fraud amounts are levied as fines by IIROC. Furthermore, there is a greater chance of delays or defaults on assessed fines as the fine collection rate from the individual offenders (25%) is far less than firms that are at 100%, according to the IIROC's 2018-19 annual report. Therefore, if the individual fines are tied to the dealer firms, there are better chances for SROs to recover losses. Besides, doing so will certainly impel the dealer firms to revisit their policies and train their agents to ensure they always comply with the rules of the SRO.

Focus on Early Fraud Detection Mechanism in Securities Markets

The trust and confidence of investors in capital markets can be strengthened when fraud or other non-compliances are detected early in their initial stages and avoid huge losses to investors.

There has been rising popularity of using regulatory technology in the securities markets to detect non-compliance trading activities. It is possible to achieve active surveillance and detect suspicious activities to avoid any manipulations that could cause flash crashes with the help of the latest Big data solutions. Moreover, the impact of improved data analytics could benefit the securities agencies and dealer firms in devising policies that ensure competitive capital markets in Canada and to mitigate problems that could arise in the future.

Focus on Penalty Escalation

The purpose of penalties must be to have both a specific and general deterrent effect. For this to happen, penalties imposed must be proportionate to the offenses. A system of pyramidal enforcement should be put in place with various degrees and levels of escalation. Offenders will be allowed to address their behaviour through the SRO and if failed then the matters should be escalated to the provincial securities commission, especially for the more serious improper sales practices and quasi-criminal offenses. There is evidence to suggest that improper sales practices and quasi-criminal offenses affect the dollar value of fines imposed, while others do not. There should be closer scrutiny of these offenses and the fines imposed for non-compliance. It might also be helpful to address alternative explanations for regulatory outcomes that deviate from the public interest. There is a clear need to better understand the efficacy of SROs vis-à-vis enforcement.

Focus on Proportionate Penalties

For penalties to be proportionate, regulators should assign equal weight to aggravating and mitigating factors in penalty imposition. The IIROC should revise its disciplinary hearing processes and sanction guidelines in the interests of standards of enforcement that ensure consistency and transparency when applying mitigating and aggravating factors. With this tailored approach, an argument can be made that the trick to successful self-regulation is to incorporate impartiality into the hearing process to minimize potential bias and increase the potential for proportionate penalties to be imposed for regulatory infractions. In analyzing the IDA's enforcement performance, we noticed that penalties were more proportionate when a public member was added to the hearing panel. This is not to say that there was no proportionality in penalty imposition before a public member was added to chair disciplinary hearings; rather, the findings tend to lean in the direction of proportional sanctions as reflected in the harsher penalties imposed. Consistency in applying both mitigating and aggravating factors in penalty hearings will bring IIROC or the proposed IIROC/MFDA unified SRO a step closer to regaining public trust.

Focus on Investors' Protection

Using data from the IIROC tribunal cases, we built a machine learning model that predicted with 86% accuracy the demographic characteristics that are correlated with fraud victimization in Canada. Our model found that seniors (>65), retirees, females with limited investment knowledge, and those with a prior relationship with their advisors as being at greater risk of being victimized from investment fraud. These features can be used by both member firms and regulators to mitigate victimization risks. The proposed unification between the MFDA and

IIROC to create a new SROs can achieve this outcome by empowering the CSA statutory regulators to address these feature variables more closely and restore public confidence in the markets.

Financial institutions as well as financial professionals are experiencing challenges to improve their understanding of their clients' financial goals. The primary reason seems to be the problems with keeping their clients' information up-to-date. More sustained measures must be put in place to ensure registered representatives are updating their clients' KYC on an annual basis. Base on our featured engineering model, the IIROC can enhance their risk reduction by closely monitoring the accounts of clients who fits the demographic traits identified above. The purpose of such scrutiny will be to prevent investors with vulnerable demographic characteristics from being engaged in aggressive investment activities, and consequently, reduce the likelihood of being victims of investment fraud.

Focus on SRO's Legal Framework

A more detailed review of the IIROC's legal, mandate, governance, limitations, and accountability frameworks as the oversight institution for certain aspects of securities market operations based on self-regulation, and how these conditions may affect decisions on the imposition of penalties (with and without 'capture' by members) should be carried out. The objective of SROs in the securities industry is to guard against conduct contrary to the interests of members, their clients, and the public. The empirical evidence suggests that the IIROC is not pursuing this three-part objective or if it does, it is not having any discernible impact.

Need for Standardized Format of Decision and Reasons across Hearing Panels

The hearing panels need to follow a standardized format of reporting the 'Decision and Reasons' in each case. Every case provides a unique data set regarding the victim's profile, the offender's profile, and the factors that influenced the panel's decision. A standardized format, with pre-identified key variables, will ensure that the opportunity to record all aspects of invaluable information is not lost, and the dataset of all the cases as a whole can be analyzed to assist future decision-making. Moreover, it will bring transparency, efficiency, and clarity in the rulings of the regulatory bodies.

Removing Quasi-criminal offences from the jurisdiction of the SROs

The SROs can take actions against offenders for regulatory violations and can only impose monetary penalties and industry sanctions. When offenses with criminal elements are addressed by the SROs, the offenders can evade punishment from the criminal justice system and elude jail time and a criminal record. The internal resolution of such cases provides an opportunity for the offenders to get away with relatively benign penalties. Moreover, complications arising from the overlap of authority between the RCMP and the SROs can be avoided if there is no ambiguity regarding jurisdiction.

References

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Yours Truly,

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Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

October 23, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
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Re: Canadian Securities Administrators/ Autorités canadiennes en valeurs mobilières (CSA)

Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework

Dear CSA Members and Staff,

1. Introduction

The Mutual Fund Dealers Association of Canada (MFDA) is pleased to provide comments on the current structure of the self-regulatory organization (SRO) framework as requested by the CSA in its Consultation Paper 25-402 referred to above (CSA Consultation Paper).

The MFDA is the national SRO for 90 mutual fund dealers and 80,000 approved persons of such dealers across Canada providing broad-based financial advice and services to millions of households in Canada. MFDA was created at the instance of the CSA in 1998 as a public interest regulator, is recognized under applicable legislation in 8 provinces and operates in all provinces

and territories of Canada. Its operations are restricted to securities regulation and it has no trade association or industry representation functions.

The 2020 MFDA Wealth Management Footprint Report provides a detailed summary of the MFDA Member client profile in Canada. MFDA Members service 9.1 million households, representing 56% of Canada's households. Of these MFDA serviced households, 81% are mass market clients (with less than $100,000 in financial wealth) and they account for 26% of the financial wealth managed by MFDA Members. This can be contrasted with the broader Canadian investor population where there is a similar percentage of mass market households (79%), but they account for only 4% of Canada's financial wealth. The result of this is that mass market investors, who are typically middle- and working-class Canadians, are able to access a range of advice and services from MFDA Members that they could not otherwise access from any other category of advisory firm which typically have minimum account thresholds of $100,000 or more. It is important and in the public interest for this market segment, and the many others that exist in Canada, to continue to be served by appropriate distribution channels which are recognized by the securities regulatory framework that is ultimately adopted.
See: https://mfda.ca/wp-content/uploads/MFDAwealthfootprint2020.pdf

2. General Observations and Background of MFDA Comments

The MFDA has in the past several years conducted and published extensive research and policy analysis on the matter of the SRO regulatory framework in Canada, which is the subject of the CSA Consultation Paper. Most recently, in February 2020 the MFDA published its paper "A Proposal for a Modern SRO: A Special Report on Securities Industry Self-Regulation" (Modern SRO Report). The Modern SRO Report contains detailed discussion and policy analysis on the SRO experience in Canada and internationally, including a summary of benefits and concerns with SROs, regulatory best practice trends relevant to SRO reliance, optimal securities regulatory structure design principles and recommendations for the key elements of a new single SRO designed to meet Canada's future needs. As such, it is noted that many elements of the Modern SRO Report overlap with the comment requested by the CSA in its Consultation Paper.

While we have not repeated all of the contents of the Modern SRO Report, it should be noted that our comments in respect of the CSA Consultation Paper are supplemented and further explained by the analysis and commentary in the Modern SRO Report. It should also be noted that all of the issues raised by CSA are familiar to the MFDA and were taken into account and addressed in its proposal for the creation of a new SRO with the features and functions described in the Modern SRO Report. Moreover, and in the context of the CSA Consultation Paper, the MFDA's proposal for a new single SRO can be taken to address and satisfy the "targeted outcomes for consideration" described by the CSA with respect to each issue.

The CSA Consultation Paper, as it states, was informed by an informal stakeholder consultation process conducted by the CSA. Certain aspects of the CSA's SRO framework review and the informal consultation process are particularly relevant and deserve specific comment.

(i) CSA Decision to Rely on SRO Model

The questions and request for comment in the CSA Consultation Paper appear to assume the continued future reliance on the SRO model in Canada. The MFDA believes that is the correct conclusion as reflected in its Modern SRO Report, however, in its work MFDA first started with the fundamental question of whether it is in the public interest for securities regulation in Canada to use the SRO model at all. It is respectfully submitted that in order for a complete and effective review of the SRO structure in Canada to occur, there should be firm direction on that fundamental question by the members of the CSA and their respective governments - as the legislative and empowered policy makers on the subject. Other stakeholders, of course, will have their views but they should properly and fairly be based on the "official", as it were, policy decision.

(ii) The Ideal SRO Solution

In its informal stakeholder consultation, the CSA requested an answer as to "the ideal solution for the Canadian SRO regulatory framework" (Informal consultation question 8). In other words, after comment on the variety of specific issues and questions identified, the most important and pertinent question is: what should be done to the SRO framework? The MFDA's answer to that question is set out in the Modern SRO Report which recommends *the creation of a new single SRO with an enhanced governance and accountability framework for all registered firms in Canadian capital markets that deal in securities and provide advice to investors.* A similar proposal has been made by the Ontario Capital Markets Modernization Taskforce (the 'Ontario Taskforce') in its July 2020 Consultation Report.

(iii) Desire/Need for Change

A common theme identified in the CSA's informal consultation as being apparently held by all stakeholders was the following:

> "Industry groups and associations, as well as investor advocates *all* [emphasis added] expressed a desire for change to the current regulatory framework given changes that have occurred in the business environment, client needs and expectations, and registrant demographics."

The overwhelming consistency of this theme was not a surprise to the MFDA and has been one of the main catalysts of the MFDA's work on the SRO framework reflected in the Modern SRO Report. Of particular importance is the fact that this theme also reflects the views of Canadian investors - arguably the most important public interest constituency served by the Canadian securities regulatory framework. Evidence of this fact are the results of a comprehensive national poll (the 'National Poll') recently conducted on behalf of the MFDA by a prominent and independent survey firm and released to the CSA and public at large. The support by Canadian investors for changes to the SRO regulatory framework in many areas, particularly accountability and governance, was very high.
See: https://mfda.ca/wp-content/uploads/InvSRO_Report.pdf

(iv) CSA – Achieving National Regulator Benefits through SRO Design

The CSA members and all stakeholders in this consultation process recognize that there are other initiatives and reviews underway with respect to the future of Canadian securities regulation - one of the most significant in terms of potential impact being the development of the Co-operative Capital Markets Regulatory System. Whatever the outcome of that development, there is an important aspect of the proposals of the MFDA and the Ontario Taskforce that should be borne in mind. Under those proposals the direct role of the CSA in a strengthened SRO governance and accountability framework would result in CSA members achieving many of the benefits of a national regulatory model, while preserving individual provincial/territorial jurisdiction and authority. In addition, the new national SRO as proposed is compatible and consistent with any expected national statutory regulator and it would require little, if any, change whether or not such a statutory regulator is developed.

3. Benefits and Strengths of current SRO Framework

The MFDA agrees that there are important strengths and benefits to the SRO model and, in choosing that structure for its proposed new single regulatory authority, it identified the need to build on the strengths of the model as well as address its weaknesses. However and as outlined below, some of the strengths that have been identified in the informal CSA consultation and reflected in the CSA Consultation Paper appear to be constrained by the current two SRO framework in Canada and, in effect, understate the full potential of the SRO model.

Flexible to Accommodate a new CSA design. One of the most important strengths and benefits of the SRO model, which is not mentioned in the stakeholder comments or the CSA Consultation Paper, is that it is a flexible model capable of accommodating evolving market and industry needs. The structure, function, governance and oversight of SROs have changed dramatically in Canada and elsewhere in the world since they were first created. This flexibility is reflected in the statutory definition of SROs in most Canadian securities legislation which merely requires that the organization has a "regulatory purpose in respect of its operations and business conduct of its members and their representatives with a view to promoting the protection of investors and the public interest." Not only does this statutory recognition of flexibility allow establishment of a new single SRO without legislative change, it permits the introduction of new features to serve existing and future regulatory objectives. Objections to such a new model based on a static view of the form, membership, governance structure and functions of an SRO according to historical experience or current circumstances are simply unfounded and must not be allowed to impede public interest driven regulatory structure reform. As securities regulatory objectives evolve according to capital markets and financial services changes, so too should the form of the regulatory agencies responsible for them.

(i) National scope of SROs

There is little question that the national scope of the existing SROs has served Canada well and any new regulatory framework should be based on that national structure. Many of the benefits long identified for the challenging-to-achieve national securities regulator would be gained.

It is also important to observe that the stated benefit of uniformity of rules and standards inherent in a national SRO does not preclude the accommodation of differences based on justifiable

regional, industry and product considerations. SROs, in particular, have the proven flexibility to organize sub-groups of members and industry participants according to sector, regions and other criteria to focus on subjects where differences in approach may be in order. It is also critical to note that individual CSA members would retain oversight jurisdiction under applicable provincial legislation.

(ii) Specialized industry expertise of SROs

The MFDA agrees that a key strength of the SRO model is the opportunity to bring specialized expertise to industry regulation. However, as implicitly noted by stakeholders in the informal CSA consultation, there are also limitations to this feature that can be improved upon. First, the need to balance industry participation with independent/public board members recognizes that the "public" is a core stakeholder group in securities regulation. Second, the other core stakeholder group identified by both the MFDA and the Ontario Taskforce is the statutory regulators themselves and for that reason it is proposed that they be represented in the governance structure of a new SRO. This feature also serves the additional benefit of accommodating communication between industry participants and statutory oversight regulators facilitating the sharing of expertise – industry and regulatory. Third, it is important to note that CSA staff also have specialized industry and regulatory expertise with respect to their direct registrants and combining such expertise in a new national SRO as recommended in the proposals of MFDA and the Ontario Taskforce, results in a more complete and efficient regulatory staff complement.

(iii) Benefits of a two SRO framework

Fit for purpose regulation. The suggestion that the current two SRO structure in Canada is a benefit because it focuses on the different businesses of investment dealers and mutual fund dealers deserves comment. The classification of the two types of dealers for registration and regulation purposes (including their own SROs) no longer reflects the reality of Canadian financial and securities markets. Not only do the types of business and activities among members in each category differ widely, but the overlap of markets and products dealt with in each category make the dual SRO structure arbitrary and inflexible in meeting the needs of both capital markets and their participants. Developments in securities markets such as product convergence, digital distribution models, globalization and others render current registration categories under securities legislation, as well as the two SRO model, obsolete and inadequate in serving the public interest. The consolidation of regulatory expertise and all market participants in one organization is the only practical and effective way to protect the public while allowing capital markets to grow and innovate to the benefit of Canadians.

Investor access to two SRO protection funds. The two existing investor protection plans for customers of SRO members have served well within their respective limited mandates. It would be expected that such customer protection would continue in the future. Although the MFDA has not advanced specific proposals for protection plans, two observations may be made. First, it is generally acknowledged that the role and scope of protection offered by the existing plans is not well understood by the investing public. Part of the confusion arises from the existence of two plans (as well as similar protection structures in other financial sectors such as banking and insurance) and the kind and amount of risk technically covered. Second, it is hard to justify in an increasingly complex and converging financial/securities marketplace why customers of some

securities registrants benefit from coverage and customers of others do not. The existence of the two separate protection plans has a justifiable origin but their existence in their current forms going forward requires consideration. The MFDA and Taskforce proposals for a single SRO will require the matter to be assessed. There is no reason why a single plan could not be created which fairly underwrites the respective risk profiles of the relevant registrants covered.

(iv) Marketplace surveillance

One of the distinctive features of the SRO model which made it successful in its original form was the commonality of interest among members. Industry participants had a common interest in promoting their businesses which were similar and were prepared to cooperate in setting standards and sanctions for their activities for their mutual benefit. Member regulation of the business conduct and prudential state of registrants and market regulation or surveillance are distinct activities and do not reflect the basis for the commonality of interest among SRO members. Even among investment dealers who are members of IIROC, the number to which market rules apply or have relevance is relatively small. Under the MFDA's proposed SRO model which would include additional direct CSA registrants, the disparity would be even greater.

In addition, marketplace regulation is more aligned with broader financial/economic regulation and control of financial systemic risk which is more properly the responsibility of government agencies including regulators such as the CSA. Those bodies have the scope and authority to oversee and regulate such matters which often involve global activity beyond the jurisdiction of an SRO. This has been the general modern approach in countries around the world, with Canada and the United States being exceptions to that trend. Most recently, Australia reflected this trend with its transfer of the market surveillance function from the Australian Securities Exchange to the statutory regulator, the Australia Securities and Investments Commission, with the government expressly stating that it was more appropriate that such regulation be carried out directly by the statutory regulator.

4. Issues Raised by Stakeholders

CSA has requested comment on 7 issues, various stakeholder comments and the stated Targeted Outcome for Consideration associated with each issue.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

The MFDA agrees that the identified operating costs (compliance, IT, administrative and fees) to organizations with business units subject to multiple regulatory regimes would be expected to be higher than if they were part of a single regime. While some of such costs may be caused by the regulatory framework, it is also noted that for many organizations the costs are driven more by internal business structure choices. Such choices often reflect the different infrastructure requirements of the respective business units and are not a consequence of the regulatory structure. Nevertheless, apart from the costs to individual organizations driven by business reasons versus regulatory structure, the MFDA agrees that a regulatory framework which increases industry-wide cost inefficiency is not desirable as a public policy matter.

However, the CSA Consultation Paper's framing of the identified cost concerns in the narrow context of the two SRO circumstance in Canada significantly understates and mischaracterizes

the true nature and extent of the problem. The undeniable fact is that Canada has 15 securities regulators comprised of the CSA members and the two SROs. Many SRO members have direct CSA regulated affiliates. In other words, the concern is not just dual (two SRO) platform firms but rather, and more importantly, the fragmented and multiple regulatory structure itself. The obvious solution proposed by both the MFDA and the Ontario Taskforce is to reduce the number of regulators for dealer/advisor registrants engaging in similar activities to one.

Targeted Outcom*e: The MFDA single SRO proposal satisfies the Targeted Outcome for a regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.*

Issue 2: Product-Based Regulation

The MFDA agrees in general with the stakeholder comments with respect to the convergence of registration categories (reflecting advice and product convergence) as well as the opportunities for undesirable regulatory arbitrage. However at the outset, as noted above in Section 3(iii) in '*Fit for purpose regulation*', it should be recognized that the core problem is defined by the obsolete registration categories in applicable legislation and CSA requirements, not by the fact that there are multiple regulators including two SROs. At the same time, the fact that CSA registration categories require SRO membership for only two registrant categories, while other registrants engaging in similar activities are not subject to such a requirement, also contributes to the lack of harmonization, consistency and business structure inflexibility identified. From a broad securities regulation point of view with investor protection and business efficiency as objectives, the primary determination should be: what level of protection and regulatory standards are appropriate for the different products/services offered to investors, regardless of the registration category title? As the stakeholder comments in the CSA Consultation Paper illustrate, the current regulatory standards and framework are outdated.

To the extent that registrants in different registration categories engage in similar conduct in offering similar products and services to the public, it follows that the level of protection and regulatory standards should be similar. In this regard, the regulatory framework should reflect this objective and the optimal regulatory structure can be designed and implemented to ensure such protections and standards are available and effected on a consistent basis. Stakeholders (industry members, regulators and investors) have accepted and adapted in their businesses, operations and product choices to the momentous changes that are occurring in financial services and they should also be able to accept and adapt to the necessary changes to the regulatory structure.

It is acknowledged that the issues are complex and affect wide-ranging interests and will not be easy to deal with. This circumstance is illustrated in the stakeholder comments on the lack of harmonization and fairness in the current balkanized regulatory framework. Again, the obvious answer to addressing the concerns identified is the creation of a single regulatory forum using the SRO structure. With its flexible design features, an updated and modern SRO design reflecting industry evolution and regulatory and governance best practices can be adopted by the CSA to minimize the gaps in protection and efficiency and serve desired securities regulatory objectives. This is the basis of the MFDA's proposal for a new single, national SRO. With all registrants regulated by one frontline organization, governed by the core stakeholder interests (industry,

public and statutory regulators), the chances of improving and maintaining securities regulation in Canada are optimized.

The continuing statutory oversight authority by each CSA member in respect of the proposed new SRO is another important feature - both in its establishment and continuing operations. SROs are regulatory authorities subordinate by legislation to provincial/territorial regulatory oversight. As outlined in the MFDA's Modern SRO Report, the leadership role of the CSA members and their respective governments will be critical in the design and implementation of a new SRO regulatory structure and its oversight. This is as it should be with respect to a new SRO on the basis that, as noted above with respect the state of current regulation, the legislative regulatory framework and the statutory regulators determine the role of SROs, not the other way around.

Targeted Outcome: *Proceeding as proposed by the MFDA and the Ontario Taskforce with a single national SRO regulator will create a regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules…and much more*.

Issue 3: Regulatory Inefficiencies

Our comments with respect to Issue 2 above as well as Issue 4 below confirm the general view that the current regulatory framework including multiple CSA members and the two SROs contributes to regulatory inefficiencies. The duplicative costs and inefficiencies resulting from these multiple regulators would be minimized by the consolidation of regulatory functions in a single regulator. As observed by stakeholders in the informal CSA consultation, it is important to note that the costs are not only direct, unnecessary expenses of the regulators themselves, but include consequential costs to industry participants and investors (who ultimately bear a large portion of them.)

Not all costs or inefficiencies identified, however, are attributable to the regulatory framework. As an example, the stakeholder comments that there is inefficient investor access to certain products such as ETFs reflects the inherent systems investments required to distribute and service ETF products. There are no regulatory barriers to investors buying ETFs through mutual fund dealers. Industry participants make business and economic choices as to the investment they wish to make in their infrastructure relative to their expected markets, products and profitability.

Targeted Outcome: *The MFDA is of the view that a regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors would be the result of its proposed single national SRO.*

Issue 4: Structural Inflexibility

The MFDA agrees that a regulatory framework that contributes to the kinds of structural inflexibility identified by stakeholders is undesirable and not in the public interest. The issues raised are similar in cause and solution to those in our comments on Issue 2, Product-Based Regulation above. To the extent that the current regulatory framework accommodates different rules and requirements among multiple regulators - which impact the business choices, costs and services of participants - structural inefficiency will continue to exist. However, as noted above, the root problem is not caused by the simple fact of multiple regulators but rather by the fact that

the registration categories for industry participants - particularly dealers - require a choice to be made: direct CSA registrant or member of one of the two SROs.

While not entirely solving the root problem of registration categories, the elimination of multiple regulators in favour of a single organization would go a long way to permitting the development and/or application of rules and requirements that are, to the extent possible, fair to all, harmonized and applied on a consistent basis. It is also noted that the establishment of such a comprehensive national regulator in the form of an SRO is less complicated and disruptive compared to the magnitude of a CSA policy project addressing registration categories, which would require legislative changes in multiple jurisdictions.

What appears to be the general tenor of the issues identified is that the growth of diverse, quickly-evolving products and services, combined with more flexible and open investor choices as to access to such products and services, is not being served by the current regulatory structure. Those observations are valid but do not address what substantive regulatory structure changes should be made and how. The growing complexity of products, services and investor preferences suggests that new, coordinated, principled and comprehensive regulatory approaches will be required that can only be achieved through a consolidated regulatory framework (as reflected in the MFDA and Ontario Taskforce proposals) which is not limited to the two SROs, but also includes CSA members.

The inefficiencies identified by stakeholders in the informal CSA consultation also seem to be focused on the interests of individual industry members, rather than the broader economic and public interest objectives of Canada, which securities regulation serves through the maintenance of efficient capital markets and which requires that the interests of all stakeholders be considered in a fair and balanced manner. One example is the 270-day proficiency upgrade rule raised by some of the industry stakeholders. The arguments for and against eliminating the rule, as well as the broader public policy concerns raised, are well-known to the CSA and the CSA has recognized that one of the determinative public interest considerations with respect to this issue is the need to ensure continued access to financial products and services to mass market investors in Canada. In other words, in the context of balancing stakeholder interests, while elimination of the 270-day rule may benefit certain industry stakeholders, it may also have a concurrent negative impact on other industry stakeholders and investors, and the CSA must take these competing interests into account. In the view of the MFDA, the forum of a comprehensive national SRO regulator with direct CSA participation in governance would be best positioned to serve and balance these kinds of competing interests.

Targeted Outcome: *In sum, a flexible regulatory framework that accommodates innovation and adapts to change while protecting investors, and addressing the interests of all industry stakeholders in a fair and balanced manner, would be achieved by the creation of a consolidated national SRO regulator as proposed.*

Issue 5: Investor Confusion

The MFDA agrees that the sources of investor confusion cited by stakeholder comments are generally accurate, being: regulatory overlap, complaint resolution, investor protection fund coverage and multiple registration categories and titles.

The matters of regulatory overlap and multiple registration categories are common to Issues 2, 3 and 4 above, and our comments on investor protection fund coverage in Section 3(iii) above pertain in this context as well.

With respect to the complaint resolution process, the concerns raised regarding understanding and access are valid. In addition, however, the actual effectiveness of the processes has been and continues to be a source of frustration for investors. In this regard, it is noted that the Ontario Taskforce has proposed that OBSI, as a complaint resolution forum, be granted binding decision-making powers in the context of greater oversight by the CSA with appropriate avenues of appeal. The MFDA has endorsed those proposals and believes that they would alleviate some of the uncertainties and investor dissatisfaction with the current processes.

In order to address the general concern of investor confusion, investor expectations must be addressed. Investor expectations with respect to the role and effectiveness of the securities regulatory framework including the SROs has recently been confirmed in the National Poll of Canadian investors referred to above in Section 2(iii), and these expectations include as follows:

- **88%** of Canadians believe that it is time for CSA regulators to strengthen their oversight of the investment industry.
- **Over 80%** of Canadians support having representatives of CSA regulators on the board of a new single SRO and believe that it would (i) bolster public confidence; (ii) increase the level of trust in the oversight of a new SRO as compared to now; and (iii) help ensure that SRO board decisions are made in the public interest.
- **91%** of Canadian investors believe that regulation of similar services and products should be the same and investors should be entitled to the same protections regardless of the dealer category.

Targeted Outcome: *The MFDA is strongly of the view that creating a simpler and more effective regulatory regime through a single national SRO with direct CSA participation in governance will result in a regulatory framework that is easily understood by and meets the expectations of Canadian investors while also providing appropriate investor protection.*

Issue 6: Public Confidence in the Regulatory Framework

The matter of public confidence in the regulatory framework is, in the view of the MFDA, one of the most important considerations in an assessment of the current structure and, in particular, the role of SROs. To repeat, this view has been confirmed in clear terms by the results of the National Poll referred to in our comments on investor confusion in respect of Issue 5 above. On the issue of public confidence, Canadian investors felt as follows:

- **Less than half (48%)** trust the investment industry to make decisions that are in the public interest and not their own.
- **76%** think conflicts of interest among SRO board members happen frequently and are not declared or eliminated before making important decisions.
- **60%** believe the current regulation model of the investment industry is not working and think the government securities regulators need to be more directly involved.

These results demonstrate that the critical public confidence objective is not being satisfied by the current regulatory framework. It is not the case, as some stakeholders in the informal CSA consultation evidently commented, that there "is a risk that a loss of confidence can occur in the SRO's ability to meet its public interest mandate"…the fact is that it has already been lost or, at least, severely compromised according to a large majority of Canadians.

This conclusion should not be a surprise as the maintenance of public confidence in SROs to act in the public interest and manage conflicts of interest has been a critical consideration in the structuring - and elimination - of SROs in countries around the world. In the United Kingdom (which the CSA Consultation Paper refers to as a comparator jurisdiction), it is noted that a failure to serve the public interest was a primary reason for the elimination of SROs in securities regulation. In his testimony on the establishment of the Financial Services Authority in 1997 Gordon Brown, Chancellor of the Exchequer, stated: "The current system of self-regulation will be replaced by a new and fully statutory system, which will put the public interest first, and increase public confidence in the system." Similarly, the extensive academic and professional commentary listed in the resources compiled by the MFDA and referred to in the response in Section 5 below, highlights the critical relationship between the public interest mandate of securities regulators and the importance of ensuring public confidence in the regulatory model.

Historically, there have been many supportive and incremental changes to strengthen the public interest mandate and public confidence in the SRO model which have included changes to strengthen SRO governance with the amplification of the role played by both the public as well as government. Such changes have invariably been driven by conflicts concerns. The creation by the US Congress of the Public Company Accounting Oversight Board (PCAOB) after the Enron scandal is an illustrative example. When considering the appropriate governance model for the PCAOB, the US Congress expressly rejected the historical industry/public director SRO governance model as having proven 'unsatisfactory'. Instead, Congress adopted a model where all PCAOB directors, including the Chair, are selected by the Securities and Exchange Commission, as a 'more effective means of addressing conflicts of interest'. Similarly in Canada, representatives of the CSA sit on the six person Council of Governors of the Canadian Public Accountability Board (CPAB) which is responsible for appointing the members of the board of directors of CPAB.

Finally, the MFDA agrees with stakeholder comments that regulatory capture and SRO compliance concerns as noted in the CSA Consultation Paper are consequences of a less than robust recognition of the public interest mandate and the importance of ensuring public confidence in the structure and operations of the two Canadian SROs. We also agree that the suggested formal investor advocacy mechanisms and more robust CSA oversight of the SROs would improve adherence to their public interest mandates and increase public confidence. In this regard, we note that strengthening the role of CSA members in SRO oversight and direct participation in SRO governance are key recommendations of both the Ontario Taskforce and the MFDA.

Targeted Outcome: *The MFDA endorses the Targeted Outcome of a regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance process - all of which is achievable by a new single national SRO with the features proposed by the MFDA and the Ontario Taskforce.*

Issue 7: Separation of Market Surveillance from Statutory Regulators (CSA)

The views of the MFDA with respect to the relationship of the separate functions of market surveillance and business conduct/prudential regulation are noted in the CSA Consultation Paper and in our comments under Section 3(iv) above. They are also explained in more detail in the Modern SRO Report.

As a business conduct/prudential securities regulator, MFDA's primary concerns and observations are that (i) market and member regulation are different functions affecting different participants and do not efficiently fit together in the same SRO, and (ii) market regulation, with its systemic risk implications, is more appropriately the function of the government securities regulators.

If it is ultimately decided that an SRO rather than statutory regulators should conduct market surveillance, two options are available that would improve on the current regulatory structure, provided they include the strengthened governance and accountability framework recommended by the Ontario Taskforce. The first option would be for this function to be performed in a comprehensive single SRO model as recommended by the Ontario Taskforce. A second, simple and inexpensive solution in the context of the proposal for a new single 'member regulation' SRO, would be to leave market surveillance/regulation as the sole activity of IIROC whose members would be those relatively few registrants to whom such regulation is relevant. Both options, with the strengthened governance and accountability framework, would help achieve the key regulatory objectives for the CSA of increased market visibility, direct data access and ability to develop in house expertise in this critical area.

Targeted Outcome: *The MFDA endorses the Targeted Outcome of an integrated regulatory framework for markets and the management of systemic risk, with the features described in the CSA Consultation Paper, but believes such regulation is most appropriately conducted by CSA directly, or in another organization separate from the business conduct/prudential regulation of registrants. If it is decided to combine such function in a comprehensive SRO, a strengthened accountability and governance framework as recommended by the Ontario Taskforce would be critical to achieving this Targeted Outcome.*

5. Additional Information and Data

In response to CSA's request for additional documents, data and information that should be considered by CSA in its analysis of the issues and outcomes noted in the CSA Consultation Paper, MFDA refers CSA to the following:

MFDA Special Report on Securities Industry Self-Regulation – is a comprehensive review of the Canadian and International experience with SROs, including opinion and analysis by regulatory bodies, academic authorities and informed industry and public/investor stakeholders, with relevant reference authorities cited. These reference authorities, as well the regulatory policy analysis in the Report, are directly relevant to the issues being considered by the CSA. See: https://mfda.ca/wp-content/uploads/MFDA_SpecialReport-3.pdf

MFDA Wealth Management Footprint Report – provides current data as to the expansive wealth management footprint of MFDA members in Canada including client, advisor and member profile. See: https://mfda.ca/wp-content/uploads/MFDAwealthfootprint2020.pdf

MFDA Investor Research Survey – *'What Canadian investors want in a modern SRO'* – designed and conducted by MaruBlue, examines Canadian investors' expectations, priorities and hopes for the future SRO framework in Canada and highlights their desire for a model that emphasizes greater accountability, government oversight and investor protection.
See: https://mfda.ca/wp-content/uploads/InvSRO_Report.pdf

The foregoing is respectfully submitted by the MFDA in response to the request of the CSA in Consultation Paper 25-402. CSA Members are to be commended for the decision to review the current SRO regulatory framework in Canada. The MFDA would be pleased to contribute further in any way helpful to the work of the CSA on this important project.

Yours truly,

Mark T. Gordon
President and CEO

Sun Life

October 22, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
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Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Re: CSA Consultation Paper 25-402 Self-Regulatory Organization Framework

Sun Life Financial Investment Services (Canada) Inc. (SLFISI) is a registered mutual fund dealer in all provinces and territories in Canada and is a member of the Mutual Fund Dealers Association of Canada (MFDA). SLFISI is regulated by the Autorité des marchés financiers (AMF) in Quebec. As a mutual fund dealer, SLFISI offers a range of mutual fund products from investment fund managers in Canada.

We commend the CSA for reviewing the current self-regulatory organization (SRO) framework in response to the evolution of financial services and products. We provide our comments in our capacity as a mutual fund dealer.

While the multiple SRO framework has served the industry well to date, we support the evolution of the current SRO framework to a single SRO model over time in response to the evolving changes in financial services and products and to improve investor experience. We recommend that the following key elements be incorporated into the design of an improved regulatory body:

1. A framework that regulates across the continuum of products and type of advice rather than one structured and separated based on the product. This means that expectations on key principles should be the same across products such as know your client, suitability, etc.

2. A regulatory framework that maintains a single set of rules and registrant supervision to minimize inconsistent interpretations of rules amongst firms based on their platform.

3. The alignment and simplification of registration categories and requirements based on product complexity and risks and type of advice.

The consultation paper articulates the overall challenges of the current SRO framework. It is important that the CSA continue to gather additional insights on the operational and business model implications to MFDA-only firms to ensure that the future regulatory framework does not create additional regulatory burden or require significant infrastructure changes.

Trust in the regulatory framework is essential to maintain a safe and healthy financial services industry. We believe that the design of any regulatory model should focus on protecting investor interests by standardizing and simplifying processes and rules. Additional comments in response to the general CSA questions are included in Appendix A.

We appreciate the opportunity to provide our comments to the CSA. I would be pleased to provide further information or respond to any questions.

Sincerely,

Karen Woodman
President, Sun Life Financial Investments Services (Canada) Inc.

APPENDIX A: RESPONSE TO GENERAL CONSULTATION QUESTIONS

1. Are there other issues with the current regulatory framework that are important for consideration that have not been identified?

   Overall, the consultation paper captures the issues and challenges. As the industry evolves its regulatory framework, it is important to consider the implications to MFDA-only firms and their clients and that changes should not create additional regulatory burden or require unnecessary operational and infrastructure costs to MFDA-only firms. We encourage the CSA to continue stakeholder discussions on this aspect.

2. Are there any of the CSA targeted outcomes listed more important from your perspective than other outcomes?

   The principles of the proposed CSA targeted outcomes are important in a future regulatory framework. We recommend that the top three priorities be:

   - Accommodate innovation and adapt to change while protecting investors. Especially with the current COVID environment, the speed to develop new technology will be critical. Regulations should continue to be technology neutral so that they do not inhibit innovation or create additional unnecessary burden to provide new tools and services to clients.

   - Provide consistent access to similar products and services for registrants and investors. There is an opportunity to reduce client confusion and allow for a more seamless client experience for a client to deal with one firm and access different types of advice and products. To achieve this outcome, registration categories could be graduated based on type of advice (e.g. discretionary, non-discretionary) and product complexity (e.g. derivatives)

   - Minimize redundancies that do not provide corresponding regulatory value. Eliminate regulations that are duplicative or do not mitigate significantly any risk or add additional protection to the client. However, efforts may be better spent on a go-forward harmonization approach. Assuming there is an evolution to one set of rules, any harmonization should not create additional prescriptive requirements but rather consider whether regulations already exist setting out the core principles to be met (“spirit of the regulation”).

   While these are the top three priorities, we would want to understand the new regulatory framework and key changes required to get there. Prioritization of the changes would be critical to ensure that MFDA-only dealers and their clients are not disadvantaged from dual platform firms during the transition phase.

3. General comments on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed.

   We agree with the proposed CSA Targeted Outcomes and suggest the following change: “A regulatory framework that is easily understood by investors and provides appropriate investor protection” should be amended to reflect that a regulatory framework should result in consistent client outcomes based on the advisory relationship and risks and provides appropriate investor protection. For investors, understanding certain aspects of a regulatory framework are important e.g. member firms are subject to a governance structure that ensures investor protection and how to escalate issues. We should not expect investors understand the intricacies of the regulatory frameworks or have to follow different processes because there are multiple SROs e.g. who to file a complaint, reasons for different investor protection coverages. Clients who wish to inquire, report an issue or a file a formal complaint should be able to go through a single portal.

Le jeudi 22 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246 Tour de la Bourse Montréal (Québec)
H4Z 1G3

Par courriel : consultation-en-cours@lautorite.qc.ca

Objet : 25-402 - Consultation sur le cadre réglementaire des organismes d'autoréglementation

Je souhaite soumettre mon commentaire aux Autorités canadiennes en valeurs mobilières (ACVM) et à l'Autorité des marchés financiers.

Je suis un professionnel du secteur des valeurs mobilières et il m'apparaît que cette consultation a été lancée par et pour les grandes institutions bancaires canadiennes sans jamais tenir compte des milliers de professionnels qui conseillent le public.

Avec ce processus de consultation, il semble que les ACVM font le procès de l'autoréglementation dans son ensemble au Canada. Les OAR qui sont impliqués dans le processus sont basés en dehors de nos frontières et la question semble surtout toucher le reste du Canada (ROC)?

Mais, c'est en apparence, seulement!

Cette consultation nous affecte directement au Québec – mais tout cela s'est fait et se fait comme si on voulait tenir le Québec à l'écart de la discussion puisqu'on s'est arrangé pour que le sujet principal soit l'éventuelle fusion d'IIROC et du MFDA.

Faut-il rappeler de nouveau que le domaine des valeurs mobilières est un champ de compétences exclusivement provincial?

Les ACVM se servirait-il de cet exercice comme prétexte pour exclure du débat le Québec et pouvoir écarter d'emblée son expertise des 20 dernières années dans le domaine? Ont-elle l'intention d'ignorer l'opinion des quelque 30 000 intermédiaires en valeurs mobilières du Québec? Pourquoi le modèle d'encadrement des professionnels serait-il décidé dans le ROC par les seules grandes firmes de courtage qui ont pour la plupart leur siège social à Toronto?

Il y a par ailleurs lieu de s'interroger sur la façon de consulter des ACVM qui consiste à faire des pré-consultations avec une poignées d'intervenants. Ce sont ces mêmes dirigeants qui décident de l'orientation de la consultation et ont un à

priori largement favorable aux grands groupes financiers qui contrôlent déjà les destinées des OAR *canadian*.

Coïncidence ou non, ce sont souvent ces mêmes joueurs qui réclamaient le démantèlement du modèle d'encadrement québécois, les mêmes qui voulaient l'abolition des chambres lors du PL 141 et lors des deux précédentes tentatives en 2007 et 2010 ceux qui voulaient remplacer la CSF par le MFDA.

Il s'agit d'une façon plutôt dangereuse de procéder. Cela menace la saine concurrence, menace l'autonomie professionnelle des conseillers québécois et menace surtout la protection des consommateurs du Québec.

Comment ne pas croire alors que le débat n'est pas faussé d'avance et que la question des économies d'échelles supposées ou de la simplification du système canadien des OAR cache aussi une nouvelle attaque contre le modèle d'autoréglementation québécois?

Le Québec, ses consommateurs, ses professionnels, ses régulateurs ont beaucoup à perdre là-dedans. Au terme de l'exercice annoncé, l'OAR fusionné sera contrôlé à Toronto. Ensuite, après avoir obtenu des délégations de pouvoirs de toutes les autres provinces, le Règlement 31-103 lui permettra de facto d'occuper le rôle de régulateur national en valeurs mobilières.

Ainsi, sur le plan réglementaire, le Québec souffrira d'une perte d'influence énorme. Sans compter les problèmes de cohérence et d'application des règles qui en découleront pour les cabinets québécois et leurs conseillers inscrits dans les disciplines de valeurs mobilières. Il s'agit encore une fois d'un cas typique d'harmonisation du ROC pour désharmoniser le Québec.

Comme des milliers de mes collègues professionnels, je crois qu'il faut bloquer toute tentative unilatérale de bouleverser notre environnement professionnel et éviter par la même occasion une perte d'influence réglementaire substantielle pour le Québec, son OAR en épargne collective, son industrie financière et son public. Nous devons être consultés en premier, le Québec doit faire respecter sa juridiction en matière de valeurs mobilières et nous devons nous opposer à toute menace de nos compétences et de notre autonomie professionnelle.

Je vous remercie de prendre mon commentaire en considération. Et je ne m'attends à rien d'autre que la discussion se poursuive au Québec pour le bénéfice des consommateurs et des conseillers d'ici comme il se doit.

Signé : _____

RÉJEAN AYOTTE

Le jeudi 22 octobre 2020,

Me Philippe Lebel

Secrétaire de l'Autorité Autorité des marchés financiers

800, rue du Square-Victoria, 22e étage

C.P. 246 Tour de la Bourse Montréal (Québec)

H4Z 1G3

Par courriel : consultation-en-cours@lautorite.qc.ca

Objet : 25-402 - Consultation sur le cadre réglementaire des organismes d'autoréglementation

Je souhaite soumettre mon commentaire aux Autorités canadiennes en valeurs mobilières (ACVM) et à l'Autorité des marchés financiers.

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Avec ce processus de consultation, il semble que les ACVM font le procès de l'autoréglementation dans son ensemble au Canada. Les OAR qui sont impliqués dans le processus sont basés en dehors de nos frontières et la question semble surtout toucher le reste du Canada (ROC)?

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Les ACVM se servirait-il de cet exercice comme prétexte pour exclure du débat le Québec et pouvoir écarter d'emblée son expertise des 20 dernières années dans le domaine? Ont-elle l'intention d'ignorer l'opinion des quelque 40 000 intermédiaires en valeurs mobilières du Québec? Pourquoi le modèle d'encadrement des professionnels serait-il décidé dans le ROC par les seules grandes firmes de courtage qui ont pour la plupart leur siège social à Toronto?

Il y a par ailleurs lieu de s'interroger sur la façon de consulter des ACVM qui consiste à faire des pré-consultations avec une poignée d'intervenants. Ce sont ces mêmes dirigeants qui décident de l'orientation de la consultation et ont un à priori largement favorable aux grands groupes financiers qui contrôlent déjà les destinées des OAR canadian.

Coïncidence ou non, ce sont souvent ces mêmes joueurs qui réclamaient le démantèlement du modèle d'encadrement québécois, les mêmes qui voulaient l'abolition des chambres lors du PL 141 et lors des deux précédentes tentatives en 2007 et 2010 ceux qui voulaient remplacer la CSF par le MFDA.

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Le Québec, ses consommateurs, ses professionnels, ses régulateurs ont beaucoup à perdre là-dedans. Au terme de l'exercice annoncé, l'OAR fusionné sera contrôlé à Toronto. Ensuite, après avoir obtenu des délégations de pouvoirs de toutes les autres provinces, le Règlement 31-103 lui permettra de facto d'occuper le rôle de régulateur national en valeurs mobilières.

Ainsi, sur le plan réglementaire, le Québec souffrira d'une perte d'influence énorme. Sans compter les problèmes de cohérence et d'application des règles qui en découleront pour les cabinets québécois et leurs conseillers inscrits dans les disciplines de valeurs mobilières. Il s'agit encore une fois d'un cas typique d'harmonisation du ROC pour désharmoniser le Québec.

Comme des milliers de mes collègues professionnels, je crois qu'il faut bloquer toute tentative unilatérale de bouleverser notre environnement professionnel et éviter par la même occasion une perte d'influence réglementaire substantielle pour le Québec, son OAR en épargne collective, son industrie financière et son public. Nous devons être consultés en premier, le Québec doit faire respecter sa juridiction en matière de valeurs mobilières et nous devons nous opposer à toute menace de nos compétences et de notre autonomie professionnelle.

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Signé : _____

Daniel Bissonnette, prés. & Chef conformité

Groupe Planifax Inc.

Le jeudi 22 octobre 2020,

Me Philippe Lebel

Secrétaire de l'Autorité Autorité des marchés financiers

800, rue du Square-Victoria, 22e étage

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Signé : _Michel Fugère 113053

HORIZONS ETFs
by Mirae Asset

Steve Hawkins
President & CEO
Horizons ETFs Canada
Office: 416-601-2442
shawkins@horizonsetfs.com

BY ELECTRONIC MAIL: comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

October 22, 2020

VIA SEDAR

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Dear Sir/Madames:

Re: CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework

---

A. Introduction

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (the "**CSA**") on the Self-Regulatory Organization Framework.

Horizons ETFs Management (Canada) Inc. is an innovative financial services company and offers one of

the largest suites of exchange traded funds in Canada. Horizons ETFs Management (Canada) Inc. is the fourth largest ETF provider in Canada. Horizons manages approximately $14.9 billion of assets under management and has 93 ETFs listed on major Canadian stock exchanges. The Horizons ETFs product family includes a broadly diversified range of solutions for investors of all experience levels to meet their investment objectives in a variety of market conditions.

B. Comments

Introduction

The current multi-regulatory model has failed to keep pace with the technology-driven transformation of the financial services industry. We believe that the regulatory regime has not evolved to serve the existing environment, nor has the nimbleness to address future developments.

Horizons believes in a single robust Self-Regulatory Organization ("SRO") in Canada and as such we believe the current two-SRO framework should be replaced in the future by a single pan-Canadian SRO with a mandate to regulate at the very least both investment dealers and mutual fund dealers. In our opinion, this new SRO should be a consolidation and continuation of the existing IIROC and MFDA entities. We believe the "blank page" approach is not feasible and could result in greater uncertainty for investors and market participants that could, in turn, also lead to unnecessary delays in implementation. The pace of change has accelerated which can be evidenced by many financial developments such as the wide acceptance of ETFs, the rise of robo-advisors and how artificial intelligence is now used, to give just a few examples of how our financial markets have changed. We need governance and governance structures to catch up to this, not fall further behind. Canada's capital markets depend on investor trust and that requires a nimble and efficient regulatory regime. A single SRO would better reflect the changing industry and would make the process more accessible and manageable for firms.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

We are in agreement with the stakeholder comments described in the consultation paper. There is inherent inefficiency caused by the overlapping oversight. This inefficiency results in redundant staff to administer oversight. More importantly, we agree that ultimately these costs are born directly by investors since operating expenses are an input of product pricing. Regulatory value in our opinion would be best served by streamlining the SRO model as indicated in our introduction and in line with the other jurisdiction examples which have evolved to a single SRO such as the U.S. and the U.K.

Issue 2: Product-Based Regulation

We agree with stakeholder comments in the consultation paper. In speaking with clients, we have found that there are inconsistent investor experiences. In addition, different interpretations of the rules have been cited and unfortunately, this has created regulatory arbitrage opportunities. Not only should the experience for investors be consistent but there should also be a level playing field for registrants. For example, investment funds, constructed as ETFs, require a greater understanding of capital markets that would not be necessarily be the case for traditional mutual funds. This fact should not however limit investor choice of the type of investment fund simply based on the dealer registrant category.

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HORIZONS ETFs
by Mirae Asset

Issue 3: Regulatory Inefficiencies

We agree with stakeholder comments in the consultation paper. The framework currently does not provide consistent access to products for registrants and investors. It not unusual to get feedback from prospective investors who do not understand why ETFs are not being offered or are available to them. Mutual fund dealer representatives, due to back office constraints, have generally not offered ETFs to their clients. There is disappointingly a very limited number of MFDA firms that are currently offering ETFs and little expectation of this changing under the current regulatory regime. Whereas we believe close to 100% of all IIROC firms offer ETFs on their platforms of products. The rise of ETF adoption and assets is a global trend and needs to be recognized as an important evolution to the capital markets. We posit that the lack of penetration amongst MFDA firms is a direct result of the lack of encouragement and incentive to solve these operational and regulatory issues, as there are costs involved and vested interests related to the existing models.

As a result, it is our view that, the MFDA does not have the same level of expert knowledge regarding ETFs as does IIROC. The disruptive nature of ETFs in the financial services industry has also led to tension between the mutual fund and ETF industries as well as the dealers that distribute them. In our opinion, this has created the potential for conflict of interests where industry concerns, among others, can outweigh investor concerns and protections.

Issue 4: Structural Inflexibility

We agree with stakeholder comments and further state that the regulatory framework has led to the continuation of many existing business models for registrants with no adaptation for the significant changes we have seen to our capital markets and growing investor preferences. The end result is frustration and confusion for investors.

Issue 5: Investor Confusion.

We agree with stakeholder comments. In addition, registrants who are not able to provide access to certain types of products or services have no incentive to direct investors to another category of registrant. Rather, there is a real risk they could be incentivized to retain the business by offering other products and/or services that are not necessarily in the best interests of their clients.

Issue 6: Public Confidence in the Regulatory Framework

We agree with the **underlying principles** in the stakeholder responses. We feel there are many benefits to a single SRO approach, rather than government regulation, for a wide variety of reasons. For example, knowledge and expertise are necessary for governance which is effective, better understood and fully supported by industry participants. It has also been beneficial to have a consistent North American approach to SROs because of our close proximity and integration with American capital markets. Specifically, we have found IIROC to be quite proficient in relation to understanding the intricacies of ETFs and we belief this is a direct function of their inclusion of and cooperation with industry participants.

However, in our view, there may be room for improvement regarding the rules and procedures on the composition of the SRO's board of directors, committees and councils, cooling off periods and the definition of independent directors. Changes, such as these, could potentially increase investor confidence in an SRO regime and lead to a more efficient regulatory regime for registrants.

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HORIZONS ETFs
by Mirae Asset

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

In our view, the continuation of national market surveillance activities under the new SRO, which are currently within IIROC's mandate would not hinder the targeted outcome of an integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk. This position is based on our many years of experience working with IIROC and its participants under the existing regulatory regime.

Yours very truly,

HORIZONS ETFs MANAGEMENT (CANADA) INC.

Steve Hawkins
President & CEO

55 University Avenue, Suite 800 • Toronto, Ontario, M5J 2H7
Phone: 416.601.2500 • Fax: 416.601.2501

Montréal, le 22 octobre 2020

À l'attention de:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o:

The Secretary
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Objet: Consultation des ACVM 25-402 – Consultation sur le cadre réglementaire des organismes d'autoréglementation - Lettre de commentaires du Conseil de section du Québec

Madame, Monsieur,

Le conseil de section du Québec de l'Organisme canadien de réglementation du commerce des valeurs mobilières (l'« OCRCVM ») accueille favorablement la présente *Consultation des ACVM 25-402 – Consultation sur le cadre réglementaire des organismes d'autoréglementation* (la « Consultation »). D'emblée, veuillez noter que la réponse du Conseil de section du Québec à la Consultation est émise dans le cadre de notre rôle de comité consultatif et est indépendante de l'opinion de l'OCRCVM.

Le Conseil de section du Québec désire témoigner publiquement du rôle qu'il joue dans le cadre du modèle de l'autoréglementation afin d'aider à la réflexion. Nous n'entrerons donc pas dans le débat public du format éventuel que pourra prendre l'autoréglementation dans l'avenir.

Rôles du Conseil de section

Les 10 conseils de section et le comité consultatif national de l'OCRCVM jouent un rôle clé en veillant à ce que l'application des règles et les décisions quant aux règles soient prises : 1) dans le but de protéger les investisseurs; 2) de manière efficace, et 3) en tenant compte des considérations régionales.

Ces deux paliers de comités donnent à l'OCRCVM une vue globale des enjeux et besoins des investisseurs, ce qui permet à l'OCRCVM d'avoir une réglementation nationale adaptée aux besoins et aux particularités d'une région sans pour autant dénaturer l'essence de ses règles.

Les membres de chaque conseil de section sont élus par les membres actifs de chaque province et ils représentent, dans la mesure du possible, tous les types de modèles d'affaires des firmes de courtage ainsi qu'une balance entre membres du secteur des affaires et de la conformité. Ils apportent aussi un éclairage sur les aspects opérationnels collaborant ainsi à une mise en œuvre plus fluide de la réglementation.

Chaque conseil de section agit en tant que comité régional, dont le mandat comprend :

1- Un rôle réglementaire relativement aux demandes d'adhésion de nouvelle firme ainsi qu'aux demandes d'inscription des individus; et
2- Un rôle de consultation en ce qui a trait aux enjeux régionaux et à la présentation du point de vue régional sur les enjeux nationaux.

De plus, chaque membre d'un conseil de section a le devoir d'agir avec intégrité et indépendance afin de représenter l'industrie de sa région et d'assurer la protection des investisseurs.

Rôle réglementaire

Dans le cadre de son rôle réglementaire, le conseil de section joue un rôle important quant à l'accession à la profession et l'entrée de nouveaux membres. Pour les demandes d'adhésion de nouvelles firmes ainsi que pour les demandes d'inscription, le conseil de section travaille étroitement avec l'OCRCVM. En examinant ces demandes, l'objectif du conseil est de s'assurer que le personnel de l'OCRCVM a procédé à un examen approfondi des demandes et a évalué la compétence et l'intégrité des personnes clés du membre potentiel. L'OCRCVM compte sur les membres du conseil de section du milieu du courtage local qui connaissent les exigences que doivent avoir les candidats et qui apportent souvent un éclairage important au moment de l'étude des demandes. Cet apport assure la protection des investisseurs et maintien la réputation de notre industrie.

Un rôle comparable est exercé par le conseil de section où les firmes ont leur siège social. Les demandes visant des changements importants (plus de 10 %) dans la structure de propriété existante d'un membre font l'objet d'une approbation par le conseil de section. Encore une fois l'expertise de terrain est très utile dans l'évaluation de ces demandes.

De plus, le conseil de section apporte une contribution majeure en ciblant et recommandant des personnes afin qu'elles puissent siéger sur les formations d'instruction. Ces formations d'instruction jouent un rôle essentiel dans la mise en application des règles, la protection des clients et la réputation de notre profession. Encore une fois, étant des joueurs de l'industrie locale, les membres du conseil sont bien placés pour commenter les candidatures.

Un tableau décrivant plus en détail les diverses responsabilités du conseil de section dans son rôle réglementaire est joint en annexe.

Rôle de consultation

Les conseils de section et le comité consultatif national jouent un rôle essentiel en veillant à ce que les décisions en matière d'établissement des règles et de modification des politiques soient prises en fonction des considérations régionales. Par conséquent, les conseils de section ont en partie pour mandat de soulever des questions d'intérêt régional et de fournir un point de vue régional sur les initiatives nationales.

En ce qui concerne les politiques, ils remplissent ce rôle en ce qui concerne : 1) l'examen des projets de règles de l'OAR définis et élaborés par le personnel responsable des politiques; 2) la détermination de suggestions d'établissement de règles d'intérêt régional précis; 3) la détermination de préoccupations régionales lorsque des commentaires relatifs aux projets de politiques externes sont transmis au personnel responsable des politiques.

Afin de faire part de ses préoccupations ou recommandations, le conseil de section peut rencontrer le personnel de l'OCRCVM de leur région ou demander à rencontrer les membres de la haute direction de l'OCRCVM (par exemple le Conseil de section du Québec prend soin de rencontrer Andrew J. Kriegler une fois par an). Il peut aussi faire part de ses préoccupations ou suggestions au comité consultatif national qui pourra, au besoin, soumettre ces commentaires au conseil d'administration de l'OCRCVM.

Le Conseil de section du Québec est particulièrement actif dans ce rôle d'apporter des suggestions à l'OCRCVM sur le cadre réglementaire actuel pour qu'il soit efficace et qu'il reflète les besoins des investisseurs tout en ayant en priorité la protection de ceux-ci. Dans le cadre des priorités qu'il s'est fixées, le Conseil de section du Québec a, au cours des dernières années, travaillé activement à proposer à l'OCRCVM des façons de moderniser cette réglementation. En effet, le Conseil de section du Québec a alimenté la réflexion sur l'importance de la mise en place de certaines politiques règlementaires (ex. les personnes en situation de vulnérabilité, l'utilisation de la signature électronique, etc.)

À titre d'exemple, le Conseil de section est présentement en discussion avec l'OCRCVM quant à l'opportunité d'analyser le client dans son entièreté. La réglementation a besoin d'être modernisée afin de refléter comment le client transige, construit son portefeuille et protège ses actifs. À cet effet, le Conseil de section a spécifiquement rencontré Mme Irene Winel, Première vice-présidente à la réglementation des membres et aux stratégies pour discuter de ses préoccupations, idées de modernisation réglementaire et aussi pour mettre en lumière l'évolution des demandes de leurs clients.

De plus, le conseil de section peut demander de rencontrer des personnes clés au sein des Autorités canadiennes en valeurs mobilières afin de pouvoir les éclairer sur les pratiques de l'industrie et les besoins des investisseurs. D'ailleurs le Conseil de section du Québec a, à quelques reprises, rencontré divers représentants de l'Autorité des marchés financiers sur les projets visant la protection des aînés, l'abolition des commissions de suivi et sur la réforme axée sur le client.

Aussi, plusieurs sous-comités des conseils de section jouent un rôle important de support dans l'analyse de certains changements et dans la soumission de recommandation. Un exemple est le sous-comité sur les dérivés du Conseil de section du Québec. Ce sous-comité a activement participé aux discussions, tant en amont qu'en aval, sur le Projet de modernisation des règles relatives aux dérivés qui a été publié pour commentaires le 21 novembre 2019.

Conclusion

Avec ce qui précède, nous reconnaissons les bénéfices et l'importance de l'autoréglementation. Il serait important que la future structure des OAR prévoie un forum pour que les membres de l'industrie, qui ont une connaissance de terrain, des enjeux et des besoins des investisseurs, soient consultés par l'organisme qui sera responsable des firmes actuellement membres de l'OCRCVM.

En effet, non seulement la communication constante entre les membres de l'industrie locale sur les différents enjeux et besoins permet de rendre le cadre règlementaire optimal, mais, surtout, assure la protection des investisseurs.

Finalement, nous croyons important que le nouveau cadre réglementaire prévoie une flexibilité dans les catégories d'inscription afin de permettre l'innovation et divers modèles d'affaires pour mieux répondre aux besoins actuels et futurs des clients.

Veuillez agréer, Madame, Monsieur, mes salutations distinguées.

Julie Gallagher
Présidente, Conseil de section du Québec

Niveaux d'autorisation du Service de la mise en application concernant les audiences et les comités

Élément	Règle de référence	Description des règles	Autorisation par le personnel de l'OCRCVM*	Autorisation par le conseil de section	Autorisation par le Conseil
DÉSIGNATIONS AU COMITÉ D'INSTRUCTION					
1.	8304	*Pouvoir de désignation du conseil de section* – Le conseil de section doit désigner des personnes physiques comme membres représentant le secteur du comité d'instruction de sa section.	Non	Oui (pour la désignation)	Oui (pour la désignation par l'intermédiaire du comité de gouvernance)

Niveaux d'autorisation des questions liées à la conformité des finances des sociétés qui relèvent de l'OCRCVM en matière de vérification

Élément	Règle de référence	Description des règles	Autorisation par le personnel de l'OCRCVM*	Autorisation par le conseil de section	Autorisation par le Conseil
ADHÉSION					
1.	Article 3.5 du Règlement général n^{o} 1 et Règle	Nouveau statut de membre	Oui	Oui	Oui
2.	5.1	Emprunts effectués par le membre ou une société de portefeuille pour une durée supérieure à 12 mois.	Oui	s.o.	s.o.
PROPRIÉTÉ DES TITRES					
3.	5.2	Émission par le membre ou la société de portefeuille d'un titre représentatif d'un prêt subordonné, d'un titre restrictif ou d'un titre à participation limitée.	Oui	Oui	s.o.
4.	5.3	Changement de la propriété juridique ou véritable à l'émission ou au transfert des actions en circulation d'un membre ou d'une société de portefeuille (< 10 %).	Oui	s.o.	s.o.

5.	5.4	Changement de propriété touchant une participation importante sous forme d'actions (10 % ou plus des titres comportant droit de vote du membre ou d'une société de portefeuille du membre; 10 % ou plus des titres participants en circulation du membre ou d'une société de portefeuille; participation de 10 % ou plus dans le capital-actions total du membre).	Oui	Oui	s.o.
6.	5.5	Propriété directe ou indirecte des titres d'un autre membre détenue par le membre ou une société de portefeuille	Oui	Oui	s.o.
7.	5.6	Dispense relative à la propriété des titres d'une société membre détenus par un investisseur du secteur autre que le courtier membre à l'égard duquel il est autorisé	Oui	s.o.	Oui
8.	5.7	Participation du public à la propriété des titres du membre ou de sa société de portefeuille.	Oui	Oui	s.o.
9.	5.8	Dispense de l'exigence selon laquelle un membre qui est une société ouverte doit mettre en place un comité de vérification.	Oui	Oui	s.o.
10.	6.1	Une société de portefeuille peut être la société de portefeuille de plusieurs membres si elle possède tous les titres comportant droit de vote et tous les titres participants de chacun d'entre eux.	Oui	Oui	s.o.
SOCIÉTÉS DE PORTEFEUILLE et SOCIÉTÉS RELIÉES					
11.	6.3	Participation d'un associé, administrateur, dirigeant, investisseur ou employé dans une société reliée ou une société ayant des liens avec lui.	Oui	Oui	s.o.
12.	6.5	Un membre peut avoir une filiale en propriété exclusive dont l'activité principale est celle de courtier ou de conseiller en valeurs mobilières.	Oui	Oui	s.o.
13.	6.6	Dispense de l'exigence relative aux cautionnements réciproques entre des sociétés membres reliées.	Oui	s.o.	Oui

14.	6.7	Placement par la société membre dans une société qui exerce des activités autres que des activités liées au commerce des valeurs mobilières.	Oui	Oui	s.o.
DÉMISSIONS et FUSIONS					
15.	8.2	La démission d'un membre, sous réserve du dépôt des documents financiers audités appropriés.	Oui	s.o.	s.o.
16.	8.3	La démission d'un membre lorsqu'un autre membre acquiert la totalité ou une partie de ses opérations et que le membre restant accepte la responsabilité de la totalité des dettes non réglées du membre démissionnaire.	Oui	s.o.	Oui
17.	8.3A	Deux ou plusieurs membres fusionnent pour devenir un membre unique, et le membre prorogé accepte la responsabilité de la totalité des dettes non réglées des membres qui fusionnent.	Oui	s.o.	Oui
18.	8.3AA	Un membre et un non-membre fusionnent et présentent les renseignements financiers appropriés.	Oui	s.o.	s.o.
INFORMATION FINANCIÈRE					
19.	16.1	Liste annuelle des membres autorisés du groupe d'auditeurs et ajout ou suppression de membres en tout temps.	Oui	Oui	s.o.
CAPITAL MINIMUM					
20.	17.12	Changement du nom ou de la structure d'entreprise, dissolution, liquidation ou aliénation de la quasi-totalité de l'actif.	Oui	Oui	s.o.

21.	17.15	Dispense générale, pour une société membre, des dispositions des règles ou règlements si la dispense ne porte pas préjudice aux intérêts des membres, de leurs clients ou du public.	Recommandation	s.o.	Oui
STATUT DE MEMBRE INACTIF					
21.	31.1	Membre souhaitant passer temporairement à la catégorie des courtiers membres inactifs.	Oui	s.o.	Oui

Niveaux d'autorisation des questions liées à l'inscription des sociétés qui relèvent de l'OCRCVM en matière de vérification

Élément	Règle de référence	Description des règles	Autorisation par le personnel de l'OCRCVM	Autorisation par le conseil de section[1]	Autorisation par le Conseil
AUTORISATIONS (PERSONNES ET SOCIÉTÉS)					
1.	9204	Approuver une demande d'autorisation d'une personne physique.	Oui	Non	Non
2.	9204	Approuver une demande d'autorisation d'une personne physique sous réserve des modalités et des conditions jugées indiquées.	Non	Oui	Non
3.	9209(6) et 9304(3)	Il est interdit à un membre du conseil de section qui a participé à une décision initiale de siéger comme membre de la formation d'instruction ou de la formation du conseil de section saisie de la révision de cette décision.	Non	Oui	Non
4.	9205	Le conseil de section doit recommander au conseil d'administration d'approuver ou de refuser une demande d'adhésion en qualité de membre à titre de courtier membre, ou d'approuver la demande en l'assujettissant aux conditions qu'il juge indiquées.	Oui	Oui	Oui
DISPENSES					
5.	9206 et Règle 35	Dispense de l'obligation de passer ou de repasser un examen concernant les compétences prescrites. En Ontario, cela comprend également la dispense de la Règle 31-502 de la Loi sur les valeurs mobilières, qui peut être accordée par l'OCRCVM. Dispense des obligations liées aux accords entre remisiers et courtiers chargés de comptes prévues à la Règle 35.	Non	Oui	Non

6.	9206	Dispense ou prorogation de la dispense des exigences concernant la formation continue.	Non	Oui	Non
REFUS					
7.	9204	Refus d'une demande d'autorisation d'une personne physique si le demandeur n'a pas les aptitudes requises en matière d'intégrité, de solvabilité, de formation ou d'expérience, s'il ne satisfait pas à une exigence de l'OCRCVM, s'il risque de ne pas se conformer aux exigences de l'OCRCVM, s'il ne satisfait pas à la législation en valeurs mobilières connexe ou si l'autorisation n'est pas par ailleurs dans l'intérêt public.	Non	Oui	Non
8.	9205	Recommandation du refus d'une demande d'adhésion en qualité de membre à titre de courtier membre si le demandeur ne satisfait pas à une ou à plusieurs exigences de l'OCRCVM, si une ou plusieurs exigences de l'OCRCVM ne sont pas respectées par le demandeur, si le demandeur n'a pas les compétences requises en matière d'intégrité, de solvabilité ou d'expérience ou si l'autorisation n'est pas par ailleurs dans l'intérêt public.	Non	Oui	Oui
CONDITIONS DU MAINTIEN DE L'AUTORISATION D'UNE PERSONNE					
9.	9207	Imposer des conditions au maintien de l'autorisation d'une personne autorisée pour assurer le maintien de la conformité avec les exigences de l'OCRCVM.	Non	Oui	Non
SUSPENSION ET RADIATION					
10.	9207	Révoquer ou suspendre l'autorisation d'une personne autorisée si la personne autorisée n'a pas les aptitudes requises en matière d'intégrité, de solvabilité, de formation ou d'expérience, si elle a omis de se conformer aux exigences de l'OCRCVM ou si l'autorisation n'est pas par ailleurs dans l'intérêt public.	Non	Oui	Non

Niveaux d'autorisation des questions liées à la conformité de la conduite des affaires des sociétés qui relèvent de l'OCRCVM en matière de vérification

Élément	Règle de référence	Description des règles	Autorisation par le personnel de l'OCRCVM*	Autorisation par le conseil de section	Autorisation par le Conseil
ADHÉSION					
1.	Article 3.5 du Règlement général n^{o} 1 et Règle	Nouveau statut de membre	Oui	Oui	Oui
2.	5.1	Emprunts effectués par le membre ou la société de portefeuille pour une durée supérieure à 12 mois.	Oui	s.o.	s.o.
DÉMISSIONS et FUSIONS					
3.	8.2	La démission d'un membre, sous réserve du dépôt des documents financiers audités appropriés.	Oui	s.o.	s.o.
4.	8.3	La démission d'un membre lorsqu'un autre membre acquiert la totalité ou une partie de ses opérations et que le membre restant accepte la responsabilité de la totalité des dettes non réglées du membre démissionnaire.	Oui	s.o.	Oui
5.	8.3A	Deux ou plusieurs membres fusionnent pour devenir un membre unique, et le membre prorogé accepte la responsabilité de la totalité des dettes non réglées des membres qui fusionnent.	Oui	s.o.	Oui
6.	8.3AA	Un membre et un non-membre fusionnent et présentent les renseignements financiers appropriés.	Oui	s.o.	s.o.

PARADIGM
CAPITAL

To:
Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Via:
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October 22, 2020

Re: CSA Consultation on the Self-Regulatory Organization Framework

We thank the Canadian Securities Administrators (CSA) for the opportunity to provide this comment on the review of the regulatory framework for the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). It is both an overdue and a timely review, one that can contribute significantly to the modernization of the Canadian capital markets.

Paradigm Capital is an employee-owned, independent investment dealer. We develop and maintain long term relationships equally between a community of diverse and growing companies and a broad range of institutional investors deploying capital to those types of growing companies. We operate at the nexus of capital connection and understand very well that within the present construct of the Canadian capital markets many small and mid-sized businesses are suffering diminished access to lifeblood capital and less access to experienced and objective advice from like-minded advisers. We applaud the efforts of the CSA to accelerate

constructive changes to the Canadian capital markets to assist in setting the stage for a healthy, positive ecosystem to support growing Canadian companies for decades to come.

We note that the Ontario Capital Markets Modernization Taskforce (OCMMT) is looking into issues which have some overlap to this CSA review. Paradigm Capital has participated in the OCMMT process. As an independent IIROC firm, we are well situated to respond to both processes.

We agree with many of the targeted outcomes in the CSA proposal, particularly the focus on improving results for investors/clients that choose to participate in our capital markets system. We also applaud the dual goals of improving efficiency and transparency.

We support self-regulation, as supervised by the CSA. While the Canadian ecosystem needs to be updated to further attract issuers, talent and innovation into Canada, the self-regulatory model is appropriate for Canada. It allows for the efficient administration of the capital markets, which in turn increases investor confidence and robust capital formation.

We believe that SRO consolidation is an important step in improving the fragmented Canadian regulatory framework. In order to facilitate effective capital formation in the Canadian markets, regulation must be made more efficient, the level of regulatory oversight made more proportionate and duplicative regulatory burden removed. We support the proposal made by IIROC (“Improving Self-Regulation for Canadians”) to remove unnecessary duplication/overlap in regulation. Although some constructive measures have been initiated in recent years by several regulatory bodies, this is a critical time for capital markets regulation in Canada. Given the global pandemic and its incumbent stresses on Canadians and Canadian companies, practical solutions to remove unnecessary overlap are needed now perhaps more than ever.

Paradigm Capital fully supports a critical conclusion of the aforementioned Ontario Capital Markets Modernization Taskforce: a vibrant economy needs vibrant capital markets, driven by innovation, competition and diversity. There is an understanding at IIROC that investment dealers operate a wide variety of business models and serve a wide variety of capital markets participants. IIROC has identified that the model of taking a broad brush to regulation, a one-size fits all approach, is not only antiquated but is harmful to its membership and by extension to the diversity of clients accessing the services of investment dealers across the country.

IIROC has commenced a project to examine how to ensure that its member firms answer only to the rules and accompanying regulatory obligations that were designed to manage the risks generated by the business activities of those firms. This is a healthy, changemaking approach to reduce the burden of regulation on stakeholders that could be well applied to a consolidated-SRO.

A collaborative, inclusive consultation process designed to find the right balance of capital markets efficiencies and robust investor protection will be critical for any consolidated SRO to prioritize. We support the phased approach in the IIROC proposal and emphasize the need to

listen to issuers and investors and to find renewed support of the variety of business models serving those issuers/investors across the country. The awareness achieved through that consultation can then be applied in the context of promoting the health and prosperity of Canadian market participants in an increasingly competitive Canadian global marketplace.

Like the issuer clients and sophisticated investors we partner with, Paradigm Capital does not believe there are any insurmountable challenges within the Canadian capital markets. We are firm in the conviction that Canadians will continue to be very good at starting companies that are innovative, growth-oriented and eager to make a positive domestic and international impact. Sensible, efficient and effective regulation will support this necessary growth. The CSA consultation on the SRO framework is a terrific example of exactly the type of constructive, changemaking initiative which validates our belief in the future.

Thank you again for the opportunity to provide this comment.

Sincerely,

Paradigm Capital Inc.

IIROC OCRCVM
Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

IIROC Response to the Canadian Securities Administrators Consultation on the Self-Regulatory Organization Framework

October 22, 2020

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Glossary

Access to Advice	*Access to Advice Survey*, (The Strategic Counsel and IIROC, January 2020)
AMF	Autorité des marchés financiers
CIPF	Canadian Investor Protection Fund
CSA	Canadian Securities Administrators
CSF	Chambre de la sécurité financière
Deloitte Assessment	*Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation* (Deloitte LLP, July 2020)
ETFs	Exchange-traded funds
Evolution of Advice	*Enabling the Evolution in Advice in Canada* (IIROC and Accenture, March 2019)
FINRA	Financial Industry Regulatory Authority, Inc.
IDA	Investment Dealers Association of Canada
IIROC	Investment Industry Regulatory Organization of Canada
IIROC Upgrade Rule	IIROC Dealer Member Rule 18.7 requires individuals qualified to conduct mutual funds business only to complete additional proficiency and training requirements within 270 days and 18 months, respectively, from the date they are initially approved by IIROC
IIROC's Proposal	*Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada* (IIROC, June 2020)
MFDA	Mutual Fund Dealers Association of Canada
OEO	Order-execution-only
OBSI	Ombudsman for Banking Services and Investments
RS	Market Regulation Services Inc.
SRO	Self-regulatory organization
Tracking Survey	*Investor Awareness Tracking Survey* (The Strategic Counsel and IIROC, May 2020)

Introduction

The Investment Industry Regulatory Organization of Canada (**IIROC**) applauds the Canadian Securities Administrators (**CSA**) for their leadership in exploring ways to improve the self-regulatory model in Canada. The CSA's review of the regulatory framework governing IIROC and the Mutual Fund Dealers Association of Canada (**MFDA**) presents an immediate opportunity to evolve the self-regulatory model and increase the value it brings to Canadians for years to come.

Supervised self-regulation is an effective part of the existing securities regulatory framework. IIROC is committed to build on what has been working well and to continue to work collaboratively with all stakeholders to implement practical and cost-effective changes to support investor protection, innovation and market integrity.

As a pan-Canadian self-regulator, we owe a duty to each provincial and territorial government and to their respective securities authorities to evolve the system for the benefit of all Canadians.

IIROC supports the importance of a range of different business models by size, geography and specialization to fulfil the needs of all investors. Careful analysis is required with any proposed changes to avoid unintended consequences generally and particularly for firms which are smaller, regional or have specialized business models that provide access to advice and choice to investors of all types and means across the country.

Our response to this consultation builds upon our June 9, 2020 Publication: *Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada* (**IIROC's Proposal**) as well as:

- IIROC's joint report with Accenture: *Enabling the Evolution of Advice in Canada* (**Evolution of Advice**)
- Deloitte's *Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation* (**Deloitte Assessment**), and
- Investor research, including our *Access to Advice* Survey (**Access to Advice**) and our 2020 Investor Awareness Tracking Survey (**Tracking Survey**) which was a follow up to the 2017 Benchmark Research to gauge awareness and knowledge of Canadians about regulation and the impact on investor confidence.

Our recommendations on how to best move forward are also found below, in the section *Achieving Target Outcomes*.

We would like to thank the CSA, the people and organizations we regulate, and the many other industry stakeholders and investor organizations who engaged with us as we developed our proposal and our response to this consultation. It is only by working together that we can enhance the delivery of our mandate of investor protection and market integrity, and ultimately, better outcomes for Canadians.

General Consultation Questions

Question A

The CSA is seeking general comments from the public on the issues and targeted outcomes identified, as well as any other benefits and strengths not listed in section 4 that should be considered. In addition, please identify if there is any other supporting or quantitative information that could be used to evidence each issue and/or quantify the impact of the issues noted in the Consultation Paper.

Response

We agree with the stakeholder comments about the strengths and benefits of self-regulation.

Self-regulatory organizations (**SROs**) across sectors are widely recognized for their specialized and operational industry expertise[1] and are funded by member fees.

The enhanced knowledge and expertise of self-regulators results in better and more nimble rulemaking that provides effective protection for Canadian investors and integrity to our markets.[2] IIROC's knowledge and understanding of its dealer members' businesses from opening a client account through to trading and settlement coupled with its oversight of Canadian debt and equity markets, has led to a more holistic and deeper understanding of the drivers of the investment business, its issues and risks.

As an SRO, IIROC delivers "fit for purpose" regulation through our risk-based and proportionate approach. This approach gives investment firms of different sizes and business models operating in various regions and both urban and rural communities, flexibility in how they meet the underlying principles of our rules.

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1 "One (but not the only) justification for the delegation of regulatory authority to self-regulatory organizations (SROs) is that financial market participants that make up SROs are in a better position than a government regulator to understand market developments and to identify and resolve potential problems." Pan, Eric J., *Structural Reform of Financial Regulation in Canada: A Research Study Prepared for the Expert Panel on Securities Regulation* (2009), page 7.

2 IIROC is an affiliate member of The International Organization of Securities Commissions (IOSCO) which is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. IIROC is also an associate member of IOSCO's Committee on Regulation of Secondary Markets and Committee on Regulation of Market Intermediaries.

IOSCO's *Methodology For Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation* (2017) on page 53 (Principle 9) recognizes the value of self-regulatory organizations that are subject to oversight by a government authority. "Self-Regulatory Organizations (SROs) can be a valuable complement to the regulator in achieving the objectives of securities regulation. There can be substantial benefits from self-regulation: SROs may require the observance of ethical and business conduct standards which go beyond government regulations; SROs may have broader ability to compel the production of information than government regulators; SROs may offer considerable depth and expertise regarding market operations and practices, and may be able to respond more quickly and flexibly than the government authority to changing market conditions."

Securities regulation in a market the size of Canada's does not require more than one SRO. The current system includes the MFDA which focuses on regulating one product, mutual funds, while IIROC currently regulates a wide range of retail and institutional business models and products, including mutual funds. Approximately two-thirds of mutual funds sold in Canada are currently sold through the IIROC channel.[3] This regulatory fragmentation and duplication can act to limit the access that some investors have to products appropriate for their circumstances and life stages.

IIROC is recognized by each of Canada's 13 securities authorities and delegated authority to protect Canadian investors and the integrity of Canada's capital markets. Our pan-Canadian mandate is an especially important component in delivering consistent investor protection to investors from coast to coast. It supports rule consistency across the country, a more consistent framework for new entrants and innovators, and generates confidence for stakeholders and market participants.

Provinces and territories benefit from the economies of scale of a pan-Canadian SRO. The operational efficiencies generated through an SRO consolidation would further enhance the value to the provinces and territories, incumbents and new entrants and the Canadians we all serve.

In 2008, IIROC was created when part of the Investment Dealers Association of Canada (**IDA**) and Market Regulation Services Inc. (**RS**) came together to form a pan-Canadian self-regulatory organization overseeing all investment dealers and their trading activity in Canada's debt and equity markets.

The experience and insight gained in bringing together those two distinct and more complex organizations informs the IIROC Proposal and the Achieving Target Outcomes section below. The proposed consolidation of IIROC and the MFDA would be much simpler from a legal, operational and cultural perspective and could be concluded quickly with minimal disruption and cost.

This supervised self-regulatory model has enabled stronger policy development, oversight and accommodation of new ideas and innovations for the benefit of investors and in the public interest. In particular, the value and effectiveness of market surveillance have been enhanced by being connected to other IIROC functions and oversight. The existing SRO model at IIROC drives important coordination across departments. The access and ability to aggregate both dealer and market data enables IIROC to simultaneously consider market and client-facing activities by firms in the context of their business operations, resulting in stronger investor protection, market integrity and transparency. Our holistic view into the operations of the firms we regulate makes IIROC a better regulator and better able to respond to new issues and innovation in the industry.

[3] IFIC Monthly Investment Fund Statistics, July 2020; MFDA Membership Statistics

Another benefit of the existing SRO model is its similarity with the regulatory system in the US whose capital markets are closely intertwined with ours. This compatibility supports:

- information sharing and best practices[4]
- cross-border coordination and collaboration where required, on both existing and emerging industry issues, investigations, etc.
- access efficiencies for Canadian and US capital markets[5]

Given the significant and well-established value that self-regulation provides to the North American securities regulatory framework, our collective focus should be on how to simplify and enhance the model to benefit Canadians and the Canadian economy.

Question B

Are there other issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues, including supporting information if possible.

Response

We believe the following are important issues for consideration:

Scope

We are limiting our responses to the scope of this consultation - the SRO framework as it relates specifically to IIROC and the MFDA, and as the framework exists today. It is still important, however, to consider this consultation, the issues and the targeted outcomes in the context of the Canadian regulatory ecosystem,[6] as a whole, to avoid unintended consequences to investors, the markets or the system.

Two important issues out of scope but providing relevant context are the uniqueness of Québec and the operation of the Montreal Exchange as an SRO for listed futures and options.

Québec

Québec's regulatory framework differs in several ways from other Canadian jurisdictions. While IIROC is recognized in Québec, the MFDA has never been recognized as a self-regulatory body

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4 IIROC and the Financial Industry Regulatory Authority (**FINRA**) executed a Memorandum of Understanding in 2009, a formal cooperation agreement to enhance the effectiveness of both organizations through the exchange of information and other cross-border assistance.

5 There are 182 equities that are dual-listed on both U.S. and Canadian stock exchanges, representing a market capitalization of $2 trillion, and 64% of the total market capitalization as of September 30, 2020. This information was provided by the TMX, based on TMX data/issuers.

6 "The regulation of financial services in Canada is fragmented, uneven, overlapping and complex. Both the federal and provincial governments share jurisdiction for regulating financial services. As such, various regulators and government agencies are responsible for overseeing the regulation of different aspects of the industry, including investor protection and securities law, consumer protection, anti-money laundering, privacy and data security, and payment processing." Regulation of Fintech in Canada, Dentons (2017)

by the Autorité des marchés financiers (**AMF**). Instead, the AMF and the Chambre de la sécurité financière (**CSF**) share the responsibilities of regulating, monitoring and inspecting the firms and registrants who carry out activities exclusively in mutual funds in Québec.

The consultation does not include the CSF and the Québec framework. In the event of a consolidation of IIROC and the MFDA, the mutual fund firms which are authorized by the AMF with activities outside Québec would remain under the shared jurisdiction of the CSF and the AMF for their activities in Québec. Their activities outside Québec would be under the jurisdiction of the new single SRO.

Decisions about Québec are the responsibility of the Québec authorities and outside the scope of this consultation. IIROC looks forward to continuing its very productive relationship with the Québec securities regulators.

Derivatives SRO

Globally, many investment dealers manage their fixed income sales and trading businesses alongside or in close proximity with futures. In addition, in Canada and around the world, equity sales and trading businesses are often managed with options, often by employees registered to do both. From a supervisory and compliance perspective, these business lines and asset classes are also often grouped together as the compliance and risk issues can arise across asset classes. In Canada, however, there is a third SRO responsible for listed derivatives, the Regulatory Division of the Montreal Exchange. This separation of the derivatives SRO in Canada is outside of the scope of our response.

Support for a variety of business models

In IIROC's Proposal, we support the importance of a range of different business models by size, geography and specialization serving clients of all sizes and means across the country in rural and urban communities. In support of investor protection, we will collectively need to avert taking steps that could leave any group of investors unserved, or unprofitable to serve. Careful analysis will be required to avoid unintended consequences which might impact smaller, regional and specialized business models. This should include ensuring a framework which supports ongoing innovation and new entrants and the provision of a wider selection of products and services for investors. Based on our experience, we strongly support a focus on the importance of small and independent dealers who provide access and choice to investors across the country regardless of where they live or the amount of their investments.

In addition to investment dealers (both bank-owned and independents), there is also an industry of service providers—"FinTech" and contractors—that are supported by and dependent on the industry for growth and prosperity.

Risk-based approach to proportionate regulation

A key aspect of IIROC's support for all business models and a critical component of IIROC's Proposal is to continue its risk-based approach to regulation. In moving forward from the current framework of rigid registration categories, IIROC already applies and supports the proportionate and appropriate application of rules based on the risk of the activity to investors

and market integrity. This philosophy is at the heart of the IIROC Proposal and our response to this consultation.

Question C

Are any of the CSA targeted outcomes listed more important from your perspective than other outcomes? Please explain.

Response

As all of the targeted outcomes have a direct or indirect impact on investors, and are all interconnected, all should be pursued and achieved to result in the best overall outcomes for Canadians.

Question D

With respect to Appendix F, are there other documents or quantitative information/data that the CSA should consider in evaluating the issues in light of the targeted outcomes noted in this Consultation Paper? If so, please refer to such documents.

Response

As a data-driven, evidence-based regulator we continuously conduct research and analysis to support our regulatory approach to ensure that we are taking into account how the industry is evolving in order to better serve Canadians. Throughout our response, we cite a number of studies/assessments:

References cited in our response:

- *Access to Advice*, The Strategic Counsel and IIROC (2020)
- *Advisor Succession Planning: Managing the retirement of Baby Boomer advisors*, Accenture (2015)
- *A Major Transition*, Investment Executive (2018)
- *Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation*, Deloitte (2020)
- *A Survey of Canadian Investors' Views on Alternative Disciplinary Proposals*, The Strategic Counsel and IIROC, (2018)
- *Awareness and Attitudes Related to Provisions to Protect Vulnerable Investors and Investment Firms/Advisors*, The Strategic Counsel and IIROC (2019)
- *Enabling the Evolution of Advice in Canada*, Accenture and IIROC (2019)
- *Financial Professionals Title Protection Rule and Guidance*, Financial Services Regulatory Authority of Ontario (2020)
- *Fintech at the Crossroads: Regulating the Revolution*, McMillan (2016)

- *Global Wealth Research Report, How do you build value when clients want more than wealth?*, EY (2019)
- *IFIC Monthly Fund Investment Statistics*, Investment Funds Institute of Canada (2020)
- *IIROC Compliance Report: Helping Firms With Compliance*, IIROC, (2019)
- *IIROC, FINRA Announce Cooperation Agreement*, IIROC and FINRA (2009)
- *IIROC Policy Priorities – Update Report*, IIROC (2020)
- *IIROC Priorities for 2021*, IIROC (2020)
- *IIROC submission to the Ontario Capital Markets Modernization Taskforce*, IIROC (2020)
- *IIROC to form expert investor issues panel for valuable input on consumer issues*, IIROC (2020)
- *Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada*, IIROC (2020)
- *Investor Awareness Tracking Survey*, The Strategic Counsel and IIROC (2020)
- *Investor Preferences Undergo Lasting Transformation from Covid-19 Pandemic*, Broadridge (2020)
- *Making Regulation a Competitive Advantage*, Deloitte (2019)
- *MFDA Membership Statistics*, Mutual Fund Dealers Association of Canada (2020)
- *Ontario Capital Markets Modernization Taskforce Report*, (2020)
- OSC Bulletin, various volumes and issues, Ontario Securities Commission (2007, 2018 and 2020)
- *Methodology For Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*, International Organization of Securities Commissions (2017)
- *Qualitative Research with Complainants,* Navigator Ltd. and IIROC (2020)
- *Reducing Regulatory Burden in Ontario's Capital Markets*, Ontario Securities Commission (2019)
- *Regulation of Fintech in Canada*, Dentons (2017)
- *Ripe for Reform: Modernizing the Regulation of Financial Advice*, C.D. Howe Institute (2019)
- *Structural Reform of Financial Regulation in Canada: A Research Study Prepared for the Expert Panel on Securities Regulation*, Eric J. Pan (2009)
- *Wealth Management - After the Storm*, Morgan Stanley & Oliver Wyman (2020)
- *What kind of modernization does the Securities Act really need?*, The Globe and Mail (2020)

Other sources for consideration are included below:

- *A 360 Review of Issues and Concerns Related to the Canadian Investment Marketplace: A Consultation Among MFDA and Dual-Platform Dealers*, Navigator Ltd. (2020)
- *BC Capital Market Report - 2019*, British Columbia Securities Commission (2019)
- *Canadian Mutual Fund & Exchange-Traded Fund Investor Survey*, Investment Funds Institute of Canada and Pollara Strategic Insights (2020)
- *Global Wealth 2020: The Future of Wealth Management—A CEO Agenda*, Boston Consulting Group (2020)
- *Global Regulatory Outlook 2020: The Regulatory Landscape Evolves*, Duff & Phelps (2020)
- *IIROC Annual Report 2019/2020*, IIROC (2020)
- *IIROC Enforcement Statistics*, IIROC (2020)
- *Industry Self-Regulation: Role and Use In Supporting Customer Interests*, Organisation for Economic Co-operation and Development, OECD (2015)
- *On the cusp of change: North American wealth management in 2030*, McKinsey & Company (2020)
- *Qualitative Research Among MFDA Advisors*, Navigator Ltd. (2020)
- *Self-Regulation In The Securities Markets*, CFA Institute (2013)
- *The Alberta Capital Market*, Alberta Securities Commission (2020)
- *Top Trends in Wealth Management: 2020*, Capgemini (2019)
- *Two-thirds of Canadian Investors are Interested in Starting or Building their Portfolio of Responsible Investment*, Ipsos (2020)
- *Wealth Management and Advice in the Time of Coronavirus*, Deloitte (2020)

Issues Identified by the CSA

Achieving Target Outcomes

The growth and stability of the investment industry is important to Canada. The industry is responsible for assisting Canadians in navigating their financial future and is an employer of a significant number of Canadians. The continued evolution and success of the investment industry contributes to the stability of our broader financial sector and the Canadian economy.

Each of the seven issues identified by the CSA includes a question regarding the best way to achieve the targeted outcome. Based on our continuing engagement with a wide range of stakeholders and as set out in the IIROC Proposal, the way forward towards achieving the seven sets of targeted outcomes must:

- Be a positive experience for investors, regardless of where they live, how many assets they have or their level of investing sophistication as measured by additional investor protection and an improved investor experience which will result in higher investor confidence in the system
- Have a positive impact on dealers' and representatives' ability to serve Canadians, regardless of size or business model
- Foster a competitive industry to ensure there are investment opportunities and value propositions for existing and evolving Canadian investor needs
- Reduce duplicative regulatory burden and complexity, to increase transparency and efficiency for the ultimate benefit of investors
- Demonstrate operational improvements quickly and in prioritized stages, to create an updated and more nimble SRO model that is well-placed and ready for the future.

Self-regulation delivers unique value to stakeholders, and although the current framework may not be perfect today, there is much that is working well in protecting investors and market integrity in support of Canada's capital markets. Tearing everything down and starting over, as some have suggested, would be inefficient, costly, and unduly disruptive for investors as well as industry and market participants, especially now, during challenging economic times.

Consolidating IIROC and the MFDA at the earliest opportunity will be beneficial for all market participants and for governments. With minimal short-term effort by governments and/or the CSA, the efficiency and effectiveness of securities regulation can be improved in this country at a time when government resources are stretched and focused on economic renewal. IIROC's Proposal recognizes the valuable organizational and individual expertise of IIROC and the MFDA, and builds on what is already working to achieve practical results in an efficient time

frame resulting in a platform that is nimble and responsive for the future.[7]

As set out in the IIROC Proposal, the most effective way to achieve the CSA's targeted outcomes is to bring together IIROC and the MFDA into a consolidated SRO as an important first step. This would:

- Reduce investor confusion and support investors' ability to make more informed decisions[8]
- Enable easier access to a wider range of services and products for many Canadians, including lower cost options such as exchange-traded funds (**ETFs**)[9]
- Remove duplicative regulation and complexity that could allow the industry to reinvest up to $490 million[10] into client service and innovation over the next 10 years, without compromising investor protection
- Support greater innovation in Canada as it would make it easier for "FinTech" players to develop new technology for the largest possible market of dealers, as they could focus on one SRO regulatory platform. This in turn would make innovation more readily accessible for independent and smaller dealers[11]
- Provide firms and advisors more flexibility to transition and grow and plan for succession in the midst of a demographic shift in the advisor workforce with a larger number of baby boomer advisors approaching retirement[12]
- Contribute to the recovery and growth of the Canadian economy.

Taking a phased approach has received support from Ontario's Taskforce for Capital Markets Modernization.[13]

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7 "A merging of SROs would create a more finely tailored, fit-for-purpose oversight regime. Such an initiative would remove operational complexity and costs for dealers; streamline and bring greater efficiency to the regulatory oversight process; and give advisers the flexibility to grow and expand to respond to their clients' financial service needs as they move through their life-stages. This would help dealers and advisers deliver a more affordable, responsive and coordinated service to their investor clients and reduce the overall regulatory burden on the industry." *Ripe for Reform: Modernizing the Regulation of Financial Advice*, C.D. Howe Institute (2019), page 1

8 For example, the 2020 Tracking Survey found that while knowledge of the regulatory system in Canada is limited, investors acknowledge the importance of understanding regulators, with almost three quarters of Canadians polled indicating some degree of interest in learning more about the regulation of the investment industry.

9 "Growing demand for various products, particularly ETFs, and interest in fee-based and portfolio-management business models may be motivating MFDA-licensed advisors to take another look at IIROC, says Dan Hallett, vice president and principal with HighView Financial Group in Oakville, Ont." *A Major Transition*, Investment Executive, (2018)

10 Deloitte Assessment

11 "The new entrants may respond that regulatory compliance is costly and that too much regulation imposes unreasonable barriers to entry that protect vested interests and oligopolies and stifle competition and innovation." *Fintech at the Crossroads: Regulating the Revolution*, McMillan, (2016), p 2.

12 *Advisor Succession Planning: Managing the retirement of Baby Boomer advisors*, Accenture, 2015

13 Ontario Capital Markets Modernization Taskforce Report (2020)

The employees of IIROC and the MFDA have the knowledge and expertise to enhance supervised self-regulation in Canada, and IIROC is well-positioned to contribute its experience from bringing together the IDA and RS. As well, the similarity of the corporate legal structures of IIROC and the MFDA, along with the product overlap should result in a consolidation that is much simpler to execute.

Taking a phased approach beginning with a fairly seamless consolidation would contribute to the stability of the overall regulatory framework and investor confidence while providing continuity in regulation for market participants. We have seen firsthand the challenges and disruption presented by the pandemic – a phased approach will help minimize further disruption and provide needed stability.

As part of Phase 1, we would seek to:

- Initially:
    - operate separate mutual fund and investment dealer regulatory divisions
    - ensure that the same rules that apply to firms today would continue to apply, with the exception of:
        - repealing the IIROC rule which requires individuals qualified to conduct mutual funds business only to complete additional proficiency and training requirements within 270 days and 18 months, respectively, from the date they are initially approved by IIROC (**IIROC Upgrade Rule**)[14]
        - eliminating the current prohibitions on IIROC and MFDA firms entering into introducing / carrying arrangements (a type of back-office sharing arrangement) with each other[15]
    - bring together enforcement resources to ensure a consistent approach
- Over time, move to a single set of rules and consistent application that is risk-based, proportionate, and accommodates a range of business models.

Evolving Canada's self-regulatory framework in phases allows us collectively to improve the Canadian regulatory framework through the immediate and over time removal of unnecessary and overlapping regulation and deliver value to stakeholders. Taking measured steps, we can continue to evolve as we integrate – leveraging the strengths of both organizations to create a modernized SRO – all while reducing investor confusion and enhancing investor protection. From that streamlined and stronger platform, the new SRO would continue to support the CSA in further improvements to the framework during the recovery from the pandemic.

As part of a Phase 2, and/or subsequent phases, we support and look forward to working with the CSA and other stakeholders to review other registration categories for incorporation into the mandate of the new SRO, if the CSA deems it is appropriate.

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[14] Requires CSA approval.

[15] Ibid.

To the extent that all firms and individuals who are offering similar products and services to Canadians are under the purview of the same regulator, regulatory arbitrage will be reduced, and investors will have consistent and better levels of protection.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Targeted Outcome: A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.

Question 1.1: *What is your view on the issue of duplicative operating costs, and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the questions above, please consider and respond to the following, as applicable:

a) *Describe whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients.*
b) *Describe instances whereby those duplicative costs are necessary and warranted.*
c) *How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?*

Response

We agree with stakeholder comments regarding duplicative operating costs. The IIROC Upgrade Rule essentially prohibits an investment dealer from employing mutual fund-only licensed individuals on the IIROC platform. As a result, dual-platform dealers servicing similar segments of the investing public have to create separate regulated entities and incur duplicative operating costs that are ultimately borne by investors. For example, the Deloitte Assessment estimated the net present value of operating cost savings that could be achieved by dual-platform firms over a 10-year time period to be between $380 million and $490 million. Operating costs/potential savings include systems and technology, staffing, corporate, and other costs.

The Deloitte Assessment also highlighted the potential for reduced regulatory fragmentation and burden, access to more holistic and flexible investment advice for investors, and enhanced opportunities for new firm entry and innovation under a single SRO framework. Given how SRO membership and investor protection fund fees are assessed, further analysis would be necessary to determine the impact of an SRO consolidation on fees. The target outcome guiding this analysis would be that like activity, regardless of the SRO division in which they are housed, will attract like fees. In other words, just as there should be no rule arbitrage between the divisions, there should be no fee arbitrage either.

Fragmentation and duplication extend beyond the SRO framework. While mutual fund dealers operating in most provinces in Canada are regulated by the MFDA, in Québec mutual fund dealers are regulated by the AMF with registrants required to be members of the CSF for continuing education, ethics and enforcement matters.

As discussed in our response to Issue 4, evolving investor needs are translating into demand for lower-cost investments as well as more sophisticated solutions, putting further pressure on firms to optimize operational costs.

As discussed in the Deloitte Assessment, the current SRO framework has been a barrier to investment in innovation and technology. For dual-platform firms in particular, the current SRO framework creates regulatory obstacles that:

- limit the cost savings from firms looking to centralize back-office functions which could be invested in technology and other innovations to deliver better solutions and service offerings to investors
- add unnecessary obstacles and confuse investors when transitioning from the MFDA platform to the IIROC platform within the same firm brand.

Question 1.2: *Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

We support the CSA's targeted outcome. The existing Canadian regulatory framework uses both provincial/territorial government agency and supervised SRO regulation to protect investors, strengthen market integrity and maintain efficient and competitive capital markets. Consolidation of two SROs would be an important first step in achieving the targeted outcome, reducing unnecessary duplication and process, and improving the investor experience.

As part of Phase 1, we would recommend eliminating the IIROC Upgrade Rule.

With minimal cost and disruption, a new, consolidated SRO would create a streamlined platform and enable innovation and investment during a profound period of economic uncertainty. The CSA could build on this evolution of the SRO model over time and as appropriate.

Issue 2: Product-Based Regulation

Targeted Outcome: A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.

Question 2.1: *What is your view on the issue of product-based regulation, and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) *Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories?*
b) *Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services?*
c) *What role should the types of products distributed and a representative's proficiency have in setting registration categories?*
d) *How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?*

Response

We agree with many of the stakeholder comments that a more streamlined regulatory framework will create efficiencies in regulatory oversight and enable more proportionate and consistent application of regulation.

Regulatory arbitrage opportunities will continue to exist wherever more than one regulator has oversight over the same or similar products and services. To eliminate this issue, the ultimate solution will need to involve IIROC, the MFDA, the provincial and territorial securities regulatory authorities and the two existing investor protection funds.

Given the complexities of the current structure, consolidation of two SROs would be an important first step in achieving the targeted outcome, significantly reducing opportunities for regulatory arbitrage. We agree with the views expressed by certain stakeholders that any regulatory structural change should occur on a staged basis.

We also agree with the observations made by certain stakeholders that a lack of common oversight standards have resulted in multiple compliance teams and different interpretations of similar rules. Even when the same rules are adopted by different regulators, their application, interpretation and enforcement may differ. This situation can create inconsistency and unfairness in outcome, potential regulatory arbitrage and can reduce investor confidence in the system.

Some stakeholders noted that IIROC's rules are more principles-based while the MFDA tends to be more prescriptive. Determining whether to utilize a principles-based approach or a prescriptive approach is an important policy consideration. However, choosing one approach over the other does not automatically result in regulatory arbitrage. Instead the source of regulatory arbitrage is the different application of rules.

<u>Offering products and services across multiple registration categories</u>

There is a view that multiple firm registration categories recognize more unique business models than would otherwise be recognized within one category, enabling greater access to products and services (including advice) by clients from small communities or with smaller amounts to invest.

However, it is unclear whether this greater access objective is being achieved given that under the existing multiple categories approach:

- investment dealers are effectively prohibited from making mutual fund-only account service offerings available to clients on a cost-efficient basis[16]
- clients are unaware of the regulatory arbitrage-related differences between each firm category[17]
- clients are confused[18] as to which:
    - products and services they can access within each firm category[19]
    - firm category offers the products and services that are most appropriate for their needs.

To mitigate regulatory arbitrage and facilitate greater client access to products and services, it is important to give the regulator the flexibility to accommodate innovative business models while maintaining core rule consistency for all business models across all regulators. To that end, IIROC has demonstrated that a flexible / proportionate regulatory approach is feasible (e.g. order-execution-only (**OEO**), robo-advisor, traditional advisory and managed account service offerings etc.) and, as part of a consolidation with the MFDA, we would pursue this approach further.

Individual registrant access to different firm registration categories

We agree that individuals should have access to different registration categories. This should include mutual fund-only licensed individuals being allowed to work for an investment dealer and indefinitely provide mutual fund-only account services to their clients (as is the case today at a mutual fund dealer).[20, 21]

Overall role of products and services and individual proficiency in determining firm registration categories

Firm registration categories have traditionally been introduced to accommodate unique business models not specifically addressed under the existing categories. This approach, while

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16 See related cost discussion in response to Question 1.1 and related advisor proficiency and education requirements discussion in response to Question 3.1.

17 A regulatory arbitrage example is the current difference in proficiency requirements for individuals selling only mutual funds as discussed later on in this response in the section entitled *"Individual registrant access to different firm registration categories."*

18 See related investor confusion discussion in response to Question 5.1.

19 A list of products, services and other activities currently provided/conducted through each category of firm registration is included in IIROC's Proposal on p 36.

20 Similarly, an individual who meets the proficiency requirements to be registered as an "Exempt market dealer – dealing representative" [section 3.9 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*], should be allowed to carry out the same activities within an investment dealer as they are permitted to perform within an exempt market dealer, without having to meet additional proficiency requirements.

21 See related advisor proficiency and education requirements discussion in response to Question 3.1.

initially effective, has resulted in uneven regulatory standards and individual proficiency requirements, including some instances of unevenness when the same product or service is being made available through firms in different registration categories.

The increasing use of technology within the financial services industry has resulted in significant growth of new products and services that firms wish to offer to clients. This includes products based on new asset classes (i.e. crypto assets) and digital / automated services that rely less on a registered individual's interaction with the client (i.e. robo and hybrid advice).[22]

We cannot continue to address new business models, products and services through the introduction of additional firm registration categories – there are simply too many new developments. As well, further fragmentation of the regulatory requirements would only worsen the existing regulatory arbitrage concern and contribute to investor confusion. It is also not optimal to continue to address new developments through "ad hoc" exemptions, unless core rule compliance and consistency and appropriateness of the exemptive relief granted is verified in each case.

As previously discussed, one viable option would be to give the regulator the flexibility to accommodate innovative business models while maintaining core rule consistency for all business models across all regulators. Another would be to reconsider the need for so many different categories of firm registration, particularly where it is determined that a flexible / proportionate regulation approach is effective in accommodating existing and new business models and satisfying consumer product and service demands. Further to the IIROC Proposal, the consolidated SRO could be enabled to move to a single registration category with appropriate and proportionate rule application depending upon the business model and risk of the dealer.

Contribution of current regulatory framework to regulatory arbitrage

As noted above, by having different rules, administered by different regulators, for similar products, and differing proficiency standards for representatives on different platforms, firms may be tempted to opt for the least costly, least burdensome platform. This may result in a situation where certain investors with more complex needs have an account only at a firm with limited product and service offerings without being aware of other options offered to them.

Support for this gap in awareness of investors is found in the 2020 Tracking Survey. One of the key findings of the study was that seven in ten investors indicate a general awareness that the investment industry is regulated (70%), however 41% agree that they don't really understand how the industry is regulated. In particular, the study found that, investors are largely unaware of the limitation of advisors to recommend or sell products other than those in which they are regulated.

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[22] According to EY's 2019 Global Wealth Research Report, *How do you build value when clients want more than wealth?* on page 9, "The percentage of clients expecting to use FinTech solutions will increase from 38% today to 45% in the next three years. Expected FinTech use over the next three years is expected to increase with each client wealth segment, with 35% growth expected among mass affluent clients (28% today to 38% expecting to use) and 41% growth among HNW clients (29% today to 41% expecting to use)."

The issue with investors not understanding limitations in product offerings, imposed by the regulatory structure, is compounded by a general lack of understanding of the breadth of products and services available. Another study, Access to Advice, found that 65% of "aspiring investors" do not know the financial products and services that are available to them. The same study found that 90% of current investors say it is important that the level of financial advice and service they receive is flexible to meet changes in their needs and circumstances.

These findings suggest that the current fragmented regulatory structure may be impairing the ability of investors to access and receive advice for the full range of products and services available in the market,[23] especially as their needs change and become more complex.

Question 2.2: *Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

We agree with the targeted outcome of a framework that minimizes opportunities for regulatory arbitrage, provided that investor access/choice and investor protection is not compromised.

Consolidation of IIROC and the MFDA would:

- be an important first step in achieving the targeted outcome, minimizing opportunities for regulatory arbitrage
- facilitate a consistent approach to policy, compliance and enforcement.

Under the IIROC Proposal, the IIROC and MFDA rules would be harmonized over time. Moving to a more flexible and proportionate regulatory approach while maintaining consistent core requirements that apply to all products and services will be important elements of this harmonization work.

As part of a Phase 2, and/or subsequent phases, we look forward to working with the CSA and other stakeholders to review other registration categories, for incorporation into the mandate of the new SRO, if the CSA feels it is appropriate.

In today's complex capital markets there are numerous products, such as mutual funds, ETFs and segregated funds, that are similar to, or can function as substitutes for, other products; therefore, it is crucial to have consistent regulatory oversight over all such products. This will still allow smaller firms to provide customized services and limited product offerings to certain market segments in a cost-effective manner. Having common regulatory oversight of rules applicable to all products[24] will minimize opportunities for regulatory arbitrage. As IIROC's

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[23] To respond to investor needs and the limitations of a one-product platform the MFDA implemented rule amendments to facilitate the offering of ETFs on the MFDA platform and last year proposed amendments to MFDA Rule 2.3.1(b) to allow for the provision of limited discretionary trading services to investors.

[24] IIROC currently has oversight over all product-related activities of its Dealer Members, with the exception of trading on Canadian derivative and foreign marketplaces.

mandate includes all product types and multiple different business models, we are proof that having a regulator overseeing all dealer activity, using a flexible and proportionate approach, is not only feasible but is also effective and efficient.

Issue 3: Regulatory Inefficiencies

Targeted Outcome: A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.

Question 3.1: *What is your view on the issue of regulatory inefficiencies and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.

b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.

c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

Response

Regulatory inefficiencies by their nature can lead to unnecessary regulatory burden and regulatory arbitrage. Two inefficiencies cited by stakeholders are:

- inefficient investor access to products and services for some firm registration categories and
- excessive costs and issue resolution inconsistencies associated with multiple regulators.

Inefficient investor access to products and services

We agree that inefficient and inconsistent investor access to products and services is a significant concern.[25]

In the case of investor access to ETFs, we also agree with stakeholder comments that current regulations preventing mutual fund dealers from entering into back-office sharing arrangements with investment dealers make it more challenging for a mutual fund dealer to find cost-efficient ways to provide clients with access to ETFs and similar products. Specifically,

[25] A similar broader concern was included in the Ontario Securities Commission's 2019 report, *Reducing Regulatory Burden in Ontario's Capital Markets* on page 5 where it states that "Outdated rules, unnecessary duplication and complexity benefit no one. In fact, they add costs that are ultimately borne by investors, and they reduce participation in our markets."

because current SRO rules prohibit introduction arrangements between IIROC and MFDA firms:[26]

- only an omnibus account arrangement can be entered into between IIROC and MFDA firms to give investors access to ETFs on the MFDA platform
- the additional systems enhancements necessary to make an omnibus account arrangement work for ETFs can be relatively expensive for mutual fund dealers who do not anticipate facilitating high volumes of ETF transactions for their clients.

The prohibition of IIROC/MFDA back-office sharing arrangements was put in place to ensure that non-IIROC dealers would not be able to access Canadian Investor Protection Fund (**CIPF**) protection for their clients without meeting IIROC requirements, including minimum solvency and insurance coverage requirements.

In order to give mutual fund dealers the option of using investment dealer back-office systems to meet books and records and client reporting obligations relating to ETF transactions via IIROC/MFDA introduction arrangements, a rule change agreement is needed with the MFDA (along with CIPF and the MFDA IPC). This is a longstanding example of regulatory inefficiency requiring agreement by various parties to address. IIROC and the CSA have recently permitted back-office sharing arrangements with registered portfolio managers who are not IIROC firms, so allowing firms in other registration categories to enter into such arrangements with IIROC-regulated firms is not a novel concept.

There are some additional factors relating to efficient access to products and services. All registrants that facilitate this access should:

- in the case of registered individuals, satisfy equivalent minimum and ongoing proficiency requirements and continuing education requirements, and
- satisfy equivalent product due diligence and know-your-product requirements.

This is necessary to ensure that individuals with equivalent qualifications are involved in providing access to the specific product or service and to avoid regulatory arbitrage. So, as part of enabling more efficient investor access to ETFs through an MFDA firm, inconsistencies between the IIROC and MFDA proficiency and continuing education requirements[27] should be harmonized as appropriate. This work should include deciding whether to mandate the completion of an ethics course, which we support, for all client-facing registered individuals transacting in ETFs (or any investment) with a client, as is required for IIROC Approved Persons.

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[26] IIROC DMR subsections 35.1(b) and 35.1(c); MFDA Rule 1.1.6.

[27] IIROC DMR 2900, Part A, Item #3 and IIROC Continuing Education Rule 2650; MFDA Rule 1.2.3 and MFDA Policy No. 8.

Additional costs and other inefficiencies associated with the current regulatory framework

We agree that additional costs and other inefficiencies associated with operating multiple SROs, and multiple regulators within the current regulatory framework, are a concern.[28] Specific to operating multiple SROs, there are:

- higher CSA oversight costs
- duplicative costs relating to non-regulatory functions (such as accounting, human resources, offices services and information technology).

Specific to the current regulatory framework as a whole, there are also additional costs associated with:

- developing, maintaining and interpreting multiple rule sets that address all of the activities performed by each category of registered individual and each category of registered firm
- coordinating rule development and interpretation amongst multiple regulators, to minimize the likelihood of situations where the requirements that apply to the same activity on different firm platforms differ.[29]

Creating a new consolidated SRO will help reduce these costs and other regulatory inefficiencies. Additional efficiencies could be realized through reductions in the number of registration categories and the number of rule sets that apply to these categories.

Advisor proficiency and education requirements

Another regulatory inefficiency not mentioned by stakeholders is the maintenance of a rule that is not so much focused on investor protection or capital markets efficiency, but rather on the maintenance of the existing regulatory framework, specifically the IIROC Upgrade Rule.

The IIROC Upgrade Rule requires mutual funds-only licensed individuals to upgrade their qualifications to those required for licensed individuals that transact in any type of security within 270 days after becoming an employee of an IIROC Dealer Member. The rule (and its predecessor OSC rule):

- was enacted to ensure that only the MFDA acts "…as the self-regulatory organization (the SRO) for firms and individuals whose dealer activities are limited to sales of mutual funds"[30]
- was retained in the past at least in part because of the concern that, if the rule was repealed, "…the ongoing viability of the MFDA could be undermined".[31]

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[28] A similar concern is expressed within C.D. Howe Institute Commentary No. 556, *Ripe for Reform: Modernizing the Regulation of Financial Advice*, on page 7 that "The existence of a multi-layered regulatory framework, with multiple structures, means that each separate license or registration, whether through a government or professional agency, comes with its own distinct oversight, audit, and record-keeping regime."

[29] These situations, referred to as "regulatory arbitrage" are discussed in greater detail in our response to Question 2.1.

[30] OSC Bulletin Volume 30, Issue 10 (March 9, 2007), page 2100, *Notice of Amendment to OSC Rule 31-502, Proficiency Requirements for Registrants*.

[31] Ibid.

Continuance of the IIROC Upgrade Rule effectively imposes higher proficiency and education requirements for individuals offering mutual funds-only account services on the IIROC platform than those that must be met by individuals offering mutual funds only account services on the MFDA platform.

The existence of the IIROC Upgrade Rule also impacts Canadians who wish to:

- commence their investing with a small amount of money
- contribute to and build their investment portfolio over time
- efficiently access more sophisticated products and services once more customized investments become suitable
- develop and evolve a long-standing relationship with their individual advisor, as their investment objectives and financial situation change, without having to repaper their relationship numerous times along the way.

Specifically, the IIROC Upgrade Rule effectively requires these clients to change from an MFDA to an IIROC firm once they are ready to access more sophisticated products and services. Without the upgrade rule, these same clients would:

- be able to access both simpler and more sophisticated products and services at the same IIROC firm
- be able to transition from entry level services to more sophisticated services without having to redo account documentation as though they were new client of the firm, resulting in less confusion and disruption.

Question 3.2: *Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

<u>Is the CSA targeted outcome for issue 3 described appropriately?</u>

Yes, provided the updated regulatory framework not only addresses issues associated with investor access to products and services, including advice, but also:

- addresses the existing product and account services regulation approach, which features uneven regulatory requirements for similar products and services depending upon:
    - product classification (i.e. security, derivative or crypto asset)
    - regulatory platform on which the product or service is offered
- better facilitates the introduction of new product and account service offerings.

If yes, how can the targeted outcome be best achieved?

To further reduce regulatory inefficiencies and to more fully utilize the expertise of SROs and SRO staff:

- the CSA requirements should focus more on the maintenance of core regulatory obligations that are owed, or not owed, to clients depending upon the products and services they are offered (i.e. no advice, advice or decision making)
- in addition to the maintenance of equivalent core regulatory obligations, the SRO requirements should focus on any additional requirements that are necessary to ensure:
    - the proper carrying out of these core regulatory obligations
    - consistency in the assessment of risk across all classes of investment products
    - consistency in client reporting relating to specific products and services.

Continuing to maintain detailed prescriptive rules at both the CSA and supervised SRO level is duplicative and constrains the SROs' ability to facilitate new product and service offerings that investors are requesting.

Issue 4: Structural Inflexibility

Targeted Outcome: A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors.

Question 4.1: *What is your view on the issue of structural inflexibility and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) How does the current regulatory framework either limit or facilitate the efficient evolution of business?

b) Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancement, and how this has impacted the client experience.

c) Describe factors that limit investors' access to a broad range of products and services.

d) How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?

e) How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?

Response

Introduction

In general, we agree with the stakeholder comments and that the current, fragmented regulatory framework includes structural inflexibility that constrains innovation and the industry's ability to effectively and efficiently meet changing investor needs. We believe that

the current framework also includes examples of structural *flexibility* that contribute to investor confusion, inconsistency and unnecessary complexity.

Examples of structural inflexibility include:

- *Account service offerings*

  Currently, there are three main categories of account service offerings made available to clients:

  - OEO
  - advisory
  - managed / discretionary

  Advances in technology, as well as changing investor needs have led to the development of new account service offerings, some of which do not fit cleanly into one of the above categories. As more firms seek to expand their offerings and deliver on investor expectations of one-stop shopping for holistic advice and service, discrete firm registration categories focused on specific service offerings may become increasingly unable to accommodate the industry's evolution.

- *Legacy rules that do not allow technology to play a role*

  In order to more effectively and efficiently accommodate innovation, regulators need to provide greater clarification on what activities must be performed by individuals versus those for which individuals are accountable, but can be automated.

- *Delays in granting exemptions*

  Currently, it can be challenging for SRO staff to efficiently accommodate new business models by granting appropriate exemptive relief where there are corresponding CSA rules. Bi-lateral discussions and the time required to achieve alignment can lead to delays, uncertainty and costs for those seeking the relief.

- *IIROC Upgrade Rule*

  As outlined above in our response to Issue 3, we agree that this rule presents an unnecessary barrier for firms seeking to introduce mutual fund-only services to clients on the IIROC platform.

In terms of structural flexibility, firms can choose between different regulatory platforms with different requirements and levels of oversight, and representatives are able to choose between different registration categories with different proficiency and oversight requirements.

This structural flexibility:

- results in an un-level playing field, and some firms will be tempted by the lowest cost regulatory platform, which may in turn constrain the range of products and services they are able to offer investors
- increases its complexity, and in turn makes it more difficult for investors to understand and navigate[32]

Changing client needs and expectations

Significant changes in client needs, expectations and preferences including the degree of digital engagement[33] are impacting service providers and regulators in Canada. During our Evolution of Advice initiative with Accenture, we asked over 60 senior leaders from over 20 different firms across Canada how their clients' needs and preferences were changing. We also engaged directly with Canadian investors.[34] Key insights from our research include:

- Canadians are looking for holistic, goals-based advice to support their overall financial objectives and life goals
- Over 85% of Canadian investors told us they want "one-stop shopping", essentially the ability access to a range of products and services without having to go to multiple providers
- Investors do not think of their money from the perspective of type of account or product, even though much of the regulatory system leverages an account-based approach
- Investors want the ability to move seamlessly between different types and levels of services, without having to transfer back and forth across business lines and open new accounts
- Investors are generally seeking more transparency and more control over the wealth management process, and that they expect to be able to access advice and service when and how they want – easy digital experiences are increasingly considered table stakes
- 90% said they want the level of financial advice and service to be personalized, and flexible in order to meet changes in their needs and circumstances
- Over a quarter of investors say they do not need their advice to come from a human.

How the industry is responding

Firms are responding by broadening the scope of advice, products and services offered. Many firms have implemented, or are exploring, new technology-centered business models such as

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[32] See response to Issue 5 - Investor Confusion.

[33] According to 2020 Morgan Stanley & Oliver Wyman's Wealth Management - After the Storm, page 8, digital engagement for select leading Wealth Managers in Q1 2020 has seen a 7-10X increase in client engagement across all digital channels, 4-5X increase in digital research consumption, 3-4X increase in number of client-facing webinars, 2-3X increase in number of virtual client meetings.

[34] Access to Advice

digital wealth platforms and/or hybrid (human and digital) or partially-assisted models. Others are investing in digital tools and investor-education offerings to better support OEO clients.

Greater adoption of technology by both firms and investors has been further accelerated by the COVID-19 pandemic.[35] For example, Canadians have embraced technology to meet with financial advisors virtually, open new accounts electronically and make investing decisions efficiently and securely from the comfort and safety of their homes. We need to continue to help facilitate these new options as part of a flexible regulatory model that supports Canadians and how they want to consume financial advice and services.

Self-regulation supports innovation and industry evolution

As outlined in our response to Question A, self-regulatory organizations are widely recognized for their specialized industry expertise. This leads to a stronger understanding of issues and risks, and ultimately enables stronger policy development, oversight and accommodation of new ideas and innovations.

The pan-Canadian mandate of self-regulation is critical in attracting investment and innovation to Canada. It supports a consistent framework for new entrants and innovators, rule consistency across the country, and confidence for stakeholders and market participants.

Barriers to Innovation

Regulatory fragmentation

The current level of regulatory fragmentation in Canada is the largest barrier to innovation according to findings in Evolution of Advice. As discussed in our response to Issue 1, a significant source of structural inflexibility is demonstrated by the additional costs and constraints experienced by dealers who choose to operate different business models to better serve their clients (dual-platform dealers). This significantly constrains discretionary capital available for innovation, with no corresponding incremental value in terms of investor protection, access to advice and services or market integrity.

Some firms have also expressed uncertainty regarding how new ideas would be received, or which regulator(s) would be involved in the approval process. Multiple regulatory approval layers add complexity and confusion, and sometimes delays.

The fragmented nature of the Canadian regulatory framework can also act as a disincentive for international firms to bring their new ideas and platforms to Canada. The path for regulatory approval is not always clear and having to engage more than one regulator for approvals can discourage start-ups who have limited capital and time to spare. As a result, it can take longer for new ideas to come to market in Canada, which delays investor access to new models and services, and increases costs for those waiting for approval.

A consolidation of IIROC and the MFDA would simplify the framework for "FinTech" players, enabling them to focus their resources on developing innovative solutions for one regulatory

[35] Michael Alexander, President of Broadridge Wealth and Capital Markets Solutions reported in a July 2020 press release "We are seeing an accelerated adoption of digitalization and personalization from investors, financial advisors, and wealth firms as a result of the pandemic".

platform, and the largest possible market of dealers. It removes a barrier for new entrants, making it more cost-effective to innovate. In turn, independent and smaller dealers will have greater access to new technology options to enhance their client service offerings.

Multiple rule sets / regulatory arbitrage

Consistent with our response to Question 2.1, having more than one set of rules or different ways to apply the same rules can lead to regulatory arbitrage and acts as a barrier to innovation. When it comes to innovation, inconsistency breeds uncertainty, which can lead to delays in advancing new ideas and sub-optimal client experiences.

Rule sets that are too prescriptive

Rule sets that are too prescriptive also act as a barrier to innovation. Prescribing how a regulatory objective must be achieved and who must achieve it can impede the introduction of new approaches to achieve the objective in more efficient ways, which can result in additional client costs.

Technology

Significant and rapid advancements in technology are challenging the relevance of some existing rules, which were drafted decades ago.[36] This is requiring regulators to consider where technology could help in meeting various regulatory requirements, without compromising investor protection.

There are current rules (IIROC, MFDA, CSA) that assign responsibilities to specific individuals, e.g. Approved Persons. We believe that ensuring appropriate individual accountability is core to meeting regulatory requirements. When it comes to leveraging different technologies in support of meeting regulatory requirements, we should be technology agnostic. In Canada, regulators need to do more to clarify the activities that must be performed by individuals versus those activities for which individuals are accountable but can be automated.

Product and Service Access Challenges

We believe that efficient access to a comprehensive product shelf, including low cost options, is critical, to appropriately meet investor needs and expectations, including one-stop-shopping to receive holistic advice and financial plans. Over 85% of Canadian investors told us they want "one-stop shopping" – the ability to access to a range of products and services without having to go to multiple providers, or open multiple accounts.[37]

We also agree that there are current challenges with Canadians being able to access the advice and services that they need, and that an investor's geographic location can constrain availability of some products and services, especially via the traditional "in-person" advisory model.

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[36] "In some cases, regulations do not keep pace with changing times, become out of date, or are no longer relevant to the economy, but they continue to be enforced. If regulations do not keep pace with the changing times, the public can be put at risk and economic opportunities can be lost. Out-of-date regulations can create economic distortions and carry economic costs." *Making Regulation a Competitive Advantage*, Deloitte (2019), page 15

[37] Access to Advice

There are several contributing factors:

- The IIROC Upgrade Rule makes it more difficult for investment dealers to grow their business by hiring mutual-fund only advisors. This limits the ability for investment dealers of all sizes to more efficiently offer services to more Canadians who wish to invest and receive advice.[38]
- There are current IIROC and MFDA rules that prohibit introduction and back-office service arrangements between IIROC and MFDA firms. Such restrictions make it more challenging for a mutual fund dealer to find cost-efficient ways to provide their clients with access to ETFs and similar products.[39]
- There is lower availability, awareness and adoption of newer online and hybrid service models. Firms have highlighted various challenges in delivering lower cost advice models, including legacy technologies and systems and the fragmented regulatory framework in Canada.[40] Automated and hybrid models are increasingly becoming available to investors, although compared to other markets, adoption appears to be constrained somewhat by investor concerns related to online security and privacy, as well as a belief by 40% of investors that online models carry lower regulatory protection.[41]
- In many cases, an investor's amount of assets can determine their access to advice and certain products and services. As well, if fees are an issue or concern, the low-cost model commonly referred to as order-execution-only or OEO, by definition, does not include the option to receive advice. Making it easier for service providers to deliver lower cost models, without compromising investor protection, would provide greater access, choice and flexibility for all investors regardless of their circumstances.

Taking the first step to consolidate IIROC and the MFDA under the IIROC Proposal would help to reduce regulatory barriers to innovation that constrain firms from introducing new models and services. It would make it easier and less costly to provide a wider range of service offerings to clients, including offerings that are more automated and less customized, improving access to advice and products for Canadians.

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38 For a more detailed explanation of the issue, please see our response to Issue 3

39 For a more detailed explanation of the issue, please see our response to Issue 3

40 Evolution of Advice

41 Access to Advice

Question 4.2: *Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

We support the Targeted Outcome, and offer the following comments:

- An important part of investor protection is ensuring appropriate access to advice and a broad range of products and services
- There are certain aspects of the framework that need to be fixed, e.g. the rules, to provide the necessary certainty to all stakeholders. For the purposes of this response, a "flexible regulatory framework" is one that includes/allows for a:
    - registration category framework that allows for application of regulatory requirements according to the business activity conducted, but maintains core rule consistency for all business models, across all regulators
    - risk-based and proportionate approach, in order to accommodate a wide range of different and innovative business models
    - reduction in duplicative approval layers, to improve the efficiency with which innovation can be accommodated by the regulatory framework.

SRO consolidation would simplify the framework and make it easier and more cost-effective for innovators.

Issue 5: Investor Confusion

Targeted Outcome: A regulatory framework that is easily understood by investors and provides appropriate investor protection.

Question 5.1: *What is your view on the issue of investor confusion and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?

b) Describe the difficulties clients face in easily navigating complaint resolution processes.

c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.

Response

While each of the SROs and CSA regulators continue to focus on ways to help investors understand their respective roles and the protections available, we agree that the current

fragmented and duplicative regulatory framework has contributed to investor confusion and their ability to make informed decisions.[42]

Consider that mutual fund activities can be undertaken by both mutual fund and investment dealers, often in the same locations. Depending on the dealer's business model and province(s) of operation these activities may be regulated by either of the two SROs and the AMF/CSF in Québec. Some of the activities undertaken by investment dealers regulated by IIROC are also undertaken by exempt market dealers and portfolio managers who are directly regulated by the CSA and may not have investor protection fund coverage.

As such, it is not surprising that investors can have difficulty understanding:

- what products and solutions are available from which types of firms and advisors
- who regulates what
- the nature of the protections available
- how to navigate the system if they have questions and/or concerns.

IIROC has been tracking investors' awareness and understanding through comprehensive quantitative surveys it commissioned in 2017 and more recently in 2020. IIROC's goal was to track whether mandatory membership disclosure amendments that took effect in 2017 and 2018 had positively impacted investor awareness levels. We also wanted to measure awareness, understanding and perceptions regarding the regulation of the investment industry so that we could create and deliver meaningful education programs to help Canadians become more informed investors.

Highlights from the 2020 Tracking Survey of 2,500 Canadian investors include:

- 70% of investors indicate a general awareness that the investment industry is regulated, however 41% agree that they do not really understand how the industry is regulated
- Levels of understanding of the role of regulators, and how the industry would protect investors are varied
- Investors are largely unaware of what advisors are licensed to recommend or sell
- The majority of investors (85%) believe that it is important to have an understanding of the regulators, and 73% are interested in learning more about the regulation of the investment industry.

As the current pandemic has underscored, many investors need and want advice. Results from our Access to Advice research found that the majority of Canadians want access to financial

[42] Ian Russell, president of the Investment Industry Association of Canada reported in a Globe and Mail article *What kind of modernization does the Securities Act really need?* that "The complicated structure of securities registrants and allowable activities, and the intertwined regulatory framework, is outmoded and outdated – incompatible to the increasingly integrated wealth management process. It inconveniences and confuses investors, results in unnecessary costs and inefficiencies from excessive technology and systems, and complicates internal firm processes, creating regulatory barriers that prevent investors from accessing the spectrum of wealth products and services."

products and services from one place.[43] The same product or service regulated by multiple SROs and CSA regulators, and offered by multiple registration categories, can cause confusion and additional complexity for investors. Furthermore, non-standardized use of titles across all registration categories can also mislead investors, further compounding the issue.[44] Accordingly, investors may not be aware of the limited products, services, and corresponding advice offered by certain registration categories. Similarly, they may not be aware of protections available if a firm becomes insolvent, and where to complain if an issue arises.

IIROC has a dedicated Complaints and Inquiries department to help Canadian investors when they have questions or concerns. During the past fiscal year, in support of the overall regulatory framework, our Complaints and Inquiries team redirected 569 of the complaints and inquiries from investors to other regulators as appropriate, and an additional 178 to the Ombudsman for Banking Services and Investments (**OBSI**) and Canadian marketplaces.

To better understand investor experiences and perceptions of the complaint-handling process and to help complainants better navigate the complex regulatory system, IIROC is currently undertaking qualitative research with investors who have complained directly to IIROC and who may have used the service of OBSI.

Results from this research so far (33 one-on-one interviews have been completed) confirm that many investors have limited understanding of how regulation works and where to turn if they have complaints. Continuing to build investor understanding in this area should be a focus for all stakeholders, including the new consolidated SRO.

Question 5.2: *Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

We support the CSA's targeted outcome. Consolidation of the two existing SROs under IIROC's Proposal would be an important first step in alleviating investor confusion. A new single SRO that brings together IIROC and the MFDA presents an opportunity to re-brand the organization in a way that could increase investor awareness.

After consolidation, the new SRO could continue to support the CSA in a comprehensive policy review of other registration categories regulated directly by the CSA.

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[43] Investor interest in one-stop shopping was also discussed in Evolution of Advice

[44] IIROC is participating in the Financial Services Regulatory Authority of Ontario Title Protection consultation.

Issue 6: Public Confidence in the Regulatory Framework

Targeted Outcome: A regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes.

Question 6.1: *What is your view on the issue of public confidence in the regulatory framework and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe changes that could improve public confidence in the regulatory framework.

b) Describe instances in the current regulatory framework whereby the public interest mandate is underserved.

c) Describe instances of how investor advocacy could be improved.

d) Describe instances of regulatory capture in the current regulatory framework.

e) Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?

Response

The IIROC Proposal addresses the issues highlighted in the stakeholder comments and supports achieving the targeted outcome. A consolidated, supervised SRO would improve clarity, reduce investor confusion and make it easier to increase investor awareness of regulation and the protections available. A clear and consolidated approach to compliance and enforcement across the industry will strengthen investor protection. Together, this should improve public confidence in the regulatory framework.

We know that regulation is important to investors as evidenced by the various surveys we have conducted with the aid of national and independent research firms we engage. We also believe that investors are generally confident in the regulatory framework as it is reflected in IIROC regulation. Streamlining the regulatory framework under the IIROC Proposal would reduce confusion and increase investor awareness and confidence.

Our Access to Advice research surveyed current and aspiring investors. Highlights include:

- 87% of current investors and 67% of aspiring investors feel it is important that investment advice come from a regulated firm or individual
- 76% of current investors and 48% of aspiring investors said they are confident the investment industry in Canada is properly regulated.

In the 2020 Tracking Survey, out of a sample of 2,500 Canadian investors:

- 39% responded that they trust the regulatory system that oversee the investment industry to protect their interests as an investor, while 28% said they trust the federal government and 15% trust the provincial government to protect the interests of investors
- 67% said that they are moderately and softly confident in the regulatory bodies that protect investors. This was a 15 percentage point increase from the 2017 (52%) benchmark awareness survey
- most are unaware that advisors are limited to recommend only those product types for which they are regulated and that investors may have to pursue additional accounts or advisors if they want access to the full range of investment products.

Overall, The Strategic Counsel stated that "weak levels of awareness and understanding of the regulatory environment for the investment industry in general provide significant context for both trust and confidence assessments." They also concluded that "this lack of clarity around who and what is regulated, and how regulators protect investors, is likely a driver of the trust and confidence that investors express at the systemic and market levels, and the awareness investors have of specific regulatory bodies such as IIROC."

Our responses to specific stakeholder comments follow below.

Public Interest Mandate

We believe that IIROC's governance structure effectively manages conflicts of interest and ensures different stakeholders are fairly represented, so that we achieve our public interest mandate.

Directors who are independent from the industry (including the CEO who previously served as Deputy Superintendent at the Office of the Superintendent of Financial Institutions of Canada) make up a majority of the IIROC Board. The majority of our current and past Independent Directors have never worked for an IIROC-regulated firm.

IIROC has had, and will continue to have, Directors with direct experience in retail investor protection issues. This was discussed at length in the IIROC submission to the Ontario Capital Markets Modernization Taskforce.

With respect to term limits, IIROC believes that an eight-year term limit for Directors strikes an appropriate balance between continuity and renewal on the IIROC Board.

Finally, the criteria for an individual to qualify as an Independent Director of IIROC are extensive and rigorous, extending to both associate and affiliate relationships, and to upstream and downstream relationships. This is in addition to the "fit and proper" requirements for all Directors.

Formal Investor Advocacy Mechanisms

IIROC regularly engages with retail investors through qualitative and quantitative research with the assistance of an independent national research firm. IIROC's Investor Research Panel of 10,000 Canadian investors provides opportunities for direct input on a range of issues impacting investors and their confidence in the capital markets. This input also informs management's and the Board's review of proposed rules and other requirements as they relate to retail investors, including:

- 1,507 current and 501 aspiring investors' views on access to investment advice[45]
- 1,000 investors' awareness of and familiarity with policies and procedures to protect vulnerable investors, such as "safe harbour" and choosing a trusted contact person[46]
- 1,011 investors' views on how breaches of IIROC rules and/or wrongdoing could be dealt with through alternative measures.[47]

For example, we are currently conducting research with complainants to better understand their experiences and perceptions of our complaint-handling process.[48]

We complement our quantitative research with qualitative focus groups on issues such as Know Your Client.

Investor Advisory Panel

Early this year IIROC announced plans to establish a pan-Canadian Expert Investor Issues Panel that will enable individuals with a wide variety of experience and expertise related to investors to provide direct input on all relevant investor issues, especially those that impact access to advice and services and investor outcomes and confidence.[49] We are reviewing panels from other regulators and jurisdictions, such as the OSC's Investor Advisory Panel, the AMF's Financial Products and Services Consumer Advisory Committee, and FINRA's Investor Issues Committee. Critical to this panel will be individuals with backgrounds in investor education, consumer outreach, seniors and/or vulnerable investor issues, professional regulation, financial services, government, public policy, and/or academia.

Regulatory Capture

We do not believe that IIROC exhibits any of the characteristics of regulatory capture set out in the Consultation Paper. Our governance structure, as well as CSA oversight (described in more detail below), ensure that we effectively fulfill our public interest mandate.

While we believe that we have sufficient tools and resources to obtain accurate information from industry and to deter industry wrongdoing and to hold wrongdoers accountable, we will

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45 Access to Advice

46 Awareness and Attitudes Related to Provisions to Protect Vulnerable Investors and Investment Firms/Advisors, IIROC and The Strategic Counsel (2019)

47 A Survey of Canadian Investors' Views on Alternative Disciplinary Proposals, IIROC and The Strategic Counsel (2018)

48 IIROC Notice 20-0137, IIROC Priorities for FY2021 (2020)

49 IIROC to form expert investor issues panel for valuable input on consumer issues (2020)

continue to vigorously pursue additional enforcement tools and resources. This includes the authority to collect fines through the courts, strengthen our investigations and disciplinary hearings, and gain protection from malicious lawsuits when acting in the public interest. We have been successful in obtaining the full "enforcement toolkit" in New Brunswick, Prince Edward Island, Nova Scotia, Québec and Alberta. We have obtained partial enforcement authorities in all remaining provinces and territories, with the exception of Newfoundland.

We have already begun using the additional investigative tools provided by some of the provinces. In doing so, we have been able to better identify wrongdoing and ensure that the best evidence is obtained.

Moving forward, we are also taking steps toward implementing new initiatives that would make our enforcement more flexible and responsive, and would enable us to better support investors who suffer losses. One initiative has been our alternative forms of discipline proposal that aims to provide a more-tailored, proportionate and timely approach to Enforcement matters at IIROC. We are still in the public consultation phase of this initiative, but hope to see its implementation later in 2020.

SRO compliance and enforcement concerns

We believe that our enforcement activities are highly transparent as we make every effort to ensure the public understands our process and outcomes achieved. As mandated by our Recognition Orders, we publicly announce (simultaneously in both official languages) all enforcement proceedings and ultimate decisions and hearings are open to the public and the media. IIROC is one of the few organizations that publishes sanction guidelines that set out the principles and factors applied in determining the appropriate penalties imposed against those who break our rules. Complainants are kept informed of the status of our investigations and prosecution. IIROC also publishes annual Enforcement Reports which, among other things, provide details regarding the volume and nature of work conducted during the year. We also publish the names of all individuals who have outstanding fines who are not allowed to work for IIROC-regulated firms if their sanctions have not been met.

IIROC objectives in sanctioning are consistent with other securities regulators and professional disciplinary bodies. As confirmed by the Supreme Court of Canada,[50] the purpose of sanctions in regulatory proceedings is to protect the public interest by deterring future misconduct. IIROC also recognizes victim restitution compensation as a desired outcome within the greater regulatory context. IIROC in particular treats victim compensation by wrong-doers as a significant factor when determining how to proceed and which penalties to impose in our disciplinary cases. We are also exploring ways to return to harmed investors disgorged funds collected from an advisor or firm disciplined by IIROC[51].

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50 *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43.

51 IIROC Notice 20-0137, IIROC Priorities for FY2021 (2020)

CSA Oversight of SROs

Section 2 of the Consultation Paper describes the robust CSA oversight framework for IIROC. The CSA and IIROC have been actively engaged in enhancing this framework over the past several years, expanding the reporting requirements in 2018[52] and proposing other enhancements in 2020.[53]

While we believe that IIROC's rule exemption process does ensure accountability to the CSA, we also note that the proposed enhancements to IIROC's Recognition Order require IIROC to provide the CSA with immediate notification of our receipt of an application for a Board exemption or amendment to a Board exemption that could have a significant impact on: (i) IIROC members and others subject to IIROC's jurisdiction, or (ii) the capital markets generally including, for greater clarity, certain stakeholders or sectors.

With respect to oversight reviews, we support the CSA's risk-based approach. On an annual basis, the CSA:

- Identifies the key inherent risks of each functional area or key process based on:
    - reviews of internal IIROC documentation (including management self-assessments and risk assessments)
    - information received from IIROC in the ordinary course of oversight activities (e.g. periodic filings, discussions with staff)
    - the extent and prioritization of findings from the prior oversight review and
    - the impact of significant events in or changes to markets and participants to a particular area
- Evaluates known controls for each functional area
- Considers relevant situational/external factors and the impact of enterprise wide risks on IIROC as a whole or on multiple departments
- Assigns an initial overall risk score for each functional area
- Collaborates with IIROC to identify and assess the effectiveness of other mitigating controls that may be in place in specific functional areas
- Assigns an adjusted overall risk score for each area
- Uses the adjusted risk scores to determine the scope of the review.

We agree with the CSA that this approach currently ensures that oversight reviews are focused on the most important aspects of IIROC's public interest mandate.

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[52] OSC Bulletin Volume 41, Issue 15 (April 12, 2018), page 3009, *Variation and restatement of recognition order of a self-regulatory organization to clarify and update reporting requirements*.

[53] OSC Bulletin Volume 43, Issue 31 (July 30, 2020), page 6173, *Changes to Harmonize and Streamline the Oversight of IIROC*.

Finally, we have described in detail[54] the steps we are taking to tailor our compliance programs to firms of all sizes and business models, as well as managing regulatory burden and costs for smaller firms.

Instances in the current regulatory framework whereby the public interest mandate is underserved

As we described in the IIROC Proposal, technology-driven transformation is not only changing the products, services and nature of the advice delivered to Canadians, but is also changing behaviours by enabling Canadians to access and consume financial services the way they want. This changing relationship between investors and the investment industry is placing tremendous pressure on the existing regulatory framework—a framework based on assumptions that no longer universally apply: the concepts of one customer, one account and the idea that financial products are distributed in silos.

To deliver what investors want, the investment industry must divert significant resources away from client service and product innovation — just to comply with duplicative and overlapping regulation. As a result, the current SRO framework denies many Canadians robust access to the advice, products and services they deserve. This needs to change.

Consolidating IIROC and the MFDA would reduce unnecessary duplication and process and would increase Canadians' understanding of regulation and their ability to navigate through the system. In addition:

- investors would be able to have a seamless graduation as their investment needs change over time, from fairly simple products and advice to more complex advisory channels and solutions
- more products at lower cost, e.g. a full suite of ETFs, would be available to many more Canadians
- clients would not have to re-open accounts and/or change firms/advisors as their investing needs change, resulting in reduced "paperwork burden" and improved consolidated reporting to investors
- elimination of regulatory duplication would offer cost savings that could be reinvested in innovation and client service.

[54] *IIROC Compliance Report: Helping Firms With Compliance* (2019); *IIROC Policy Priorities – Update Report* (2020)

Question 6.2: *Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

We agree with the targeted outcome. We suggest that the CSA consider adding a reference to "streamlined and proportionate" regulation as an objective for self-regulation.

The IIROC Proposal supports achieving the targeted outcome. With an immediate focus on bringing enforcement departments together, a clear and consolidated approach across the industry should strengthen protections for investors.

A consolidated, supervised SRO would provide clarity, reduce investor confusion and make it easier to increase investor awareness of regulation and the protections available. Together, this should improve public confidence in the regulatory framework.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

Targeted Outcome: An integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance, to ensure appropriate policy development, enforcement, and management of systemic risk.

Question 7.1: *What is your view on the separation of market surveillance from statutory regulators and the stakeholder comments? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence of your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concern?

b) Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.

Response

Fair and orderly markets drive investor confidence, which in turn drives participation in our markets. Increased levels of retail client participation on our marketplaces heighten the importance of market oversight.

As a pan-Canadian regulator we apply a consistent standard of market oversight using a common set of trading related requirements, which reduces confusion and potential harm to investors.

We believe that the market regulation function is an integral part of the regulatory system contributing to the management of systemic risk and is directly connected with conduct and

Le jeudi 22 octobre 2020,

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Objet : 25-402 - Consultation sur le cadre réglementaire des organismes d'autoréglementation

Je souhaite soumettre un commentaire aux Autorités canadiennes en valeurs mobilières (ACVM) et à l'Autorité des marchés financiers. Je suis un professionnel des services financiers.

La présente consultation qui porte sur le cadre réglementaire des organismes d'autoréglementation (OAR) canadiens aura vraisemblablement des impacts majeurs au Québec. Toutefois, cette importante consultation a été décidée et se déroule à toutes fins utiles à l'extérieur des frontières de notre territoire puisqu'elle a été initiée par les grandes institutions de dépôt canadiennes de Toronto avec comme objectif principal l'amélioration de leurs propres conditions tout en y greffant de vagues promesses d'apparat concernant une protection accrue des épargnants.

Il ressort de cet exercice que la situation de quasi-monopole dont bénéficient déjà les grandes banques se consolidera encore davantage puisque les petits courtiers en épargne collective se retrouveront privés de représentation à la table des grandes firmes de courtages advenant une fusion des deux OAR canadiens. Ce qui est déjà annoncée.

L'encadrement réglementaire appliqué par les associations de sociétés de courtage que sont l'OCRCVM et l'ACCFM qui prévaut actuellement dans le reste du Canada (ROC) est un encadrement d'une autre époque qui favorise les sociétés bancaires et qui considère les conseillers comme des « employés ». Dans ce modèle éculé, les OAR supervisent les firmes de courtage et les firmes de courtage encadrent les intermédiaires à qui elles imposent un fardeau de règles prescrites et d'obligations qui ne cessent de s'alourdir. Dans ce système, les conseillers sont considérés comme des subalternes et ne participent pas de façon démocratique à l'amélioration des pratiques, à la déontologie, à la formation continue, à la prévention et à la reconnaissance de leur professionnalisme.

Les acquis du professionnalisme

Par ailleurs, le modèle québécois actuel responsabilise le conseiller professionnel qui doit prioritairement servir l'intérêt du client avant le sien. C'est le cœur du professionnalisme. Les clients doivent pouvoir avoir confiance en leur conseiller en

raison de la complexité du domaine et des impacts possibles sur leur santé financière.

Le conseiller membre de la CSF peut se prévaloir de plusieurs privilèges que lui confère son appartenance à une organisation professionnelle :

- Le contrôle sur la formation continue et la qualification des membres par l'entremise de la CSF

- Une autonomie certaine dans l'organisation et la régulation des activités professionnelles

- La participation aux activités, au conseil de l'organisation, aux différents comités, dont le comité de discipline et aux décisions concernant la profession

- L'obligation spécifique de servir le meilleur intérêt du client n'est pas inscrite dans la réglementation des OAR canadiens.

Concurrence affaiblie = protection du public menacée

La protection du public passe par une saine concurrence. En forçant l'établissement de nouvelles règles sur le territoire québécois dont les répercussions risquent de nuire à la survie des courtiers de petites tailles, les OAR canadiens et les ACVM vont favoriser la mainmise des grands groupes financiers sur le secteur des valeurs mobilières, laissant le marché devenir de plus en plus concentré.

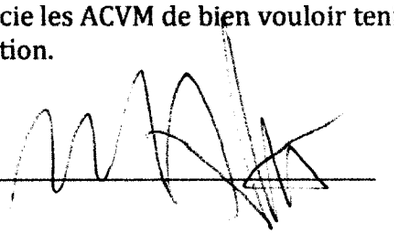
En limitant la concurrence ou en réduisant l'entrée sur le marché de joueurs de plus petites envergures sans avantage démontrable pour les consommateurs, les décideurs des ACVM pourrait rompre l'équilibre essentiel entre les intérêts de la protection des consommateurs et les vertus du marché dynamique et concurrentiel qui caractérisent le Québec aujourd'hui.

L'importance du conseil pour tous les Québécois

Il est primordial pour l'État québécois que les familles puissent avoir accès à des professionnels des services financiers afin de les aider à gérer leur situation financière. Le conseiller en services financiers est la clé de voûte du système qui assure que le plus grand nombre de contribuables possibles bénéficient d'épargne retraite afin de ne pas trop imposer de pression sur le filet social des gouvernements. Le gouvernement ne doit pas négliger l'importance et la fragilité de l'écosystème qui caractérise aujourd'hui le Québec. Le Québec et ses institutions, le ministère des Finances doivent, dans les faits protéger le modèle que s'est donné le Québec il y a 20 ans. Un modèle qui donnent d'excellents résultats, qui est à l'image de sa population, qui est diversifié, qui permet aux Québécois des régions et aux entreprises régionales de bénéficier de conseils professionnels de premier plan et de prospérer.

Toute tentative de bouleverser cet équilibre risquera d'avoir des conséquences néfastes pour le Québec et l'ensemble des Québécois.

Je remercie les ACVM de bien vouloir tenir compte de ma position concernant cette consultation.

Signé : 

prudential regulation of investment dealers. Together they support markets that operate efficiently and with integrity and support investor protection.

IIROC's operational expertise is complementary to the work done through statutory regulation, and regulatory efforts are coordinated where applicable. This was evident during the 2008 financial crisis where statutory regulators placed certain restrictions on short sales that were operationalized and monitored by IIROC. The comprehensive data set that we collect from all marketplaces is provided to the CSA on an ongoing basis to assist with their statutory functions and responsibilities. Data is provided efficiently and without the need to duplicate any process. Where appropriate, we coordinate with the CSA to analyze and interpret the data based on our operational expertise.

IIROC's market regulation function does not operate in isolation and is carried out in coordination with the member regulation function. Monitoring of a dealer's trading conduct aligns with both its financial and business conduct and provides a complete picture of a dealer's overall compliance health. This integration enables IIROC to simultaneously consider all aspects of a dealer's activities, whether market or client facing, in any decision or action it may pursue to both increase the efficacy of oversight and introduce efficiencies to reduce the compliance burden on the investment dealer community. This leads to better outcomes where all aspects of a client's relationship with a dealer are considered as part of the decision-making process. Many of these synergies and efficiencies are also present in our enforcement activities. It is the recognition of this synergy that resulted in the merger of RS and the IDA in 2008.

IIROC leverages its market surveillance systems, which are an integrated part of its information technology infrastructure, and data for IIROC regulatory purposes other than core market regulation functions. These efficiencies may be lost through separation of the market regulation function. Furthermore, the separation of these systems from our integrated infrastructure may be complex and would likely require considerable resources and cost with no commensurate benefit.

Question 7.2: *Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response

We believe that the CSA target outcome for issue 7 is described appropriately and that this outcome is currently being achieved based on the discussion above. The application of a single set of requirements that are applicable to all investment dealers for their trading-related activities, regardless of jurisdiction, coupled with statutory oversight leads to an effective system to monitor and manage risk.

Conclusion

Thank you to the CSA for providing this opportunity to discuss these important issues, and for the wide range of stakeholders who have contributed their views and continue to participate in this process.

We believe it is critical to build on what is working, and with minimal cost and disruption, create a streamlined platform on which to continue the evolution of the SRO model in partnership with the CSA. Certainly, everything the financial sector has learned through the experience of the COVID-19 pandemic supports the need to move the system forward in a practical and timely manner.

We would like to thank the CSA Sub-Committee for their commitment to a transparent and collaborative process. We look forward to continuing the dialogue with the CSA and all stakeholders to evolve self-regulation in Canada to improve outcomes for investors.

Trois-Rivières, le 22 octobre 2020

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Objet : 25-402 – Consultation sur le cadre réglementaire des organismes d'autoréglementation

Me Lebel,

La présente fait suite à la consultation *25-402 – Consultation sur le cadre réglementaire des organismes d'autoréglementation* lancée le 25 juin 2020.

Nous tenons tout d'abord à remercier les ACVM de nous donner la chance de nous exprimer sur la question. Nous avons longuement hésité avant de soumettre nos commentaires sur ce sujet pour deux raisons principales.

Premièrement, la situation socio-sanitaire actuelle nous force collectivement à gérer de toute urgence des enjeux qui n'existaient pas avant mars dernier. Le temps que nous pouvons consacrer à analyser la question et à fournir des commentaires est extrêmement limité pour une organisation de taille moyenne comme Groupe Cloutier Investissements.

En second lieu, la pandémie s'ajoute à ce qu'il conviendrait d'appeler une fatigue réglementaire. Le sujet est certes d'une grande importance pour l'industrie en général ainsi que pour notre organisation. Nous avons toutefois investi des efforts colossaux à participer aux nombreuses consultations des ACVM des dernières années. Pour une organisation comme la nôtre, de tels investissements laissent des traces, d'autant plus lorsque les résultats ne sont pas à la hauteur de nos attentes.

C'est pourquoi notre présente lettre de commentaires sera très concise et ne respectera pas nécessairement les questionnements des ACVM dans le document de consultation. Nous traiterons principalement de l'éventualité de se retrouver avec un OAR unique pancanadien et des conséquences que cela pourrait entraîner.

Le cœur du problème : Le dédoublement réglementaire

La récente initiative des ACVM résulte de certaines initiatives gouvernementales et de pressions exercées par de grands groupes intégrés souhaitant une simplification de la réglementation. Pour ces derniers, l'objectif principal est de se soustraire à la double réglementation à laquelle ils doivent se soumettre lorsqu'ils opèrent à la fois un courtier en épargne collective et un courtier en placement.

L'atteinte de cet objectif nous laisse entrevoir de façon assez inévitable une fusion des deux principaux OAR canadiens, l'OCRCVM et l'ACFM. Cette option semble à première vue préférable à la possibilité de laisser le choix aux courtiers à double plate-forme d'inscrire leur courtier en épargne collective auprès de l'OCRCVM plutôt qu'auprès de l'ACFM. Cette solution constituerait ni plus ni moins qu'une condamnation à mort pour l'ACFM qui manquerait rapidement de ressources financières.

Nous comprenons parfaitement cette volonté de la part des grandes institutions financières. Dans leur contexte, cette volonté est parfaitement logique. Toutefois, un regroupement des deux OAR aurait des conséquences importantes sur d'autres secteurs du marché.

Les ACVM ne devraient pas faire l'économie d'une évaluation des coûts financiers, opérationnels et des pertes d'efficacité que devraient encaisser principalement les courtiers indépendants afin que les grands groupes financiers puissent régler leur enjeu de double réglementation. Nous jugeons pertinent de rappeler ici que ces mêmes courtiers indépendants, dont nous faisons partie, doivent déjà se résoudre à voir leurs revenus et leur pérennité menacés par la disparition des fonds à frais de souscription différés à compter de 2022.

Mais pourquoi ces mesures feraient-elles aussi mal au secteur indépendant? Compte tenu de la taille relative des deux principaux OAR, il va de soi que l'ACFM risque fort d'être avalée par l'OCRCVM si les ACVM décident d'aller de l'avant avec un seul OAR pancanadien.

Alors que les grands groupes financiers ont tous déjà des filiales inscrites auprès de l'OCRCVM, beaucoup de courtiers indépendants de petite ou moyenne taille sont uniquement membre de l'ACFM ou, pour les courtiers œuvrant exclusivement au Québec, relèvent directement de l'AMF. Pour ces firmes, les règles de l'OCRCVM sont totalement inconnues.

Or, ces firmes ne peuvent pas compter sur des départements légaux importants contrairement aux grands groupes intégrés. L'adaptation à ce nouvel environnement réglementaire demandera des efforts humains et financiers colossaux pour ces firmes. Pendant que des firmes comme Groupe Cloutier Investissements consacreront des efforts à se familiariser avec les règles de l'OCRCVM, à revoir leurs politiques et procédures, à former leur personnel et leur représentant, elles auront moins de ressources à consacrer au développement de leur entreprise. Au même moment, les grands groupes financiers intégrés réduiront leurs coûts d'opération et augmenteront leur profitabilité en profitant d'un OAR unique.

À sa face même, il nous apparaît évident que les économies des uns se feront carrément au détriment des autres et ceci nous apparaît totalement inacceptable. Une telle éventualité débalancerait totalement l'équilibre compétitif entre les groupes intégrés et les courtiers indépendants.

Cette situation nous apparaît d'autant plus difficile à accepter du fait que ces grands groupes financiers ont, dès le départ, fait le choix conscient de se lancer dans deux secteurs d'activités distincts, soit l'épargne collective et le courtage en placement. Elles étaient à ce moment disposées à composer avec deux cadres réglementaires différents. Pendant ce temps, Groupe Cloutier Investissements, comme d'autres, a consciemment choisi d'intégrer uniquement le secteur de l'épargne collective. Pourquoi devrions-nous aujourd'hui accepter de devoir modifier complètement nos politiques et procédures parce que d'autres trouvent difficile et/ou coûteux de devoir manœuvrer auprès de deux OAR?

La situation décriée par les grands groupes financiers rappelle le cas d'un citoyen ayant acheté une maison aux abords d'un aéroport et qui se met à se plaindre du bruit des avions au bout de quelques années. Va-t-on démolir l'aéroport pour éliminer les inconvénients causés à ce citoyen alors qu'il savait très bien à quoi il s'exposait au moment d'acheter sa maison?

Cela étant dit, la question demeure à savoir quelle option les ACVM devraient privilégier pour le futur. Nous n'avons pas la prétention de détenir une solution magique à un problème aussi complexe. Aussi, au risque de nous répéter, le *timing* de la présente consultation en pleine crise socio-sanitaire ne nous a pas permis de consacrer autant de temps que nous aurions souhaité à réfléchir à la question.

Toutefois, nous croyons humblement que la solution qui sera retenue devrait s'attarder à quelques préoccupations :

1. Demeurer équitable envers les courtiers inscrits exclusivement auprès de l'ACFM ou de l'AMF
   La structure privilégiée par les ACVM devrait éviter de faire payer aux petits et moyens courtiers indépendants œuvrant exclusivement dans le secteur de l'épargne collective les coûts de la simplification réglementaire au bénéfice exclusif des grands groupes intégrés.

2. Conserver les spécificités provinciales
   La majorité des provinces est opposée à l'imposition par le gouvernement fédéral d'une commission des valeurs mobilières pancanadienne sous prétexte qu'il s'agit d'une compétence de juridiction provinciale. Or, la création d'un OAR unique ayant autorité à la grandeur du Canada viendrait carrément nier la spécificité du Québec qui a toujours souhaité être maître de l'application des lois et règlements sur son territoire. Cette solution viendrait créer un glissement encore plus prononcé des pouvoirs en matière de réglementation en valeurs mobilières vers Toronto. Le Québec se doit de maintenir une expertise et un pouvoir décisionnel en matière de réglementation des questions touchant aux valeurs mobilières.

3. Privilégier le modèle d'organisme intégré
   À l'instar des commentaires formulés dans la lettre de commentaires de nos collègues chez Mérici, un autre courtier en épargne collective basé au Québec, nous croyons que l'Autorité des marchés financiers a fait la démonstration de l'utilité d'avoir un régulateur intégré qui encadre toutes les disciplines touchant de près ou de loin aux finances personnelles. Un tel régulateur a une meilleure vision d'ensemble de toutes les sphères d'activité et est ainsi plus en mesure de coordonner ses actions de manière à les rendre plus pertinentes et éviter l'arbitrage réglementaire.

   L'existence de la Chambre de la sécurité financière au Québec est aussi un modèle intéressant. Elle constitue un guichet unique pour tout client qui souhaite obtenir réparation, peu importe la catégorie d'exercice. Le concept n'a jamais été poussé jusqu'au bout puisque la CSF a uniquement juridiction sur les représentants. Il serait intéressant d'étudier à fond la possibilité d'étendre ses responsabilités aussi aux courtiers.

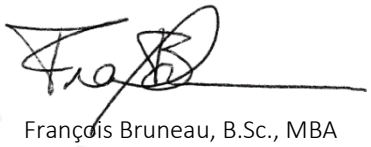
Conclusion

Bien que nous sommes conscients des limites et faiblesses du modèle actuel, le statu quo n'est certes pas un modèle à écarter pour le futur. Pour un courtier comme Groupe Cloutier Investissements, ce serait hautement préférable à un transfert vers l'OCRCVM.

Nous tenons encore une fois à remercier les ACVM pour l'opportunité qui nous a été offerte en lien avec le présent projet de consultation.

Nous espérons que notre lettre de commentaires, bien qu'elle soit condensée, a pu vous permettre de considérer les enjeux du point de vue du secteur des courtiers indépendants œuvrant exclusivement dans le secteur de l'épargne collective.

Bien à vous,



François Bruneau, B.Sc., MBA
Vice-président administration

Le jeudi 22 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246 Tour de la Bourse Montréal (Québec)
H4Z 1G3

Par courriel : consultation-en-cours@lautorite.qc.ca

Objet : 25-402 - Consultation sur le cadre réglementaire des organismes d'autoréglementation

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Il ressort de cet exercice que la situation de quasi-monopole dont bénéficient déjà les grandes banques se consolidera encore davantage puisque les petits courtiers en épargne collective se retrouveront privés de représentation à la table des grandes firmes de courtages advenant une fusion des deux OAR canadiens. Ce qui est déjà annoncée.

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Par ailleurs, le modèle québécois actuel responsabilise le conseiller professionnel qui doit prioritairement servir l'intérêt du client avant le sien. C'est le cœur du professionnalisme. Les clients doivent pouvoir avoir confiance en leur conseiller en

raison de la complexité du domaine et des impacts possibles sur leur santé financière.

Le conseiller membre de la CSF peut se prévaloir de plusieurs privilèges que lui confère son appartenance à une organisation professionnelle :

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Signé : _____

SERGE PAQUETTE.

Dealer Member Name: GF Securities (Canada) Company Limited

Date: October 22, 2020

To: Alberta Securities Commission; British Columbia Securities Commission; Ontario Securities Commission.

Comments on some questions in the CSA Consultation Paper

Consultation Questions on Duplicative Operating Costs for Dual Platform Dealers

Question 1.1: What is your view on the issue of duplicative operating costs and the stakeholder comments described above?

We agree that for dual platform Dealers, potentially it would significantly reduce costs related to compliance, operation, technology system and other fee by the consolidation. From the industry perspective, the saved cost could be reinvested in some innovation field and client service.

Consultation Questions on Structural Inflexibility

Question 4.1: What is your view on the issue of structural inflexibility, and the stakeholder comments described above?

We agree that evolving business models are limited by the current regulatory structure. Under IIROC platform, a mutual fund only representative still have to complete the same proficiency requirements as a full securities RR. It limits an investment dealer from developing a limited-license mutual fund only business model. To do so, a new mutual fund dealer needs be created with extra compliance, operation, technology, and admin cost. It also limits the client in mutual fund dealer to access broader range of services and products such as ETF. The clients must open a new account with a new investment firm and likely another advisor.

By consolidation of IIROC with the MFDA, it would benefit from the removal of barriers to add limited-licensed mutual fund business model to IIROC only dealer firm.

Consultation Questions on Investor Confusion

Question 5.1: What is your view on the issue of investor confusion, and the stakeholder comments described above?

We agree that, from the investors' perspective, having multiple regulators involved in the regulation of similar products, it would cause the confusion for investors, including the investor protection fund coverage, complaint resolution, and multiple registration categories and titles. The consolidation will solve the issue.

Le jeudi 22 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246 Tour de la Bourse Montréal (Québec)
H4Z 1G3

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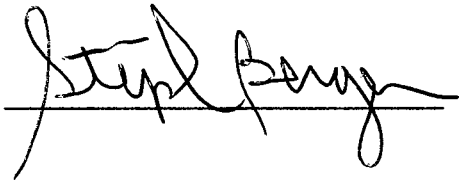
Signé : 

Le jeudi 22 octobre 2020,

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Par courriel : **consultation-en-cours@lautorite.qc.ca (mailto:consultation-en-cours@lautorite.qc.ca)**

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Suzanne Spencer

Signé : [redacted]

131267

Le jeudi 22 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246 Tour de la Bourse Montréal (Québec)
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Par courriel :

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Je suis un professionnel du secteur des valeurs mobilières et il m'apparaît que cette consultation a été lancée par et pour les grandes institutions bancaires canadiennes sans jamais tenir compte des milliers de professionnels qui conseillent le public.

Avec ce processus de consultation, il semble que les ACVM font le procès de l'autoréglementation dans son ensemble au Canada. Les OAR qui sont impliqués dans le processus sont basés en dehors de nos frontières et la question semble surtout toucher le reste du Canada (ROC)?

Mais, c'est en apparence, seulement!

Cette consultation nous affecte directement au Québec – mais tout cela s'est fait et se fait comme si on voulait tenir le Québec à l'écart de la discussion puisqu'on s'est arrangé pour que le sujet principal soit l'éventuelle fusion d'IIROC et du MFDA.

Faut-il rappeler de nouveau que le domaine des valeurs mobilières est un champ de compétences exclusivement provincial?

Les ACVM se servirait-il de cet exercice comme prétexte pour exclure du débat le Québec et pouvoir écarter d'emblée son expertise des 20 dernières années dans le domaine? Ont-elle l'intention d'ignorer l'opinion des quelque 30 000 intermédiaires en valeurs mobilières du Québec? Pourquoi le modèle d'encadrement des professionnels serait-il décidé dans le ROC par les seules grandes firmes de courtage qui ont pour la plupart leur siège social à Toronto?

Il y a par ailleurs lieu de s'interroger sur la façon de consulter des ACVM qui consiste à faire des pré-consultations avec une poignées d'intervenants. Ce sont ces mêmes dirigeants qui décident de l'orientation de la consultation et ont un à priori largement favorable aux grands groupes financiers qui contrôlent déjà les destinées des OAR *canadian*.

Coïncidence ou non, ce sont souvent ces mêmes joueurs qui réclamaient le démantèlement du modèle d'encadrement québécois, les mêmes qui voulaient l'abolition des chambres lors du PL 141 et lors des deux précédentes tentatives en 2007 et 2010 ceux qui voulaient remplacer la CSF par le MFDA.

Il s'agit d'une façon plutôt dangereuse de procéder. Cela menace la saine concurrence, menace l'autonomie professionnelle des conseillers québécois et menace surtout la protection des consommateurs du Québec.

Comment ne pas croire alors que le débat n'est pas faussé d'avance et que la question des économies d'échelles supposées ou de la simplification du système canadien des OAR cache aussi une nouvelle attaque contre le modèle d'autoréglementation québécois?

Le Québec, ses consommateurs, ses professionnels, ses régulateurs ont beaucoup à perdre là-dedans. Au terme de l'exercice annoncé, l'OAR fusionné sera contrôlé à Toronto. Ensuite, après avoir obtenu des délégations de pouvoirs de toutes les autres provinces, le Règlement 31-103 lui permettra de facto d'occuper le rôle de régulateur national en valeurs mobilières.

Ainsi, sur le plan réglementaire, le Québec souffrira d'une perte d'influence énorme. Sans compter les problèmes de cohérence et d'application des règles qui en découleront pour les cabinets québécois et leurs conseillers inscrits dans les disciplines de valeurs mobilières. Il s'agit encore une fois d'un cas typique d'harmonisation du ROC pour désharmoniser le Québec.

Comme des milliers de mes collègues professionnels, je crois qu'il faut bloquer toute tentative unilatérale de bouleverser notre environnement professionnel et éviter par la même occasion une perte d'influence réglementaire substantielle pour le Québec, son OAR en épargne collective, son industrie financière et son public. Nous devons être consultés en premier, le Québec doit faire respecter sa juridiction en matière de valeurs mobilières et nous devons nous opposer à toute menace de nos compétences et de notre autonomie professionnelle.

Je vous remercie de prendre mon commentaire en considération. Et je ne m'attends à rien d'autre que la discussion se poursuive au Québec pour le bénéfice des consommateurs et des conseillers d'ici comme il se doit.

Guy Duhaime A.V.C. Pl. Fin.
Président
Groupe Financier Multi Courtage Inc.

October 22, 2020

BY EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and
Public Safety, Prince Edward Island

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail : comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de le Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) GIV 5C1
Fax: 514-864-6381
Email: Consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames,

Re: CSA Consultation Paper 25-402

Consultation on the Self – Regulatory Organization Framework

About Portfolio Strategies Corporation

Portfolio Strategies Corporation ("PSC") is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a Mutual Fund Dealer and Exempt Market Dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and the Northwest Territories. We also founded Portfolio Strategies Securities Inc. in April 2008 under the IDA (now IIROC), so we have experience running dual platform dealers.

We appreciate the opportunity to provide comments on the current Self-Regulatory Organization framework. The review is very timely. Our firm is directly affected by the "two SRO" model as we strive to offer expanded product lines to our retail wealth clients at a reasonable cost. We have also studied the MFDA and IIROC proposals on SROs in great detail and have come to the conclusion that it is time for a consolidated SRO.

Opening Comments

The MFDA was created over twenty years ago to regulate a rapidly growing mutual fund industry, at a time when the CSA members did not have the resources to regulate mutual fund dealers at an acceptable level of oversight. Rather than use public funds to enhance regulation of these dealers, it was decided that this unique component of the investment industry should be a stand-alone SRO, but more importantly it was to be self funded. Around the same time the IDA had been a long-established SRO, whereby its dealer members offered all investment product categories, with little emphasis on mutual funds. Given such disparate product platforms the decision to create the MFDA was the correct decision for the times.

Today the investment industry has evolved at a rapid rate. IDA/IIROC firms have shifted towards more conservative managed money solutions, including mutual funds and funds of funds structures, and de-emphasized individual equity and fixed income portfolios created at the individual advisor level. MFDA dealers are now looking to offer ETFs and government bonds to their retail clients, products that used to be the exclusive purview of IIROC firms. It would appear that the two SROs have gravitated to some sort of middle ground where the operation of two distinct SROs no longer makes sense. Both SROs have their own unique guidelines and rules, written in a bygone era by staff that have never actually worked in the industry and not adapted to the needs of today's retail wealth client. In our opinion, the current magnitude of ever-increasing rules from both SROs has not led to better client outcomes. Account opening requirements and endless disclosures have become a true irritant to retail clients who are more interested in discussing their own goals and objectives than they are in dealer self preservation initiatives thrust upon dealers by both SROs and the CSA.

General Consultation Questions:

Response:

a) -We agree that the SRO must be national, including Quebec if possible, to truly realize the efficiencies gained from moving to a single SRO model.
-SRO business models have converged over the last twenty years, to some degree. The current two SRO model is highly inefficient.
-While both SROs have their own Investor Protection Funds, they could be merged for further cost savings and efficiencies.

b) -There are huge cost differences for membership at the two SROs, particularly for mid size independent firms where the MFDA fees are considerably higher than IIROC's fees (almost $100,000 higher at the MFDA, with nil additional value for our firm). At the other extreme, the minimum MFDA membership fees are roughly $3,000 – which is completely unrealistic and does not cover the MFDA's regulatory oversight costs for these small dealers. Medium to large MFDA members are subsidizing the low membership fees for small members, which is obviously and unmistakably unfair. We question whether the MFDA has ever increased their minimum membership fees since they became an SRO almost twenty years ago.
-As the investment industry has evolved over the last twenty years, the MFDA has not kept up. The MFDA seriously lacks expertise in the areas of exchange traded funds, government bonds, exempt market products, investment fund manager duties, to name just a few. The MFDA, as our SRO, should be guiding its members in these areas as to "how to". In reality, it's the other way around – members are having to educate our SRO.

c) -In our opinion the two most important CSA Targeted Outcomes are
-A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value.
-A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors.

d) -No other documents or quantitative information/ data come to mind that the CSA should consider in evaluating these issues.

Duplicative Operating Costs for Dual Platform Dealers

Question 1. 1 : *What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable :

a) *Describe instances whereby the current regulatory framework has contributed to duplicative costs for dealer members and increased the cost of services to clients.*
b) *Describe instances whereby those duplicative costs are necessary and warranted.*
c) *How have changes in client preferences and dealer business models impacted the operating costs of dealer member firms?*

Response:

We agree that the issue of duplicative operating costs cause higher than necessary operating costs, and prevent dual platform dealers from realizing economies of scale. One opportunity to lower operating costs would be to permit part time CCOs and part time CFOs to support both dealer types (MFDA and IIROC), whether the firms are related in any way or not, assuming that both dealers have capable compliance and finance staff to properly support those CCOs and CFOs.

We also agree with the comments on duplicative "non- regulatory" costs, and information technology systems. Due to the very strict back office software requirements of both SROs, with no meaningful benefits to investors on a cost benefit analysis basis, the barriers to entry for new back office software vendors are extremely high, at substantial cost, thus stifling competition in this critical area. IIROC and MFDA dealers seem stuck with the same cumbersome and outdated systems that were sold to them many years ago. There are really no new entrants in the information technology space for dealers, due to the very prescriptive, and sometimes uninformed, guidelines from both SROs.

The issue of multiple fees for dual platform dealers is very real and does not result in a corresponding increase in regulatory value. As stated earlier, our MFDA fees are almost $100,000 higher than our fees would be under IIROC, and we can assure you that we receive "nil" value for that additional $100,000. We feel that we are being overcharged so that smaller firms that are not paying their fair share of regulatory costs, can be subsidized.

a) -Duplication of compliance department costs, with no meaningful benefit.
-Incompatible back office systems to be maintained due to very specific SRO requirements without obvious investor benefits.
-A wholly unnecessary IIROC demand for more costly nominee accounts (because of outdated thinking that the CIPF is the most important thing when dealing with retail clients – it isn't) when no cost client name accounts at mutual fund companies are considered by most dealers and clients to be just as secure. This overemphasis on nominee accounts by IIROC causes retail investors to pay annual RRSP and RRIF plan fees of anywhere from $100 to $150 per year on accounts worth as little as $2,000. How can anyone argue that this is fair value for money spent?
b) We can't think of one reason whereby these duplicative costs are necessary and warranted.
c) Mutual fund dealer clients now want, and fully expect, access to ETFs, as well as liquid government bonds that offer safety and much more variety and diversity over GICs. Under the existing two SRO structure, MFDA firms now have to contract with IIROC firms (that they compete against) for clearing their ETF and bond trades. These trading costs and custody fees must inevitably be passed on to their retail clients, when no such fees exist today for self-clearing MFDA firms (likely 99% of dealer cleared business today) .

Question 1.2: *Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response :

We feel that the CSA targeted outcome for issue 1 is described appropriately. This outcome would be best achieved by rolling the MFDA into IIROC due to IIROC's demonstrated expertise in ETFs, bonds, private equity and debt, and long established margin practices.

Product-Based Regulation

Question 2. 1 : *What is your view on the issue of product-based regulation, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position .*

In addressing the question above, please consider and respond to the following, as applicable:

a) *Are there advantages and/or disadvantages associated with distributing similar products (e.g. mutual funds) and services (e.g. discretionary portfolio management) to clients across multiple registration categories?*
b) *Are there advantages and/or disadvantages associated with representatives being able to access different registration categories to service clients with similar products and services?*
c) *What role should the types of products distributed and a representative's proficiency have in setting registration categories ?*
d) *How has the current regulatory framework, including registration categories contributed to opportunities for regulatory arbitrage?*

Response :

We would agree that SROs and the CSA continue to focus on products sold, using a “tick the box” method of product-based regulation, when they should be focused on the financial, estate, tax or retirement planning work which is what all retail clients are interested in getting assistance with. The products offered by dealers are simply a means to an end, after the planning work is done and appropriate product solutions are offered. Most regulators seem to have the perception that commission-based products come first, and the planning work simply fits the recommended product and comes second. Financial advisors rely on long term relationships with their clients to make it financially worth their while ; no professional financial advisor will risk that by selling one potentially unsuitable high risk product.

Having dealt with both SROs we can say that the MFDA definitely tends to be very prescriptive, with a “tick the box” method of product-based regulation, whereas IIROC tends to be more principles-based.

Some of the differences we have observed between the two SROs are the following :

- When assessing mutual funds with a "medium-high" risk tolerance, it would appear that IIROC will accept the mutual funds as "medium" as part of an overall portfolio, whereas the MFDA would argue that the stated fund should be "high" risk. This is part of their ultra conservative, outdated philosophy that advisors are "guilty until proven innocent". As stated above, the planning work comes first, and the recommended product comes second.
- At IIROC, margin accounts have been acceptable for decades and could be a source of ready cash for clients who need funds on short notice, without having to liquidate securities at an inopportune time. At the MFDA, margin accounts are not permitted. All borrowing to invest is considered leverage, and is inherently bad in their opinion. Conservative leverage is a sound investment strategy for some clients (capital asset pricing model) but this, unfortunately is totally lost on the MFDA.
- Best execution for ETFs means speed of trade at the MFDA, and nothing else. Under IIROC there are at least three or four components of best execution. (Price, speed, certainty, total cost).
- IIROC would appear to categorize mutual fund dealers selling professionally managed third party funds and select exempt market products as "low risk" dealers. The MFDA tends to categorize these very same dealers as "high risk" simply because they sell exempt market products such as flow through shares or first mortgage MICs and MIEs, to their higher income, or high net worth clients.
- Flow through shares are sold to higher income clients for tax planning purposes, often with a six to eighteen month hold period. They are **not** held as part of a longer term, balanced portfolio. To this day MFDA sales compliance and MFDA enforcement staff refuse to accept a stand alone plan for tax planning purposes that holds flow through shares (an exempt market product for 100% of plan holdings) to be an acceptable business practice. They simply are not part of a long term, balanced portfolio.

a) With all due respect to the CSA, as stated we think this is the wrong question. The advantage of selling mutual funds under the MFDA model is that client name accounts with no annual trustee fees can be offered, thus saving clients unnecessary costs. IIROC insists on nominee accounts, due to a misguided notion that CIPF protection is the most important aspect of investing. We would like to think that IIROC might consider reviewing this stance, since free client name accounts for small amounts (RESPs, RDSPs, LIRAs, starter RRSPs) are in the client's best interest. One of the services mentioned in this section is discretionary portfolio management, which could be as simple as a client selected "fund of funds" asset allocation model. This is not permitted under any circumstances at the MFDA; firms are forced to engage external portfolio managers for simple rebalancing of asset classes, at considerable cost that will be passed on to our retail clients.

b) Our comment would be similar to a) above but we would add that directed commissions are available to MFDA advisors outside Alberta, with no apparent regulatory risk whereas IIROC does not permit this.
c) If a representative has sufficient proficiency to sell a type of product, they should not be limited to which SRO they must register with for such sales. We can't think of any public interest reasons for maintaining the current two SRO framework. The cost structures under the two SROs are very different; retail clients should not be negatively impacted by potentially unnecessary cost structures that they do not understand, but are being asked to pay for.
d) Under both SROs the regulatory requirements for operating a simple business model appear to be well in excess of what should be required, and provide no public interest protections. For example, some boutique IIROC firms focused on a few capital raises per year, from institutions or other sophisticated investors, are still subject to in-depth business conduct compliance and financial compliance audits, and potentially trade desk audits. This is regulatory burden at its worst, and provides no measurable protections for institutions or sophisticated investors, in our opinion.

Question 2. 2 *Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response:

The CSA targeted outcome for issue 2 is described appropriately.

Regulatory Inefficiencies

Question 3. 1 : *What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) Describe which comparable rules, policies or requirements are interpreted differently between IIROC, the MFDA and/or CSA; and the resulting impact on business operations.

b) Describe regulatory barriers to the distribution of similar products (e.g. ETFs) available in multiple registration categories.

c) Describe any regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that span multiple registration categories.

Response:

The stakeholder comments regarding the inability of mutual fund dealers to easily distribute exchange traded funds are painfully accurate. Our firm started to look at offering ETFs roughly five years ago from a public interest standpoint. Initially IIROC firms claimed that ETFs (that meet the definition of a mutual fund) were a complex product that only IIROC registrants were capable of selling - interpretation : These IIROC firms didn't want any MFDA firms "playing in their sandbox". They argued for exclusivity of ETFs, at a time when most of these retail clients had insufficient investable assets to merit any IIROC firm's attention. The CSA, on the other hand, did appear to see the benefits of offering ETFs to the mass affluent. So, we had the CSA onside, then IIROC and IIROC firms onside once the regulatory responsibilities and kinks were worked out. At no time did we see that the MFDA, as our SRO, was working on their member's behalf to be able to launch ETFs. This, after five years of publicly stating "it's a great idea whose time has come, and we support this initiative". If anything, the MFDA got in our way, quoting "best execution" rules that they clearly do **not** understand and do not have rules for, plus UMIR that does not apply to us. Suffice it to say, MFDA senior management attempted to dictate IIROC rules to MFDA dealers, when they should have left IIROC to regulate IIROC member firm involvement in ETF trades for mutual fund dealers.

a) Regarding comparable rules between SROs, and as stated above, the MFDA does not appear to have any rules about "best execution", yet that did not stop them from pretending they had such a rule (which they do not understand) covered under an unrelated rule about client best interest. We were forced to implement cumbersome work arounds at additional cost that will be passed on to our clients in the form of fees or reduced planning time.
b) One of the main regulatory barriers to the distribution of ETFs is the inability of mutual fund dealers to access the markets where ETFs are traded. Mutual fund dealers are required to engage unrelated IIROC firms to conduct ETF trades, then build cumbersome, potentially expensive work arounds for client reporting (confirmations and statements), fund facts delivery etc. We could argue that ETFs that meet the definition of a mutual fund, overstated trading risk aside, are no riskier than mutual funds, yet fund facts must be delivered "pre trade" for mutual funds under current CSA rules, whereas fund facts can be delivered "post trade" for ETFs. The discrepancy or disconnect is lost on us, to be perfectly honest, and it is difficult to explain to our retail clients.
c) There are no regulatory risks that make it difficult for any one regulator to identify or effectively resolve issues that come to mind, other than the fact that MFDA staff lack sufficient knowledge of ETFs to properly regulate their mutual fund dealer members.

Question 3.2: *Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response:

The CSA targeted outcome for issue 3 is described appropriately.

Structural Inflexibility

Question 4. 1 : *What is your view on the issue of structural inflexibility, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible , please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above , please consider and respond to the following, as applicable:

a) *How does the current regulatory framework either limit or facilitate the efficient evolution of business?*

b) *Describe instances of how the current regulatory framework limits dealer members' ability to utilize technological advancements, and how this has impacted the client experience.*

c) *Describe factors that limit investors' access to a broad range of products and services.*

d) *How can the regulatory framework support equal access to advice for all investors, including those in rural or underserved communities?*

e) *How have changes in client preferences impacted the business models of registrants that are required to comply with the current regulatory structure?*

Response:

We agree with the stakeholder comments on structural inflexibility listed in this paper, and will expand on them in our answers to the specific questions below. A consolidated SRO that allows dealers to evolve their business models to meet investor demand for expanded products and services would be in the public interest, as long as licensed representatives have the proficiency to offer such products and services.

a) The current regulatory framework makes it extremely difficult for mutual fund dealers to offer expanded product lines (ETFs, government bonds) to their clients, which our retail clients are starting to expect. We have been forced to build costly work arounds due to the fact that established IIROC and MFDA back office systems do not transmit data to one another, nor do system providers have any desire to work with their competitors by sharing their API (application programming interface). System providers would much rather build more costly, and sometimes inefficient data solutions for their captive dealer clients.

b) While the CSA has become quite enamoured with robos for their ability to deliver ETF solutions to the masses, both SROs are less so. MFDA and IIROC staff appear to lack knowledge or expertise in the robo space. When our firm tried to launch a robo a couple of years ago using actively managed pools of ETFs and prospectus sold mutual funds, we were given conflicting guidance from the MFDA and CSA as to whether our robo should be a referral agreement (less attractive) or an "on book" arrangement. We eventually abandoned the joint venture because the regulatory hurdles, and increasing costs, seemed insurmountable.

   Further, there seems to be a real disconnect at the CSA on how MFDA and IIROC dealer new client accounts should be opened. Robos are seemingly able to cut corners and eliminate face to face client interaction to discuss regulatory disclosures, and sign for them, while at the same time MFDA and IIROC member firms are held to a much higher standard at the account opening stage. At an IFIC conference a few years ago an attendee asked a regulatory panel that included the OSC why it is that "I can open a new account at a robo in about four minutes, but if I go through a traditional dealer the new account process can easily take an hour". There was no response given by the OSC as to why such a disparity between distribution methods is allowed to exist or encouraged by some CSA members. The disconnect from our regulators is quite troubling and is an impediment for dealers to utilize technological advancement to offer expanded product lines and services to their retail clients.

c) Aside from the technology challenges listed above, enhanced regulatory requirements for new account opening, monthly or quarterly client account statements, trade confirmations, etc. have increased dealer operating costs considerably, to the point where many dealers have had to establish minimum client account requirements to allow them to operate client accounts in a profitable manner. As many IIROC firms are "introducing" dealers to a select few "carrying" dealers that charge their "introducing" dealers for every aspect of operating these client accounts, IIROC member minimum client account requirements are considerably higher than any account minimums for MFDA members who usually self clear. Current regulatory requirements have created a framework with an advice gap, leaving millions of Canadian retail clients without easy access to these additional products and services. In our opinion a standard CSA response such as "they can use a robo" is dismissing the value of advice for a client segment that needs advice the most.

d) The creation of a consolidated SRO with "product/service" tiers based on advisor proficiency (mutual funds/ETFs/government bonds vs full service offerings including equities, fixed income (including corporate debt)) would give retail clients equal access to all available products and services. As for servicing rural or underserved communities, regulatory assistance and approval for dealer use of digital onboarding and servicing initiatives would alleviate this problem/issue.
e) Client preferences are for increased access to more products and services at MFDA firms, to fill the gap between "order execution only" firms with no advice, versus traditional IIROC member firms that have high minimum account size requirements. MFDA firms have had to build costly work arounds to accommodate client requests for ETFs because current SRO accepted back office systems do not transmit data between MFDA and IIROC member firms.

Question 4.2: *Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response:

The CSA targeted outcome for issue 4 is described appropriately.

Investor Confusion

Question 5.1 : *What is your view on the issue of investor confusion, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified ? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable :

a) What key elements in the current regulatory framework (i) mitigate and (ii) contribute to investor confusion?
b) Describe the difficulties clients face in easily navigating complaint resolution processes.
c) Describe instances where the current regulatory framework is unclear to investors about whether or not there is investor protection fund coverage.

Response:

There is no doubt that investors are unlikely to know where to turn if they have questions or a complaint about their financial advisor or the member firm. To the general public, they hold an investment, and the distinction between MFDA, IIROC, or a CSA registration category will not be clear to them. While it is true that dealers are required to disclose their membership in an SRO such as the MFDA or IIROC, the disclosure stops there and it will not be obvious to the customer what the product differences, or services offered, will be between the two SROs.

Further, CSA registration categories such as exempt market dealer, portfolio manager, or scholarship plan dealer, do not require membership in either of the two existing SROs, so consolidating the two SROs into one SRO will not eliminate investor confusion ; it will simply reduce the possible number of regulators that can lend assistance down to two regulators, from three regulators.

a) -The website search tool "aretheyregistered" helps to mitigate investor confusion by pointing investors to the advisor's dealer name and address, but it does not point them to the appropriate SRO, such as MFDA and IIROC. If it is a CSA registered firm, it still is not obvious which CSA member clients should turn to if they have questions or a complaint.
   -The fact that investors do not know the difference between the MFDA, IIROC, or CSA contributes to investor confusion. Further, when you throw segregated funds into the mix none of the three regulators mentioned above are likely to provide a sounding board for those clients, unless they can demonstrate that the segregated funds were purchased from an SRO member firm, or CSA registrant.
b) In most cases clients would likely prefer to complain directly to the regulator that oversees the financial advisor or dealer. Some clients may mistakenly assume that all dealers will automatically back their own advisor, regardless of the facts. By going straight to the overseeing regulator, they may feel that they are more likely to reach a sympathetic ear. Under current complaint handling processes clients are directed to the dealer to conduct an initial investigation, and those dealers are required to disclose other complaint options to them, be it OBSI, the MFDA, or IIROC. What are clients to do if they are not provided with those additional options?
c) In my thirty five years as a registrant I can't recall a new client ever asking me if investor protection coverage applies to them in the event of my dealer's insolvency. Having said that, if a client does want to know what coverage is available to them in such a situation, there is no obvious source of information for this, unless the potentially insolvent dealer shares it with them, but insolvencies are so rare that this is not a large problem, in our opinion. If proper disclosure of investor protection funds is the main issue to solve, perhaps OBSI or "aretheyregistered" can act as a resource for such information by tweaking their online resources to point to the appropriate SRO protection fund (CSA registrants do not appear to have such a fund through).

Question 5.2: *Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response:

We feel that the CSA targeted outcome for issue 5 is described appropriately.

Public Confidence in the Regulatory Framework

Question 6.1 : *What is your view on the issue of public confidence in the regulatory framework, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) *Describe changes that could improve public confidence in the regulatory framework.*

b) *Describe instances in the current regulatory framework whereby the public interest mandate is underserved.*

c) *Describe instances of how investor advocacy could be improved.*

d) *Describe instances of regulatory capture in the current regulatory framework.*

e) *Do you agree, or disagree, with the concerns expressed regarding SRO compliance and enforcement practices? Are there other concerns with these practices?*

Response:

On the whole we completely disagree with most of these stakeholder comments on perceived public confidence concerns. SRO boards of directors have current and former securities industry participants serving on these boards because they want industry experience that is live to varied issues that the SROs must deal with. While our preference is that former securities industry participants **not** be appointed to SRO boards (their paid positions are a conflict) it is a false premise to assume that the independent directors (usually politically connected lawyers and accountants) will understand the intricacies of day to day operations in the investment industry, and will be able to balance investor protection issues against needless regulatory burden that does not benefit the end client.

Investor advocacy groups, often dominated by lawyers who have never worked in the investment industry, have made completely ludicrous recommendations to the CSA, and two SROs, thus demonstrating a lack of understanding of the client-advisor relationship. The ongoing discussions about DSC sales abuse, perceived harm to retail investors in **every** case involving DSC sales etc. shows a real misunderstanding of our industry, and blindly ignores public interest reasons for the occasional use of DSC funds. Here are a few examples :

- A client wants to leave a firm that only offers a limited choice of proprietary funds. There is a DSC charge that the original firm wants the client to pay, and the new firm offers a commission rebate of a new low load fund or DSC fund to make the client's account whole. Is that not in the client's best interest? Unfortunately, the CSA ignored this client benefit, caved to the investor advocacy groups (and their very narrow, unresearched viewpoint) and banned all future DSC sales (except in Ontario).
- Investor advocacy groups seem to have this notion that financial advisors, and their sponsoring dealers, have almost limitless resources to make clients whole if clients change their mind, suffer job loss, or choose to move their account to a family member who only just entered the investment industry. They casually dismiss many hours of planning work delivered to such clients that has a cost, as meaningless. We are not talking about unsuitable trades here ; in these cases, I firmly believe that dealers and financial advisors will do right by these investors if the original trade was found to be unsuitable at the time. What investor advocacy groups need to acknowledge if they want to be taken seriously, is that clients often misrepresent the facts of their case in an attempt to get to their desired solution, and they can make these misrepresentations because they face no repercussions for making such misrepresentations.
- The Covid-19 freebie. Thousands of dollars in commission rebates may be paid to clients to make their accounts whole, or dozens of hours of financial, retirement, tax and estate planning services may be provided, all paid for by the responsible use of low load or DSC funds for **suitable trades**, yet the investor advocacy groups (Fair Canada, Ken Kivenko) lobbied the CSA to suspend DSC mutual fund redemption fees, and provide relief from investment or margin loans – and they said it with a straight face! These groups lack all credibility when they believe that the investment industry has billions of dollars in spare cash lying around to absorb DSC redemption fees in full, all in the name of Covid relief. Again, we are not talking about unsuitable trades here. If a client loses their job due to Covid, and needs to redeem some funds for living expenses, where is the catastrophe when clients can still access 95 to 99% of the current market value of their account? Why should the investment industry be expected to dig into their pocket to waive DSC redemption charges when they delivered valuable advice and services that investors had agreed to, knowingly, in the first place? Finally, the suggestion that financial institutions should provide relief from investment or margin loans due to Covid-19 shows an even greater ignorance of how financial institutions make loans – someone buys a GIC yielding 2% from that institution, and they in turn lend it out to credit worthy borrowers. Are these investor advocacy groups suggesting that seniors saving through GICs should waive their expectations of principal repayment in the name of Covid relief? This suggestion from Fair Canada was so laughable that it occurred to me that their board can't possibly have any retired bankers on it. Perhaps they should review **their** board composition.

a) We can't think of any obvious changes to SRO board composition that would improve public confidence in the regulatory framework. SRO board members want to do the right thing by investors, and they won't risk their reputations by doing otherwise. The CSA could look at forming an investor advocacy committee, comprised of knowledgeable, investment industry people (not biased lawyers and accountants who have no investment or investment industry experience) that could look out for investor interests, and liaise with the CSA or a consolidated SRO.
b) We can't identify instances in the current regulatory framework whereby the public interest mandate is underserved. Investor advocacy assertions that SROs go about their business completely unchecked, with no regard for public interest issues, are entirely unfounded.
c) Find reasonable, knowledgeable individuals on a committee that could raise public interest issues for retail investors, and liaise with the CSA and SROs. Nobody disagrees with the notion of investor advocacy ; we just can't identify a credible investor advocacy group, that has knowledge and experience, in existence today.
d) We do not agree with stakeholder comments on regulatory capture. Most SRO boards, certainly the MFDA, are split evenly between unpaid "industry" directors who bring knowledge and experience, and paid "public" directors who are often politically connected, retired lawyers and accountants. Occasionally, retired investment industry veterans or former regulators become "public" directors after a short cooling off period. We completely disagree with this practice and encourage the CSA and SROs to appoint truly independent directors so we can break away from the mindset of "we have always done it this way". The investment industry has evolved and it's time the board compositions did too. This proposed change would free up independent board seats that could be occupied by knowledgeable, and reasonable, investor advocates.
e) We completely disagree with stakeholder concerns regarding SRO compliance and enforcement practices, particularly the investor advocacy comments regarding a lack of dealer fines for supervision deficiencies. Both SROs regularly fine and sanction SRO dealer members for lapses in supervision. The SRO records speak for themselves and dealer sanctions have been extensive. Current SRO rules and by laws do not permit the SROs to force restitution for harmed clients, but SROs are very good at forcing their opinion on dealers when it comes to restitution (unwritten veiled threats?) and are more than willing to assist OBSI to come to the same conclusion under vague "fairness" guidelines.

   We do agree however with the stakeholder comments that one SRO (MFDA) takes a punitive approach to its enforcement proceedings, where it is not uncommon for financial advisors or dealers to spend in excess of $50,000 in legal fees to defend themselves against numerous false allegations, so they can land on one minor breach (that involved no client harm), and feel good about themselves for "winning" against the false allegations. There is absolutely no public interest being served with such a heavy handed, expensive approach by enforcement staff.

The process is deeply flawed when it causes financial ruin upon registrants who made minor mistakes with no apparent client harm, and tremendous reputational damage that may be impossible for some registrants to recover from .

Question 6.2: *Is the CSA targeted outcome for issue 6 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response:

We somewhat agree that the CSA targeted outcome for issue 6 is described appropriately, because we feel that the investor advocacy concerns, particularly regarding SRO board composition, are grossly exaggerated, and founded on a false premise that registrants do not normally deal with their clients "fairly, honestly and in good faith".

Separation of Market Surveillance from Statutory Regulators (CSA)

Question 7.1 : *What is your view on the separation of market surveillance from statutory regulators, and the stakeholder's comments described above? Are there other concerns in respect of this issue that have not been identified? If possible, please provide specific reasons for your position and provide supporting information, including the identification of data sources to quantify the impact or evidence your position.*

In addressing the question above, please consider and respond to the following, as applicable:

a) *Does the current regulatory structure facilitate timely, efficient and effective delivery of the market surveillance function? If so, how? If not, what are the concerns?*

b) *Does the continued performance of market surveillance functions by an SRO create regulatory gaps or compromise the ability of statutory regulators to manage systemic risk? Please explain.*

Response:

As stated on page 3 of this consultation paper the IDA was founded in 1916 as the Bond Dealers Section of the Toronto Board of Trade, so they obviously had the expertise to review trading activity in the Canadian debt marketplace. Then in 2002 Market Regulation Services Inc. (RS) was formed "to provide independent regulation services to Canadian marketplaces". The TSE and TSX Venture Exchange "then chose to outsource to RS, through regulation services agreements, the surveillance, trade desk compliance, investigation and enforcement functions they had historically conducted in-house". In 2008 IIROC was created "through the combination of the IDA and RS into a single organization".

From the outside looking in, we question the need for reviewing this bundling or unbundling of regulatory oversight for the third time in eighteen years. We would like to think that the concerns raised by the MFDA this year were thoroughly discussed and evaluated by the CSA on the two previous decisions. Further, Canada does not need more regulators, we need less.

If the existing CSA structure can handle the monitoring of systemic risk and inform market structure policy with existing staff resources, or would consider absorbing existing IIROC specialist staff that perform such functions, without having to create yet another regulator, then we would be supportive of that if the CSA deemed this to be in the public interest.

Question 7.2 *Is the CSA targeted outcome for issue 7 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?*

Response:

We believe that the targeted outcome for issue 7 is described appropriately.

We appreciate the opportunity to provide our comments on the Self-Regulatory Organization Framework. If you have any questions or comments on our submission please contact me directly at markkent@portfoliostrategies.ca

Yours truly,

"Mark Kent"

Mark S. Kent, CFA, CLU
President & CEO
Portfolio Strategies Corporation

WELLINGTON-ALTUS
PRIVATE WEALTH

October 21, 2020

Via Email to: comments@osc.gov.on.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Re: Consultation on the Self-Regulatory Organization Framework

We write in order to provide our comments on some of the proposals included in the June 25, 2020 CSA Consultation Paper 25-402 "Consultation on the Self-Regulatory Organization Framework" (the "Consultation Paper").

Broadly speaking, Wellington-Altus Private Wealth Inc. ("WAPW") is supportive of the proposed consolidation between the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA") and believes that the proposed consolidation will help to achieve the targeted outcomes proposed in respect of issues 1-5 of the Consultation Paper. Our response to questions 1-5 from the Consultation Paper are as follows:

Question 1.1: What is your view on the issue of duplicative operating costs, and the stakeholder comments described above? Are there other concerns in respect of this issue that have not been identified?

WAPW agrees with the stakeholder comments stating that dual platform dealers experience higher operating costs and difficulty in realizing economies of scale under the existing SRO structure. WAPW further agrees that these higher costs affect the ability of dual platform dealers to minimize costs for clients and hampers innovation in the delivery of products.

Specifically, the need to maintain separate compliance and supervisory functions in respect of each self-regulation organization ("SRO"), the multiplicity of membership fees, and the additional expenses in non-regulatory costs when operating as distinct entities, inevitably lead to increased operating costs which are ultimately borne by investors. Furthermore, the stratification of systems and operating entities necessarily hampers the ability of dual platform dealers to capitalize on economies of scale and technological innovations that would otherwise be viable.

Question 1.2: Is the CSA targeted outcome for issue 1 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

WAPW believes that the targeted outcome of "A regulatory framework that minimizes redundancies that do not provide corresponding regulatory value" is described appropriately. WAPW believes that the staggered consolidation of SROs as proposed by IIROC will best achieve this outcome.

Question 2.1: What is your view on the issue of product-based regulation, and the stakeholder comments described above?

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WAPW agrees with the stakeholder comments stating that there is a lack of rule harmonization amongst SROs, including discrepancies in the application and interpretation of similar rules. WAPW further agrees that divergences in the application and interpretation of rules gives rise to the potential for "regulatory arbitrage".

Specifically, WAPW believes that many registrants under the current model have the ability to essentially choose their regulator due to the broad regulatory overlap for certain financial products and services. In the result, two registrants who are providing products and services which are effectively identical may be subject to an unequal regulatory playing field. This can result in clients with identical interests receiving disparate levels of regulatory oversight.

Question 2.2: Is the CSA targeted outcome for issue 2 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

WAPW believes that the targeted outcome of "A regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules" is described appropriately. WAPW believes that the staggered consolidation of SROs as proposed by IIROC will best achieve this outcome.

Question 3.1: What is your view on the issue of regulatory inefficiencies and the stakeholder comments described above?

WAPW agrees with the stakeholder comments stating that the current regulatory framework makes it difficult for any one regulator to identify and effectively resolve issues that span multiple registration categories.

Specifically, the detection of whether or not patterns exist that warrant regulatory intervention is a significant hurdle to regulators who are structurally limited to seeing only one part of the larger picture.

Question 3.2: Is the CSA targeted outcome for issue 3 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

WAPW believes that the targeted outcome of "A regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors" is described appropriately. WAPW believes that the staggered consolidation of SROs as proposed by IIROC will best achieve this outcome.

Question 4.1: What is your view on the issue of structural inflexibility, and the stakeholder comments described above?

WAPW agrees with the stakeholder comments stating that evolving business models are limited by the current regulatory structure. WAPW further agrees that investors are needlessly inconvenienced by the necessity to re-paper client accounts and the loss of historical performance data when transferring accounts within a dual platform dealer.

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Specifically, WAPW is concerned about the barriers to professional and technological advancement created by the lack of flexibility in the current framework and the limitations and succession problems created for senior mutual fund dealer representatives. WAPW's client feedback indicates an evolving preference from investors of all account sizes for wholistic wealth management advice and access to a wide range of financial products, all of which is limited by the current framework.

Question 4.2: Is the CSA targeted outcome for issue 4 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

WAPW believes that the targeted outcome of "A flexible regulatory framework that accommodates innovation and adapts to change while protecting investors" is described appropriately. WAPW believes that the staggered consolidation of SROs as proposed by IIROC will best achieve this outcome.

Question 5.1: What is your view on the issue of investor confusion, and the stakeholder comments described above?

WAPW agrees with the stakeholder comments stating that investors are generally confused by the current regulatory structure and particularly by the inability to access similar investment products and services from a single source.

Specifically, WAPW is of the view that clients cannot easily understand the current framework due to its complexity and fragmentation. While industry insiders and experts can distinguish between the types of products and services overseen by different SROs, the public at large is not well positioned to understand these distinctions, particularly with respect to SROs who perform certain overlapping functions, such as with IIROC and the MFDA. The diversity of registration categories across multiple regulators exacerbates this concern.

WAPW also shares the concerns of other stakeholders in respect of fragmented investor protection coverage and complaint resolution processes.

Question 5.2: Is the CSA targeted outcome for issue 5 described appropriately? If yes, how can the targeted outcome be best achieved? If no, what outcome(s) do you suggest and how can they be best achieved?

WAPW believes that the targeted outcome of "A regulatory framework that is easily understood by investors and provides appropriate investor protection" is described appropriately. WAPW believes that the staggered consolidation of SROs as proposed by IIROC will best achieve this outcome.

Respectfully,

Charles Spiring
Chairman, ICD.D

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REGISTERED DEPOSIT BROKERS ASSOCIATION

Brian J. Evans
Chair of the Board
Registered Deposit Brokers Association
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October 21, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Submitted via email to: The Secretary, Ontario Securities Commission, comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs,
Autorité des marchés financiers, consultation-en-cours@lautorite.qc.ca

Subject: CSA Consultation Paper 25-402
Consultation on the Self-Regulatory Organization Framework

The Registered Deposit Brokers Association (RDBA) appreciates the opportunity to respond to CSA Consultation Paper 25-402, Consultation on the Self-Regulatory Organization Framework. Because GICs are not considered to be securities in most provinces, the RDBA is not directly impacted by the current review of the regulatory framework. However, the RDBA is working to resolve some of the same challenges that face the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). To address these challenges the RDBA prepared our white paper, A Proposal for Regulation of Independent Distribution in the Deposits Industry, which was submitted to Finance Canada and OSFI on May 19, 2020.

Established in 1986, the RDBA is the professional standards association for the Canadian client name deposit industry. Membership is voluntary and the association represents Deposit-Taking Institutions (DTIs), deposit brokerages and affiliates across Canada. The RDBA is committed to protecting depositors' interests and strengthening market integrity and efficiency in the Canadian Deposit Broker industry.

A key element of that commitment is the provision and monitoring of our anti-money laundering program. Its content is continually updated to remain compliant with Canadian legislation such as the PCMLTFA and the guidelines that are provided by FINTRAC. Our Deposit Brokers and affiliates are required to pass our AML/CTF test each year. Deposit Brokers must also complete the Broker Compliance Questionnaire, an annual attestation to compliance with our requirements for premises, privacy, record-keeping and business continuity. Our members are encouraged to complete our privacy training which is based on PIPEDA or its provincial equivalents in British Columbia, Alberta and Québec.

Deposit Brokers are financial intermediaries who help consumers place deposits with banks and other Deposit-Taking Institutions, such as trust companies, credit unions, and caisses populaires. Currently, there are between 150-200 Deposit Brokers in Canada with approximately 2,000 affiliates. On average, each Deposit Broker represents 20-

30 DTIs. The channel provides consumers with access to a variety of insured deposits through one professional point of contact, the client name Deposit Broker. Although they place over $12 billion in client name deposits each year (approximately 10% of the third-party deposit industry total), Deposit Brokers are the only financial intermediaries

in Canada without consistent and effective national oversight. The Financial and Consumer Affairs Authority of Saskatchewan recognized this deficiency and has provided oversight of Deposit Brokers (Deposit Agents) in Saskatchewan since 1993.

The RDBA recognizes the significant efforts of the CSA to increase efficiency for market participants and enhance protection for investors. Many of the issues facing IIROC and the MFDA, such as duplicative costs and a lack of common oversight standards, are those that the RDBA seeks to address for its members. The lack of national oversight has driven the RDBA's lobbying efforts with government and regulators to become the Self-Regulatory Organization for the client name Deposit Broker channel. This initiative is intended to address deficiencies in the current oversight model.

Federally chartered DTIs are regulated by the Office of the Superintendent of Financial Institutions (OSFI). In this structure, OSFI holds each DTI accountable for overseeing the activities of its distributors, whether they are employees in the local bank branch, or independent Deposit Brokers. The model works well for bank branches or direct distribution models in which the sellers of the deposit instruments are employees of the DTI. It can also work well when intermediaries are exclusive contractors of the DTI.

However, the model suffers from several shortcomings when the sellers are independent Deposit Brokers representing multiple DTIs. DTIs differ in their interpretations of principles-based requirements which results in inconsistencies in the standards that they apply to Deposit Brokers. The range of standards is confusing for brokers, increases the time needed to comply, challenges the financial viability of the distribution channel and ultimately limits depositors' access to a broad range of products and advice. The degree of oversight of Deposit Brokers also varies considerably among DTIs, with most focusing on reviewing new account applications and few scrutinizing broker operations, policies or procedures. As a result, field audits are rare.

The current model makes detection of non-compliance difficult, since a DTI can review only the applications it receives and not those sent to a competitor. If DTIs are unable to share the results of their supervision with competitors, the benefits of centralized oversight cannot be realized. The absence of an enforcement mechanism also makes it possible for a Deposit Broker who is found unsuitable by one DTI to simply take the depositor's business to another DTI.

One of the potential benefits of an amalgamation of IIROC and the MFDA is the elimination of the duplicative costs associated with running two platforms. In the Deposit Broker channel duplicative costs result from the need for each DTI to replicate its oversight functions for Deposit Brokers. Oversight by an SRO would provide consistent rules, standards and expectations for all Deposit Brokers, supported by regular field audits of their processes and procedures. They would benefit from reporting to one oversight body rather than to each DTI. Non-compliant Deposit Brokers would be censured, and consumers and DTIs would both be protected from unscrupulous intermediaries. Smaller DTIs seeking to diversify their funding sources would no longer face the burden of replicating the functions of Deposit Broker oversight. The development of common standards would increase competition among DTIs and expand consumer choice.

The RDBA thanks Finance Canada and OSFI for their direction and counsel during our meetings. We also wish to thank the CSA, SROs and government agencies with whom we have met. Our findings from those meetings confirmed the recognition of a gap in oversight of independent Deposit Brokers. That oversight gap can only be addressed by an existing SRO once the amalgamation of IIROC and the MFDA has been completed, and that amalgamation may take several years.

Based on that estimate of the timeline and the specificity of the required oversight, the RDBA has proposed that it become the SRO for independent Deposit Brokers. The client name Deposit Broker channel represents approximately 10% of total third-party deposit distribution and it provides access to a $12 billion market that might otherwise be inaccessible to smaller DTIs and to consumers.

In its informal consultations with stakeholders prior to the release of the consultation paper, the CSA received confirmation of the value of an SRO with national scope. Stakeholder comments also suggested that national SROs were more likely to provide a common set of standards for members by virtue of their specialized industry expertise. It was noted that specialized SROs might be better able to address the unique business models and risks of their industry.

The independent Deposit Broker channel also recognized the benefits of the national SRO model in 1986, and enabled its own Professional Standards body, the Registered Deposit Brokers Association, to perform many functions deemed essential to effective and efficient oversight of its Deposit Broker members. Today the RDBA continues to meet the specialized oversight criteria that the channel requires. DTI members rely on the RDBA to oversee the activities of individual Deposit Brokers and their affiliated agents. Consumers and regulators benefit from a high standard of oversight that is consistently applied at a fraction of the cost that DTIs would spend to replicate this oversight.

The RDBA supports the efforts of the CSA to increase efficiencies and reduce costs in the current SRO framework, and we thank you for the opportunity to comment. Should you have questions or wish to discuss our submission, please contact John Egar, Director of Business Development (email: johnegar@rdba.ca).

Sincerely,

Brian J. Evans
Chair of the Board
Registered Deposit Brokers Association

October 21, 2020

The Secretary

Ontario Securities Commission

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E-mail: comments@osc.gov.on.ca

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

The Ontario Securities Commission's Investor Advisory Panel (IAP) welcomes this opportunity to comment on CSA Consultation Paper 25-402 *Consultation on the Self- Regulatory Organization Framework* (the "Consultation Paper"). The IAP is an initiative of the OSC to ensure investor concerns and voices are represented in the Commission's policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

A comprehensive review of Canada's SRO regulatory framework is timely and appropriate. Given the dramatic changes that have taken place in the financial services industry over the last 20 years, a re-examination of the policy rationale underlying the current SRO framework and a thoughtful reassessment of its costs, benefits and challenges is necessary.

We note that concepts for SRO reform recently presented by the Investment Industry Regulatory Organization of Canada (IIROC), the Mutual Fund Dealers Association of Canada (MFDA) and Ontario's Capital Markets Modernization Taskforce (CMMT) have all focused primarily on burden reduction and cost saving. Those are worthy goals, but they are not the only important things that need to be attained in this process of designing an optimal SRO of tomorrow. Improving investor outcomes should be a co-equal priority. Also, a new design must resolve concerns that SROs have typically put the interests of their industry stakeholders above those of the investing public, and concerns that SROs have exhibited persistent blind spots in their complaint handling and enforcement processes.

These matters need to be addressed – not merely because they are important to investors, but also because any analysis of how to improve Canada's regulatory framework will be distorted, and thereby weakened, if cost savings and burden reduction dominate centre stage in the discussion while other key issues are overshadowed or ignored.

Our following comments on the Consultation Paper are specifically designed to highlight some of these key issues from the retail investor perspective.

Issue 1 – Duplicative Operating Costs for Dual Platform Dealers

The Consultation Paper leads off by noting that dual platform dealers often experience higher operating costs and difficulty achieving economies of scale that inhibit their ability to minimize costs. Also, dual platform dealers are faced with maintaining separate compliance functions and they incur both IIROC and MFDA fees. Consequently, the CSA is targeting a "regulatory framework that minimizes redundancies that do not provide corresponding regulatory value."

An IIROC-commissioned report prepared by Deloitte in July 2020 appears to have played a key role in prioritizing this issue. Deloitte estimated that consolidation of IIROC and the MFDA will save between $380 million and $490 million over a 10-year time period. However, we were struck by the small sample size and data limitations in the report. This brought into question the accuracy of Deloitte's estimate of achievable savings.

Also, according to the report, as of January 2020 there were only 25 dual-platform dealers active in Canada. The largest eight – a group that will ultimately enjoy the bulk of the estimated savings – are currently each generating annual revenue in excess of $2.5 billion in their IIROC entity.

Using Deloitte's numbers, the annual savings for the industry will amount to just 0.2% of revenue. We do not believe that achieving this relatively small annual saving for the principal benefit of a small industry sub-group should drive the whole process of identifying what constitutes an optimal regulatory framework. Cost savings and burden reduction are too industry-centric and they neither acknowledge nor account for the consequential, and potentially negative, impact they may have on non-industry stakeholders.

Bottom line: while we subscribe to the premise that regulation should be as cost effective and efficient as possible, we do not believe that saving costs, particularly when the estimated savings are marginal, should be the primary determinant of what constitutes an optimal regulatory framework. Instead, we think a more appropriate focus of this SRO review should be the identification of a regulatory framework designed to improve outcomes for both industry members and investors. Once identified, that framework should be configured to operate as cost effectively and efficiently as possible.

Issue 2 – Product-Based Regulation

The Consultation Paper notes that different rules or different interpretations of similar rules between IIROC and the MFDA exist notwithstanding the growing convergence of similar products and services between registrants of each SRO.

To address this situation, the CSA recommends a "regulatory framework that minimizes opportunity for regulatory arbitrage, including the consistent development and application of rules." In practical terms, this augers in favour of moving to a single regulator model.

From an investor perspective, it makes sense to place investment dealers and mutual fund dealers under a common regulatory regime. However, it is neither obvious nor necessary that this regime must be operationalized through an SRO rather than a consortium of statutory regulators.

But if a 'super SRO' is to be considered the preferred option, we believe it must provide no less neutrality than statutory regulators and an equal commitment to delivering outcomes aligned with the public interest. That effectively means a new, consolidated SRO cannot be industry-centric in its orientation, governance and operations. Indeed, as outlined below, it must abandon altogether the notion of investment *industry* self-regulation and instead embrace and internalize the concept of investment *community* self-regulation for the communal benefit of the industry and investors.

Issue 3 – Regulatory Inefficiencies

The Consultation Paper acknowledges that inefficiencies exist in accessing certain products and services. Specifically, mutual fund dealers under the MFDA are unable to easily distribute exchange traded funds. Also, the current framework makes it difficult to effectively resolve issues that span multiple registration categories.

To address this issue, the CSA's proposed outcome is a "regulatory framework that provides consistent access, where appropriate, to similar products and services for registrants and investors."

We support a more efficient regulatory framework, but we do not believe that the examples cited in the Consultation Paper reflect regulatory inefficiencies. Instead, from an investor perspective, they constitute regulatory safeguards necessary for investors to transact securely with various categories of dealers, including those staffed by salespeople with the lowest levels of proficiency offering advice on a relatively limited product shelf.

And context should not be forgotten. Many of the regulations that the industry now characterizes as burdensome were put in place as speed bumps to address problems dealers themselves created through a multiplicity of sales channels, opaque fee structures and complicated products that they promoted aggressively to retail investors.

Issue 4 – Structural Inflexibility

In some respects, this issue is a variant of the previous issue (Regulatory Inefficiencies), articulated in a slightly different manner. Both echo the long-standing industry refrain that blames regulatory inefficiencies and structural inflexibility for impeding business model evolution, limiting the range of products and services that a single registrant can offer, and placing barriers on professional advancement. The CSA's acquiescent targeted outcome – not dissimilar to the outcome it proposed for regulatory inefficiencies – is a "flexible regulatory framework that accommodates innovation and adapts to change while protecting investors."

Regulation certainly needs to be nimble and appropriately elastic. Yet, policymakers also need to push back against the industry trope that regulation is synonymous with burden. As noted above, it bears remembering that what industry players identify as inflexibility (and/or inefficiency) in the current system are safeguards that have been specifically designed or retrofitted to protect investors from problems associated with products created and practices initiated by industry.

So-called 'inflexible' category-specific regulation is the direct result of industry adopting different sales practices and proficiencies in different distribution channels. Therefore, in our view, before acceding to industry calls to eliminate or streamline regulation, it may be more appropriate to encourage industry to standardize their sales practices and bring their proficiency levels into alignment. Less regulatory burden will be easier to achieve if there is less unnecessary divergence to regulate.

Issue 5 – Investor Confusion

Based on survey feedback, the CSA posits that investors generally are confused by the existing regulatory framework, including the role of SROs, the barriers to one-stop shopping for investment products, and the labyrinthian structure of complaint resolution. In the face of this confusion, the CSA's targeted outcome is a "regulatory framework that is easily understood by investors and provides appropriate investor protection."

We expect there will be universal support for an easily understood regulatory framework; but simplifying the framework is not an investor priority in and of itself – and certainly not if simplicity is to be achieved by jettisoning any critical underpinnings of 'appropriate investor protection.' These would include requirements that anyone providing investment advice of any kind:

(a) must be proficient;

(b) must be able to advise in the best interest of the investor (either by being free of conflicts of interest or by disclosing and resolving any conflict in the investor's favour); and

(c) will be subject to a consistent level of robust oversight and effective rule enforcement.

In addition, an appropriately protective regulatory framework must feature a complaint resolution process designed to ensure that harmed investors will get a fair and quick resolution of their complaint, with restitution where warranted.

These are not things that can or should be traded off to make the regulatory framework simpler and easier to understand. They are, in fact, essential for making the framework understandable and sensible to the general public.

Issue 6 – Public Confidence in the Regulatory Framework

The Consultation Paper acknowledges "a possible lack of public confidence in the existing SRO framework" as well as "inadequacies in the SRO governance structure (industry-focused boards and a lack of formal investor feedback mechanisms) that fail to provide enough support for SRO's public interest mandate." It also concedes that "concern exists regarding ineffective SRO compliance and enforcement practices." To address these deficiencies, the CSA's targeted outcome is a "regulatory framework that promotes a clear, transparent public interest mandate with an effective governance structure and robust enforcement and compliance processes."

We find it troubling that public confidence was not ranked higher as a priority in the Consultation Paper. From an investor perspective, it would rank far above reducing operating costs, eliminating confusion or

gaining access to more products. Investors, in our experience, are more focused on outcomes than processes. They want more effective regulation, stronger enforcement, a higher standard of conduct from financial advisors, and lower fees. Ultimately, they want a regulatory framework they can trust to protect their interests in a fair, transparent and consistent manner.

We believe a redesigned framework will achieve this only if it takes the SRO model beyond its current form of industry-centric governance.

On this topic, we find much to commend in the CMMT's proposals. We endorse their recommendation for increased and more robust CSA oversight; we share their view that the number of independent directors should exceed the number of industry directors; and in principle we agree that extended cooling-off periods should be required before former industry personnel can become independent directors. We would add, however, that independent directors ought to possess a deep understanding of investor perspectives and concerns, and therefore ordinarily those directors should not be drawn from the ranks of individuals whose worldview has been shaped by careers within the investment business.

But, also, we urge the CSA to understand that a meaningful, credible overhaul of SRO governance must encompass much more than changing the makeup of the SRO's board of directors. It will require a fundamental re-imagining of self-regulation's object and purpose – by recognizing that the mutual interdependence of investors and the investment industry gives rise to their sharing intertwined communal interests, and those joint interests legitimately should be governed through a partnership conducted for communal benefit. In effect, the "self" in self-regulation should be this investment community, not just the investment industry.

At the board level, we believe all directors – industry appointed ones and independents alike – must act as fiduciaries of the investment community as a whole and not as representatives of its separate constituencies. They must draw on their experience and work together collegially to provide a broader and more nuanced perspective to balance competing needs, set appropriate priorities and operate fairly.

In addition, for reform of the SRO framework to gain public trust, the communal self-regulation concept must filter down to every level of the new SRO, permeating its executive and operations branches as well as policy and rule development committees and any decentralized nodes of influence such as district councils.

Lastly, for consumers to have faith in a new SRO, it will need to evidence a more credible approach to enforcement and redress than the current framework exhibits. Too often, sanctions are imposed only on errant salespeople and not on senior management, compliance officials or the firm itself, even where the firm's policies or standards of supervision appear to have been deficient. Most fines levied against advisors who have left the industry go unpaid, while their former firms are rarely, if ever, ordered to disgorge revenue the firm derived from the advisor's wrongdoing. Meanwhile, investors must rely on a flawed and protracted complaints process or costly litigation (not financially accessible for most retail investors) to pursue compensation for losses caused by misconduct.

These industry-centric outcomes are inimical to building public trust. A much better interface is needed between compliance, enforcement and redress in the SRO framework, and that will require a deep and comprehensive re-think rather than just a quick, superficial or expedient refresh.

Issue 7 – The Separation of Market Surveillance from Statutory Regulators (CSA)

As noted in the Consultation Paper, IIROC is responsible for conducting surveillance of trading activity in Canada's debt and equity marketplaces. As a result, in order to perform its own regulation of market operations, the CSA must rely on IIROC to provide critically necessary data and information. Interestingly, the Consultation Paper appears to be concerned mostly with the possible information gaps and lack of market transparency resulting from this reliance. Less concern is expressed about the optics/probity of IIROC overseeing markets where its members interact with all other market participants.

The CSA's targeted outcome is an "integrated regulatory framework that fosters timely, efficient access to market data and effective market surveillance to ensure appropriate policy development, enforcement, and management of systemic risk." We support this outcome and, in general, we see merit in the CSA taking over this market surveillance function, either directly or through a new single-purpose market surveillance entity, in order to eliminate concerns about information gaps and transparency.

Summary and Conclusion

We encourage the CSA to maintain a good balance between process and outcomes in its quest for an appropriate regulatory framework. We believe this framework will require a substantive integration of both industry and investor perspectives, in the following manner:

> **Investors as Stakeholders** – Investors must be viewed as key stakeholders whose input on SRO strategic and regulatory priorities is necessary to ensure SROs devote their resources to, and undertake regulatory programs aligned with, the public interest. Investors should be full partners with the investment industry in governance of their intertwined community of interests. And it is this *investment community* that should constitute the "self" in self-regulation of Canada's investment business through a new, redesigned SRO.
>
> **Include Investors at the Decision-Making Table** – It is essential that the design incorporate full representation of investors' concerns and interests throughout the SRO's governance structure and at the heart of its decision-making apparatus. At a minimum, SRO directors must include a cohort of individuals whose lived experience equips them with deep understanding of investor perspectives and concerns, as opposed to being people whose worldview has been shaped by careers within the industry. Both viewpoints are essential and need to be at the table.
>
> **Working for Communal Benefit** – The partnership between investors and the investment industry must be conducted collaboratively for mutual benefit. All directors, including these new ones, must come to the table with a mindset that their role is to act in the best interest of the investment community as a whole. They should not consider themselves to be representatives

of one constituency or the other. Instead, they should view their purpose as one in which, collectively, they provide the SRO with a broadened and more nuanced understanding, allowing the organization to better "see" key issues, set priorities and balance competing needs. In particular, this governance structure can best ensure a more efficient and more flexible regulatory framework that provides "appropriate investor protection."

Transform the Whole Framework – This communal orientation must permeate the entire organization, including its executive and operations branches, policy and rule development committees, and decentralized nodes of influence (e.g., district councils).

Absent this type of integrated perspective and governance structure, a redesigned SRO would lack both the legitimacy and credibility to fairly serve the communal interests of investors and the investment business, to advance the broader public interest, and to increase public trust and confidence in our regulatory system.

We thank you for this opportunity to comment on the CSA's review of Canada's SRO regulatory framework. We would be pleased to discuss these ideas further with you, at your convenience.

Sincerely,

Neil Gross

Chair, Investor Advisory Panel

October 21, 2020

CSA Consultation Paper 25-502- *Consultation on the Self-Regulatory Organization Framework*
Ontario District Council Response Letter

Addressed To:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
E-mail: comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
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Dear CSA Member:

On behalf of the Ontario District Council (ODC) of the Investment Industry Regulatory Organization of Canada (IIROC)[1], I am pleased to respond to the invitation of the Canadian Securities Administrators

[1] Pursuant to Section 10.1 of the IIROC's General By-Law No. 1, there are 10 Districts designated by the IIROC Board generally corresponding to each province in Canada with Nunavut assigned to the Manitoba District, the Northwest Territories assigned to the Alberta District and the Yukon Territory assigned to the Pacific District with British Columbia. Additional information addressing the IIROC District Council system, procedures, code of conduct

(CSA) to make submissions in respect of CSA Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework (Consultation Paper). ODC comprises senior investment dealer executives with operational, financial, legal and regulatory compliance expertise, and is uniquely positioned to provide feedback to the CSA on how innovation and evolution of the financial services industry impacts the current regulatory framework and provide specific comments on the issues and targeted outcomes outlined in the Consultation Paper.

ODC agrees with stakeholder comments to the CSA catalogued in the Consultation Paper highlighting the numerous strengths and benefits of self-regulation and submits this response at its own initiative, independent of any IIROC staff or other submissions provided in response to the Consultation Paper.

Background

IIROC is a national self-regulatory organization (SRO) that oversees all investment dealers and trading activity in debt and equity marketplaces across Canada. IIROC Members are investment dealers and marketplaces. IIROC is subject to Recognition Orders made by each CSA member with the Ontario Securities Commission (OSC) serving as IIROC's Principal Regulator.[2] As noted in the Consultation Paper, CSA members have a long history of utilizing SROs, particularly IIROC and its predecessors, as part of the Canadian regulatory framework. The dynamism inherent in member self-regulation contributes to the success of this "made-in Canada" framework relative to our international peers.

District Councils

The IIROC Board approves the mandate and procedures for District Councils outlined in Appendix 1 and the IIROC District Council Procedures. The mandates and procedures enumerate specific District Council responsibilities and decision-making powers under IIROC rules and the registration decision-making powers delegated by many Canadian statutory regulators. However, District Councils do not make policy or draft rules for the industry. The responsibilities and decision-making functions of District Councils reflect the significant trust the CSA places in IIROC industry representatives to utilize their industry and local knowledge and expertise when discharging their responsibilities and powers to serve the public interest.[3]

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and conflicts policy, and the current members of each District Council is available to the public and stakeholders via the IIROC website.

[2] Pursuant to IIROC's Recognition Orders, prior Commission approval is required for material changes to the activities, responsibilities, and authority of the District Councils.

[3] Statutory regulators have delegated firm and individual registration functions to respective IIROC District Councils in the provinces of British Columbia, Alberta, Saskatchewan, New Brunswick and Newfoundland and Labrador. Statutory regulators have delegated individual registration functions to respective IIROC District Councils in the provinces of Ontario and Quebec. In those jurisdictions with no or limited delegation, statutory regulators place heavy reliance upon and show significant deference to initial "approval" decisions made under IIROC rules before exercising their statutory non-delegated registration powers.

Response to Consultation Paper

Overall Process

ODC strongly supports IIROC and the Mutual Fund Dealers Association of Canada (MFDA) working together for a more effective single national SRO framework and believes a single national SRO structure is best positioned to advance the targeted outcomes identified in the Consultation Paper. ODC supports the CSA facilitating direct discussions between the SROs and other stakeholders to address how best to achieve the targeted outcomes identified in the Consultation Paper as a single national SRO. Having the SROs and other stakeholders work together in developing a new framework that builds on and incorporates the existing strengths of each organization promotes greater investor and public confidence and will result in a process that is more likely to advance the targeted outcomes identified by the CSA.

ODC decided to address the seven issues identified in the Consultation Paper in this response letter.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

ODC agrees with the CSA's description of the targeted outcome for this issue and submits a single SRO structure will minimize redundancies, increase operational efficiencies and economies of scale and decrease costs, particularly for dual platform dealers.[4] Duplicative regulatory costs are a major constraint on enabling the industry to deliver enhanced client experiences and innovation. ODC also encourages:

- the immediate elimination or repeal of the "proficiency upgrade requirement" in connection with an IIROC-MFDA consolidation for individuals who wish to sell mutual funds[5] on the new single SRO platform
- a detailed examination of how other industry cost savings may be achieved in a single national SRO framework through a more unified, streamlined and non-duplicative national registration system which eliminates the "time cost" and service disruptions to client accounts when an advisor moves platforms.

Greater efficiencies and cost savings are required to allow market participants to better focus on and deliver the products and innovative services Canadians need. Additional benefits will accrue to the competitiveness of our markets and its attractiveness for foreign investors.

[4] See an assessment of benefits and costs conducted by Deloitte and released by IIROC on August 25, 2020, revealing that a consolidation of IIROC and the MFDA would result in up to half a billion dollars of industry savings-savings that investment firms could redirect toward enhanced client service and economic growth.

[5] MFDA registrants may also be dually-licensed by the CSA in some Canadian jurisdictions as "exempt market dealers" able to act as a dealer or underwriter for any securities which are prospectus exempt, as a dealer for any securities sold to clients who qualify for the purchase of exempt securities and as a dealer for investment funds which are either prospectus qualified or prospectus exempt.

Issue 2: Product-Based Regulation

ODC agrees with the CSA's description of the targeted outcome for this issue and submits a single SRO incorporating both investment and mutual fund dealers will help minimize opportunities for regulatory arbitrage and promote a more consistent development and application of rules. IIROC already delivers tailored and proportionate regulation for a wide range of products and to accommodate a range of business models and possesses the requisite expertise to review market participants wishing to introduce new products or innovative services. ODC also encourages the:

- elimination of the current prohibitions on IIROC and MFDA firms entering into introducing/carrying arrangements to better harmonize operational efficiencies and reduce costs
- new single SRO address the challenges experienced by investment dealers when processing account transfers involving MFDA firms.[6]

Issue 3: Regulatory Inefficiencies

ODC agrees with the CSA's description of the targeted outcome for this issue and supports investors having more efficient access to a wide range of products and services, provided investor protection is not compromised. ODC believes a single national SRO will reduce duplicative costs for non-regulatory functions (HR, IT, Office Services) at the CSA and SRO level. These savings could be directed at enhancing investor protection or market integrity initiatives or be passed on to industry through reduced levies. A single SRO framework will also facilitate efficiencies and reduce costs when either regional or national capital market initiatives are undertaken.

Issue 4: Structural Inflexibility

ODC agrees with the CSA's description of the targeted outcome for this issue and highlights the friction and professional development costs associated with having two SROs. Financial services representatives often progress in their education and training to offer a greater range of products and services over the course of their careers. While maintaining appropriate proficiency and other "fit and proper" standards for registration, ODC submits better career path opportunities and outcomes will accrue in a single national SRO system for individual registrants. A single national SRO will also make the securities industry more enticing to prospective recruits, provide a one-stop shop for licensing and eliminate the duplicate regulatory costs associated with the current bifurcated licensing system present in some Canadian jurisdictions.

ODC strongly supports the registration function housed in a single national SRO with the necessary industry expertise to make consistent decisions based on local conditions and customs.[7] Reduction or

[6] See Sept. 16, 2020 comment letter from the Investment Industry Association of Canada (IIAC) in response to MFDA Consultation on Account Transfers (MFDA Bulletin #0823-P)

[7] Local industry representatives serving on District Council Registration Subcommittees are subject to a Code of Conduct and Conflicts of Interest Policy and possess the necessary expertise and training to decide on the suitability of potential entrants to the capital markets in their region.

preferably elimination of duplicative approval layers will improve the efficiency by which the new regulatory frameworks accommodates innovation.

ODC also encourages a registration category framework which maintains baseline requirements but allows for the application of additional regulatory requirements based on business activity. ODC submits this type of registration category framework will more efficiently promote innovative business models, products and services.

Issue 5: Investor Confusion

ODC agrees with the CSA's description of the targeted outcome for this issue and submits the high level of fragmentation in the current Canadian regulatory framework makes it more difficult and more confusing for investors to access the advice, products and services they desire or need. A single national SRO framework will simplify the current system and help Canadians more simply understand how the industry is regulated thereby instilling greater investor confidence and knowledge and enhancing the customer experience.

With respect to the CSA decision to create the MFDA in 1998 when the nature of the market and product choices were very different, a single-product SRO now serves to limit the choices available for investors and sows investor confusion as investors accumulate wealth and investment knowledge through their life cycle and seek an expanded range of products and services to suit their needs.

Issue 6: Public Confidence in the Regulatory Framework

ODC agrees with the CSA's description of the targeted outcome for this issue. ODC submits the conflict concerns highlighted in the Consultation Paper that may be specific to District Councils are addressed through a strong Code of Conduct and Conflicts of Interest Policy for District Council members and the thorough vetting of District Council candidates by IIROC staff, the Nominations Subcommittee and District Council, and the members eligible to vote at each District Council Annual General Meeting.[8] District Council members are highly skilled and experienced industry leaders who possess the requisite skills, integrity and commitment to serve in the public interest. In conjunction with a strong CSA oversight framework, these attributes all enhance public confidence.

ODC also submits the diverse skill sets and expertise of District Council members enhance investor and public confidence in IIROC fulfilling its public interest mandate and that investor and public confidence would be inherently enhanced knowing a single national SRO operating under the CSA oversight framework is uniformly applying its rules across its membership.

[8] District Council Nomination subcommittees seek to ensure a proper balance of District Council members who will, collectively, provide effective representation of the membership, having regard to each nominee's disciplinary history, if any, skills, experience and expertise necessary to discharge his or her obligations as a District Council member, including regulatory responsibilities pursuant to IIROC Rules and Delegation Orders issued by the provincial and territorial securities regulatory authorities.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

ODC agrees with the CSA's description of the targeted outcome for this issue but have serious concerns with thirteen statutory regulators assuming control of national market surveillance functions. Based on the current CSA structure and need for consensus for national initiatives, significant investor protection and market integrity concerns could arise should market surveillance functions be assumed by statutory regulators. The increasing speed, complexity and international nature of the markets require a national body or SRO staffed with market and trading expertise to fulfill this critical function. A single market watchdog with a national view and "one set of eyes" will also bring greater transparency into the various Canadian marketplaces. ODC submits IIROC remains uniquely positioned in the current Canadian regulatory framework to continue to discharge its market regulation and surveillance mandate on a national basis.

Statutory regulators assuming this function will result in greater fragmentation and introduce unnecessary risk to market surveillance functions and may actually hinder industry innovation.

Conclusion

Thank you for the opportunity to comment on the Consultation Paper on behalf of IIROC's Ontario District Council. I would be pleased to address any questions from the CSA in response to this submission.

Yours truly,

Vanessa Gardiner
Chair, Ontario District Council

APPENDIX 1

District Council Mandate

Mandate

Each District Council acts as a local committee, whose mandate includes both:

1. a regulatory role, in relation to regional approval and membership matters
2. an advisory role with respect to regional issues, as well as the provision of regional perspective on national issues.

Membership

Each District Council is composed of 4 to 20 members, inclusive of *ex-officio* members appointed by the Board.

District Council members elected for a two-year term.

The Chair and Vice-Chair of the District Council elected at the annual meeting of the Dealer Members of the District.

Organization

Certain matters relating to the composition and powers of the District Councils are described in IIROC's By-law No. 1. The District Councils also operate under IIROC's *District Council Procedures* and each District Council Member is subject to a *Code of Conduct and Conflicts of Interest Policy*.

District Councils exercise their regulatory authority and perform their advisory function directly or through delegation to staff or District Council sub-committees. The sub-committees include:

- the Nominations Sub-Committee
- the Registration Sub-Committee

and may include other sub-committees, depending on the needs of the region.

A designated member of each of the District Councils comprise the National Advisory Committee (NAC) along with a NAC Chair and Past Chair. The Chair of the NAC may meet with the IIROC Board periodically.

Specific Responsibilities

1. Approve "Applications for Approval" of individuals. (PLR 9200 series)
2. Impose terms and conditions on individuals applying for approval (PLR 9204) and as a condition of continued approval for an individual. (PLR 9207)
3. Revoke or suspend the approval of an individual. (PLR 9207)
4. Exempt individual approved persons from proficiency and continuing education requirements. (PLR 9206)
5. Grant exemptions from introducing-carrying broker arrangement requirements with respect to foreign affiliates. (Rule 35.6 until PLR 2435 and 2436 implemented providing specific criteria for establishing such arrangements without an exemption)
6. Hear and decide on appeals of proficiency related decisions of the District Council's Registration Sub-committee. (PLR 9209)
7. Recommend new membership applications for submission to the IIROC Board for approval. (PLR 9205)
8. Approve ownership-related transactions for IIROC Members. (IIROC Rules 5 and 6 and PLR 2108 and 2206)
9. Approve the panel of district auditors annually, as recommended by staff. (Rule 16.1 until PLR 4171 implemented giving the approval power to IIROC)
10. Nominate (for appointment by the Corporate Governance Committee) individuals resident in the District to be members of the hearing committee of that District. (PLR 8304)
11. Perform any other regulatory functions delegated to District Councils under IIROC's Rules or delegation orders.
12. Advise staff on policy matters of interest to the membership and the industry.

District Council Procedures
Registration Sub-Committee Mandate

Mandate

The mandate of the Registration Sub-Committee is to make individual approval decisions (including the granting of exemptions from proficiency and continuing education requirements) under authority delegated to the Sub-Committee by the District Council under IIROC's Rules.

Authorities

The Sub-Committee members shall review and decide on approval decisions on behalf of the District Council and in accordance with authorities delegated to them by the District Council.

Delegation by the Council

Delegated authorities may include any authorities the District Council has with respect to individual approval matters under the Rule 9200 series. Delegated authorities may include approvals or refusals of individual approval applications, setting terms and conditions on the continued approval of individuals, suspending or revoking approvals of individuals and granting exemptions from proficiency and continuing education requirements.

The minutes of the District Council shall record the delegation of authority to the Sub-Committee.

The Sub-Committee may not refuse an application for approval or proficiency or continuing education exemption, impose terms and conditions, or suspend or revoke an approval, unless the Applicant or Approved Person has been given an "opportunity to be heard" under IIROC Rules.

Review of Sub-Committee Decisions

IIROC Staff, an applicant or an Approved Person may seek a review of a decision of the Sub-Committee before a hearing panel composed of IIROC Hearing Committee members under Rule 9209 and 9300 or before a District Council Panel under Rule 9209.

MÉRICI
SERVICES FINANCIERS INC.
Notre indépendance, votre intérêt.

Sherbrooke, 20 octobre 2020,

Me Philippe Lebel
Secrétaire de l'Autorité
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246 Tour de la Bourse
Montréal (Québec) H4Z 1G3

Par courriel
consultation-en-cours@lautorite.qc.ca

Objet : 25-402 - Consultation sur le cadre réglementaire des organismes d'autoréglementation

Me Lebel,

Le 25 juin 2020, les ACVM ont lancé le projet de consultation *25-402 - Consultation sur le cadre règlementaire des organismes d'autoréglementation*.

Nous considérons que le sujet abordé et les questions qu'il soulève sont de la plus haute importance et méritent que nous vous présentions nos commentaires et observations afin d'aider les ACVM à prendre la meilleure orientation possible dans le contexte actuel.

Nous tenons d'ailleurs à remercier les ACVM de l'occasion qui nous est offerte de vous transmettre la présente lettre de commentaires dans l'espoir qu'elle apportera un éclairage additionnel mettant en lumière ce que certains préfèrent volontairement laisser dans l'ombre.

Car, à notre avis, c'est bien de cela dont il s'agit : une nouvelle tentative, sous un nouvel angle, de revoir le modèle d'encadrement du secteur des valeurs mobilières dans une perspective de centralisation, de concentration des pouvoirs de mise en application et de marginalisation des joueurs secondaires du marché.

Nous aurions certainement pu enrober notre prise de position dans une prose qui aurait eu le mérite d'adoucir les angles et de dorer la pilule. Peut-être aurions nous réussi à induire plus subtilement nos préoccupations profondes et à vous les faire partager, au moins en partie.

Mais nous croyons que le temps n'est plus à cette stratégie.

Car bien qu'il s'agisse d'un projet de consultation en soi, il nous est impossible de le dissocier totalement de la vague de fonds qui déferle sur le secteur des valeurs mobilières depuis une quinzaine d'années : débat sur la commission unique des valeurs mobilières, augmentation importante du fardeau réglementaire et de conformité, tentatives multiples d'imposer l'ACFM à tous les inscrits du Québec, débat québécois sur l'abolition des Chambres au Québec et beaucoup plus encore.

Cette vague de fonds a constamment les mêmes dénominateurs communs : l'uniformisation de l'industrie sous le canevas des gros courtiers pancanadiens filiales d'institutions financières et la centralisation des pouvoirs à Toronto.

Il convient ici de faire une mise en garde : nous n'imputons aucun motif à qui que ce soit. Nous ne souhaitons pas débattre d'une quelconque théorie du complot où de sombres desseins sont établis afin de régner sur le secteur des valeurs mobilières.

Là n'est pas la question.

Celle-ci se situe plutôt sur le constat que plusieurs projets de consultation des ACVM semblent prendre leurs sources sur des idées ou des concepts véhiculés et promus par certains acteurs de l'industrie, souvent provenant de grands groupes de courtage, filiales d'institutions financières et ayant leurs activités à Toronto.

Émulation? Proximité? Hasard? Nous ne le savons pas. Mais le constat demeure que les idées et intérêts de certains sont plus facilement représentés dès le départ dans les projets de consultation que les idées des autres joueurs plus « marginaux » et ce, peu importe la valeur intrinsèque des idées des uns et des autres.

C'est donc avec ce constat que nous avons choisi de débuter notre réponse et sur cette lancée que nous avons choisi non pas de répondre spécifiquement aux questions du document de consultation, mais plutôt de proposer une vision alternative et critique des enjeux soulevés.

En espérant que les ACVM y trouveront la matière nécessaire à la réflexion pour en arriver à une prise de position prenant en compte d'autres perspectives que celle que nous connaissons déjà.

Cadre réglementaire des OAR au Canada et à l'échelle internationale

Nous comprenons que la consultation est menée par les ACVM qui, par définition, ne couvrent que le domaine des valeurs mobilières sous un angle canadien.

Nous comprenons également que la spécificité québécoise est brièvement soulignée à l'effet que l'ACFM n'y est pas reconnue et que c'est l'Autorité des marchés financiers qui œuvre pour l'encadrement des inscrits en épargne collective.

Toutefois, cette mention nous semble aussi incomplète qu'elle est succincte et mérite, à notre avis, quelques ajouts.

L'ACFM n'est pas reconnue au Québec puisque, malgré plusieurs tentatives et projets règlementaires, une opposition importante à sa reconnaissance s'est toujours manifestée, particulièrement chez les courtiers indépendants en épargne collective.

En effet, l'ACFM, avec son approche prescriptive et réputée rigide, a pour effet d'augmenter considérablement les exigences opérationnelles liées à la conformité ainsi que les coûts qui y sont associés sans pour autant garantir un niveau de conformité accru ou un risque plus faible pour les investisseurs et le secteur.

Sans compter les coûts d'adhésion à l'ACFM qui sont importants et qui ne trouvent aucun comparable dans la situation ayant présentement cours au Québec.

Depuis la création de l'ACFM et sa reconnaissance dans toutes les provinces du Canada à l'exception du Québec, le nombre de courtiers en épargne collective a décru de manière significative. Effets de la consolidation du marché créé en grande partie par la pression réglementaire prescriptive et les coûts de l'ACFM qui ne permettent pas à des modèles d'opération différents de subsister.

Ajoutons qu'au Québec, les représentants en épargne collective sont encadrés, en matières déontologique et de formation continue obligatoire par la Chambre de la sécurité financière (CSF), laquelle a été créée par une loi québécoise et qui se voit conférer, par la lettre de cette loi, des pouvoir par l'Autorité des marchés financiers.

La CSF encadre également les individus détenteurs d'une certification en assurance de personne, en assurance et rente collective, en planification financière et en plan de bourse d'étude.

Cet encadrement multidisciplinaire est une réalité unique au Canada et nous nous désolons qu'elle n'ait pas été mentionnée au document de consultation puisqu'elle reflète une réalité trop souvent oubliée ou méconnue : de nombreux inscrits œuvrent dans plus d'une discipline à la fois.

Cette réalité rend une approche holistique comme celle de la CSF hautement pertinente pour plusieurs raisons :

- Un seul organisme d'encadrement des individus œuvrant dans plusieurs disciplines, réduisant les intervenants dans un dossier et facilitant l'encadrement d'un individu déviant;
- Possibilité d'exclure ou de sanctionner un individu déviant de plusieurs disciplines à la fois puisque toutes encadrées par un même organisme, augmentant la protection du public et la sécurité du secteur financier;
- Un seul guichet pour le consommateur ayant une plainte à formuler, ce dernier n'ayant que faire ou n'ayant aucune idée de la certification du professionnel à l'égard duquel il veut formuler une plainte;

Nous comprenons parfaitement que le champ d'action des ACVM se limite aux valeurs mobilières et que le contexte québécois est particulier.

Mais nous soumettons que cette particularité devrait servir d'exemple plutôt que d'être, au mieux, marginalisée et, au pire, aplanie pour adopter une approche en silos.

Le consommateur de produits financiers, qu'ils soient sous l'égide du domaine des valeurs mobilières, de l'assurance ou d'autres n'a que faire de ces éléments techniques relevant davantage de facteurs légaux et historiques que d'application concrète.

Le consommateur fait confiance à une bannière ou à un professionnel et s'attend à être traité équitablement et professionnellement par cette bannière ou ce professionnel sans avoir à se demander avec quelle certification il agit pour proposer tel ou tel produit ou solution.

Nous croyons qu'il est plus que temps que les régulateurs, en valeurs mobilières comme dans les autres disciplines, conçoivent leurs projets règlementaires en partant du point du vue du client pour offrir à celui-ci une approche holistique et englobante lui garantissant le même degré de protection et d'encadrement, sans égard au produit ou à la certification du professionnel devant lui.

Nous sommes conscients que cet enjeu ne relève pas uniquement des ACVM et des autres organismes réglementaires mais nous considérons que, puisque les ACVM et les autres organismes ont pour mission la protection du public et l'efficience des marchés, ils devraient aviser le ministre responsable de leur secteur dans toutes les provinces et territoires afin qu'une action politique et législative soit entreprise afin de briser les silos et de considérer l'intérêt du consommateur avant tout.

Le temps n'est pas aux intérêts corporatifs et à la défense d'organismes existants.

Si les ACVM sont sérieuses et veulent réfléchir à la structure d'encadrement des OAR, elles doivent ouvrir le débat et appeler au décloisonnement.

Autrement, ce sera une occasion ratée. Autrement, on ne fera que diviser une nouvelle fois les mêmes forces en présence et la protection du consommateur ne sera pas réellement améliorée dans sa globalité.

Processus de consultations informelles

Nous pouvons difficilement ne pas revenir sur ce processus décrit par les ACVM dans le document de consultation.

Si nous saluons la volonté des ACVM d'effectuer ce genre de pré-consultation afin de préparer une consultation publique en bonne et due forme et que nous reconnaissons que ce processus peut être utile afin de cibler ou circonscrire certains enjeux, nous nous questionnons sur la méthodologie employée et, surtout, sur la sélection des participants à ces consultations informelles.

Bien entendu, il serait illusoire que les ACVM sondent l'ensemble des participants du secteurs ainsi que le public avant même de consulter ces mêmes personnes. Ce serait inefficace et inutile.

Toutefois, la sélection des participants à un processus de consultation préalable n'est pas anodine et emmène un certain nombre de questions qui ont un impact direct sur le processus et le document de consultation en lui-même :

- Qui a été invité à participer et sur quelle base?
- Qui a réellement participé?
- La participation était en personne ou par écrit?

Car le processus de consultation informelle, qui constitue la fondation de la consultation en cours, aura été grandement influencé par les participants invités et les réponses ce ceux-ci. S'il existe un biais, conscient ou inconscient, dans la sélection des participants ou l'établissement des

questions, c'est tout le processus de consultation actuel qui s'en trouve affecté et potentiellement discrédité.

Notons que le document de consultation mentionne que ces consultations informelles ont regroupé des OAR, des fonds de protection des investisseurs, des groupes représentants diverses catégories de personnes inscrites, des associations du secteurs des valeurs mobilières et des groupes de défense des investisseurs. Pourtant, aucune liste des participant n'a été fournie.

Cette opacité ne renforce pas le processus de consultation, au contraire.

Par exemple, nous pourrions effectuer notre propre consultation informelle et en arriver avec un résultat parfaitement différent puisqu'il suffit de choisir les participants pour obtenir un résultat différent.

Nous ne disons pas que c'est le cas ici.

Mais nous invitons les ACVM, dans la mesure où elles souhaitent procéder à ce genre de consultation informelles, à davantage de transparence et à la mise en place d'un mécanisme d'invitation assurant une diversité des points de vue car nous craignons qu'en ne s'adressant qu'aux intervenants décrits à la liste du document de consultation, plusieurs spécificités d'acteurs à portée plus régionale soit oubliées ou méconnues des ACVM ce qui ne permettrait pas à celles-ci de prendre une décision éclairée ou d'adopter une ligne de consultation optimale.

Dédoublement de coûts opérationnels des courtiers à double plate-forme

Voilà un argument maintes fois avancé et souvent repris avec attention par les ACVM.

Bien entendu, nous ne sommes pas insensibles à la question des coûts opérationnels et nous sommes toujours partisans d'une réduction des coûts dans la mesure où la protection du public et l'efficience des marchés ne sont pas diminuées.

Ceci dit, nous désirons soumettre le constat suivant : personne n'a obligé ces organisations à opérer plusieurs plateformes et à avoir des activités dans plusieurs catégories d'inscription.

Il s'agit d'un choix libre et éclairé de ces organisations. Elles ont décidé, de leur propre libre arbitre, de s'inscrire et d'opérer dans plus d'une catégorie d'inscription et dans plus d'un territoire.

Elles connaissaient ou auraient dû connaître les coûts et contraintes que cela engendrait.

Elles devraient les assumer plutôt que d'appeler à modifier un système qui fonctionne globalement bien pour une foule d'autres inscrits qui ont accepté ces règles et qui se gouvernent en conséquence.

Par exemple, nous avons choisi chez Mérici de cantonner, pour le moment, nos activités au secteur de l'épargne collective sur le territoire du Québec. Si et lorsque nous choisirons d'ouvrir notre offre de service à une autre catégorie d'inscription ou à un autre territoire, nous serons

prêts à assumer les règles du jeu qui s'y appliqueront et n'iront pas demander une modification réglementaire ou législative pour que le règlement ou la loi s'adapte à notre modèle d'affaires.

Ceci dit, nous croyons qu'il pourrait y avoir, à brève échéance, des aménagements effectués afin de répondre à certains éléments soulevés. Ces aménagements ne seraient pas structurels afin de ne pas déconstruire ce qui existe et fonctionne bien mais plutôt d'ordre administratif. Par exemple :

- Permettre à des personnes exerçant des fonctions de conformité au sein d'une organisation d'agir dans plus d'une catégorie d'inscription sans avoir à s'inscrire partout et, ce faisant, à multiplier les coûts et exigences de formation;
- Permettre aux organisations la mise en place de passerelles informatiques afin d'alléger les coûts de TI et la complexité des systèmes;

Cet objectif pourrait être atteint grâce à un système de passerelle, de passeport ou de reconnaissance mutuelle, de dispense ou encore par un meilleur arrimage des exigences des différents OAR plutôt que par une refonte structurelle profonde qui déstabiliserait beaucoup d'inscrits pour satisfaire les gros joueurs œuvrant dans plus d'une catégorie d'inscription.

Car ne nous méprenons pas. Les inscrits qui réclament ces allègements et qui se plaignent du dédoublement de coûts ne sont pas des joueurs de tailles modestes à portée régionale. Ce sont souvent des organisations nationales qui ont, très souvent, les poches profondes et sont propriétés de grands groupes financiers.

Toute révision de la structure d'encadrement doit tenir cela en compte car conférer un allègement à ces grands joueurs augmente forcément leur compétitivité face aux plus petits. Dans une industrie déjà en forte consolidation, est-ce vraiment à l'avantage du marché et des investisseurs d'augmenter la pression à la consolidation?

Ultimement, cela aura pour effet de réduire le choix pour l'investisseur et de réduire la concurrence dont il est le premier bénéficiaire.

Règlementation en fonction du produit, inefficiences, rigidité et confusion

Nous saluons les ACVM d'aborder ces enjeux importants.

Il s'agit de questions complexes et, malgré le travail de synthèse effectué par les ACVM dans son document de consultation, il nous semble qu'un éclairage additionnel doit être apporté.

Le document de consultation identifie clairement l'un des éléments problématiques de cet enjeu : la différence d'interprétation des lois et règlements par les différents OAR. L'OCRCVM a adopté une approche dite de principes et l'ACFM est beaucoup plus prescriptive. Cela causerait, et nous le croyons, une différence importante dans le traitement des opérations et de la conformité entre les assujettis de ces deux OAR.

À titre de courtier en épargne collective inscrit uniquement au Québec, nous ne sommes membre ni de l'OCRCVM, ni de l'ACFM. Nous sommes encadrés directement par l'AMF, sur la base de la règlementation elle-même et non de règles, procédures ou manuels prescrits par une association.

Cette réalité nous permet d'effectuer un arrimage optimal entre les objectifs visés par les régulateurs dans la règlementation et la réalité de notre pratique quotidienne avec nos clients et nos conseillers.

Cette réalité nous rend pertinents, agiles et efficaces dans plusieurs aspects de nos affaires.

Cette réalité nous permet finalement de ne pas être obligés de reproduire des modèles organisationnels propres à de grands groupes de courtage mais de gérer nos opérations et nos risques de manière plus ciblées et donc, de mieux protéger nos clients.

Considérant ce qui précède, nous sommes d'opinion que le problème n'est pas tant l'existence ou non d'un ou de plusieurs OAR mais plutôt l'approche de chacun de ces OAR relativement à la mise en application de la règlementation qui est commune et applicable à tous.

Si l'ACFM a choisi une approche prescriptive et rigide, ses membres ne devraient pas s'en plaindre. À titre de membres de l'ACFM, ils devraient exiger une modification dans l'approche de celle-ci.

Il en est de même avec les membres de l'OCRCVM qui devraient agir auprès de leur OAR si la mise en application des règles étouffe leurs pratiques d'affaires et semble exagérée.

Car l'enjeu ici n'est pas la règlementation en fonction du produit. La règlementation en valeurs mobilières est applicable à tous les inscrits, avec certaines particularités propres à certaines catégories d'inscription.

L'enjeu est plutôt relatif à la manière dont chacun des OAR a géré la mise en application des règles en vigueur et l'obligation, dans la réglementation, pour certains inscrits de certaines catégories, d'adhérer à un OAR prédéterminé.

Ce qui nous amène à poser la question suivante : quelle est la place des OAR en 2020? Ce modèle est-il le seul qui puisse exister ou, comme le démontre le Québec avec la catégorie d'inscription en épargne collective, le régulateur principal d'une entité inscrite peut faire lui-même le travail?

Nous croyons que cette possibilité doit faire partie des options sur la table car elle servirait un débat beaucoup plus large, moins stérile et éviterait de faire basculer la consultation sur un champs de bataille où les intérêts corporatifs des organisations, inscrits comme OAR, occupent une place centrale.

Quoi qu'il en soit, il demeure que nous campons tout de suite notre positionnement en faveur d'une règlementation et d'une application basée sur des principes et que nous serons farouchement opposés à toute tentative de basculer vers une application prescriptive.

Pour reprendre une analogie que nous utilisons régulièrement, nous vivons très bien avec le fait que la règlementation puisse nous demander de servir à nos clients un gâteau aux carottes. Nous

désirons toutefois avoir le choix de la recette car il n'y a pas que votre grand-mère qui puisse en faire une excellente version.

À propos de l'arbitrage règlementaire, nous croyons qu'il s'agit d'un enjeu réel et sérieux qui mérite l'attention des ACVM mais également des gouvernements de toutes les provinces et territoires.

Car s'il est vrai qu'il existe un risque d'arbitrage règlementaire entre différents produits régis par la législation en valeurs mobilières, cet arbitrage est également présent pour d'autres produits tels que certains produits d'assurances (dont les fonds distincts) ou bancaires (CPG et dépôts à terme).

Toute réflexion sérieuse menée avec le but de mieux protéger le public ne peut faire abstraction du fait que l'arbitrage réglementaire dépasse le seul cadre des ACVM.

Nous avons besoin que les ACVM aient le courage d'interpeller les gouvernements de chacune des provinces ainsi que les organismes d'encadrement des autres secteurs touchés afin que des mesures adéquates soient prises.

Si les ACVM acceptent les limites actuelles et refusent d'agir sur ce front, elles manqueront à leur devoir d'intérêt public et démontreront qu'elles manquent à leur mission d'interpeller leurs gouvernements responsables en les avisant d'une situation qui mérite qu'on s'y penche.

Nous suggérons, conséquemment, que la réflexion soit élargie afin d'inscrire d'autres catégories d'inscription incluant l'assurance et la planification financière.

En effet, aux yeux du client lambda, la catégorie d'inscription du professionnel qui se trouve devant lui et en qui il a confiance est une question de peu d'importance.

L'existence du lien de confiance, qu'il soit basé sur le fait que le conseiller agit au sein d'une bannière reconnue (comme une institution financière réputée) ou que le conseiller a bonne réputation (généralement chez les indépendants), suffit à ce qu'il adhère aux recommandations qui lui sont faites.

Que le conseiller soit inscrit à titre de gestionnaire de portefeuille, conseiller, représentant en épargne collective et/ou en plan de bourse d'étude, conseiller en sécurité financière, planificateur financier ou autre n'est pas un critère déterminant pour une majorité de clients. Ces titres sont même davantage source de confusion, le client n'arrivant pas à déterminer ce que chacun signifie et ne sachant pas que chacun permet, ou pas, la recommandation de produits ou services particuliers.

La confiance est placée dans un individu et/ou une bannière, ce qui laisse place à un risque d'arbitrage réglementaire important.

Toute réforme impliquant la remise en question de la réglementation par produit doit forcément, pour être pertinente pour le client et répondre aux objectifs de protection et de traitement équitable, inclure des produits et des secteurs qui sortent du cadre de compétence des ACVM.

Nous invitons donc les ACVM à agir avec leadership et à interpeller les gouvernements pour agir sur ce front.

Autrement, nous n'aurons droit qu'à une réforme partielle, imparfaite et qui ne sera pas nécessairement d'une grande aide pour les consommateurs.

Considérations et préoccupation générales

Le document de consultation abordait également des enjeux relatifs à la confiance du public et à la surveillance du marché.

Nous croyons que ce sont des enjeux importants mais qu'il est impossible d'aborder efficacement sans régler d'abord les questions et sujets que nous avons soulevé préalablement dans notre lettre de commentaires.

Nous croyons toutefois utile, avant de conclure, de partager notre position concernant certains enjeux de principes que tout projet de réforme devra considérer à notre avis s'il veut obtenir un appui et des assises nécessaires à sa réussite.

1- L'approche de la réglementation et son application doivent demeurer basées sur les principes

   Toute proposition de révision du cadre actuel qui entraînerait une augmentation ou l'imposition d'une approche prescriptive en matière de réglementation ou d'application de celle-ci rencontrera auprès de nous une opposition farouche de tous les instants.

   Nous croyons qu'une application basée sur les principes, si elle est parfois plus exigeante pour les inscrits car elle demande réflexion, interprétation et mise en application, permet une plus grande latitude et favorise l'émergence d'une offre variée qui bénéficie aux investisseurs et à l'industrie.

   Les ACVM doivent maintenir l'approche d'une réglementation par principes mais doivent également s'assurer que, peu importe la structure d'encadrement qui sera adoptée, cette approche s'articule jusqu'au bout des réseaux de distribution.

   L'historique de l'ACFM et les critiques qui lui sont adressé témoignent des inconvénients importants qu'une approche prescriptive entraîne. Il ne faut pas perpétuer ou reproduire ce modèle.

2- Les valeurs mobilières sont de compétence provinciale

   Nous comprenons l'intérêt que peuvent avoir plusieurs inscrits à portée nationale ou associations nationales de ne faire affaire qu'avec un seul OAR qui chapeaute l'ensemble de leurs activités.

Toutefois, notre compréhension ne signifie pas que nous sommes en accord car leur intérêt est propre à leurs activités et ne recoupe pas celui des clients ou encore d'autres inscrits, dont Mérici.

À cela s'ajoute la crainte, légitime, qu'un tel organisme serait appelé à établir son siège à Toronto, augmentant sa proximité avec certains groupes à portée nationale ainsi qu'un certain régulateur, proximité qui desservirait par définition les groupes à portée régionale ou établis à l'extérieur de Toronto.

Tout projet de refonte de la structure d'encadrement doit prévoir une présence et une capacité décisionnelle et organisationnelle pour toute province souhaitant l'obtenir et l'exercer.

Nous nous prononçons afin que le Québec se dote d'une telle structure ayant son siège sur son propre territoire et engageant des gens d'ici qui contribueront à renforcer la place stratégique du Québec dans l'écosystème financier.

Un bureau régional ne répondrait pas à ces critères.

Une équipe dédiée non plus.

À nos yeux, c'est beaucoup plus qu'une question de langue ou de défense des compétences constitutionnelles, c'est une question de maintien d'expertise et de capacité décisionnelle.

3- La nécessité d'un régulateur de proximité ayant une large portée

L'exemple de l'Autorité des marchés financiers démontre qu'il est utile et pertinent qu'une seule entité encadre les secteurs des valeurs mobilières, de l'assurance et de la planification.

L'exemple de la Chambre de la sécurité financière démontre qu'il est utile et pertinent qu'une seule organisation puisse exercer des pouvoirs d'encadrement et de sanction sur des individus, peu importe leur catégorie d'inscription.

La protection du public bénéficie d'une structure large englobant toutes les organisations et les professionnels qui y œuvrent.

Le public peut ainsi se présenter à un même endroit pour requérir que cessent des comportements répréhensibles et/ou obtenir réparation.

Qui plus est, la Chambre de la sécurité financière étant constituée de ses membres, lesquels ont un intérêt dans la qualité de la prestation des services professionnels de la même manière qu'un ordre professionnel, permet une proximité et une implication de conseillers ayant à cœur la protection du public tout en assurant son indépendance par la présence d'administrateurs indépendants nommés par le ministre des finances du Québec. Aucun OAR actuel n'offre cette possibilité.

La proximité et une large portée permettent d'agir promptement et adéquatement aux défis de la pratique et de la protection du public.

Tant l'AMF que la CSF le démontrent.

Conclusion

Nous tenons à remercier les ACVM de l'opportunité qui nous a été donnée de participer à la présente consultation.

Nous espérons avoir la chance de poursuivre le dialogue sur le contenu de cette consultation, particulièrement à propos des éléments où nous avons marqué nos réserves ou désaccord.

Soyez assurés de notre entière disponibilité et de notre collaboration afin d'assurer la protection des investisseurs et l'efficience des marchés.

Meilleures salutations,

Me Maxime Gauthier
Chef de la conformité

CIPF
Canadian Investor Protection Fund

Rozanne E. Reszel, FCPA, FCA, CFA, MBA, ICD.D
President & Chief Executive Officer

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October 20, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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&

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Dear Sirs and Mesdames:

Re: Consultation on the Self-Regulatory Organization Framework

Canadian Investor Protection Fund ("**CIPF**" or "**we**") is a not-for-profit corporation approved by the Canadian Securities Administrators (the "**CSA**") as an investor protection fund and funded by its members. CIPF's members are those investment dealers regulated by the Investment Industry Regulatory Organization of Canada ("**IIROC**"). Our mandate is to provide protection within prescribed limits to eligible clients of member firms suffering losses if client property comprising securities, cash and other property held by a member firm is unavailable as a result of the insolvency of the member firm. CIPF is neither a regulator, nor a self-regulatory organization, and has no authority to investigate or regulate its member

firms. We are subject to oversight by the CSA and maintain a close relationship with IIROC and other investor compensation funds both within Canada and internationally.

We have reviewed, with great interest, *Consultation Paper 25-402 – Consultation on the Self-Regulatory Organization Framework* (the "**Consultation Paper**") issued by the Canadian Securities Administrators (the "**CSA**") on June 25, 2020. We welcome the CSA's broad and comprehensive review of the self-regulatory organization (the "**SRO**") framework in Canada. As a key participant in the Canadian capital markets with a mandate to provide specific protection to clients of IIROC dealer members, we have a fundamental interest in all initiatives designed to enhance and safeguard the interests of investors. We appreciate the opportunity to provide comments on elements of the Consultation Paper of relevance to our mandate.

Consistency, clarity and the protection of investors are principles reflected in a number of the targeted outcomes identified by the CSA in the Consultation Paper. The differences in the availability of investor protection fund coverage among registration categories is cited as a source of confusion for investors. The issue is also very relevant to the fundamental principle of equivalent and consistent investor protection.

As noted in the Consultation Paper, clients of dealers regulated by IIROC and the MFDA have the benefit of the protection afforded by CIPF (in the case of IIROC dealer members) and the MFDA Investor Protection Corporation (in the case of MFDA dealer members). Clients of exempt market dealers, portfolio managers and scholarship plan dealers ("**Direct Registrants**") are currently not afforded such protection. CIPF strongly urges the CSA to consider ensuring that membership in an investor protection fund (whether an existing fund or a newly established fund) be a requirement for all registered firms distributing products and providing advice to investors in Canada. This will inevitably enhance the protection afforded clients of Direct Registrants. The consistency inherent in a requirement applicable to all registered firms will also mitigate any confusion among investors as to the availability of investor protection fund coverage. Full and comparable disclosure by each registered firm of the scope of coverage available will serve to further reduce investor confusion.

CIPF recognizes that participation in an investor protection fund must be tailored to a Direct Registrant's size and risk profile. The effective assessment and management of risk will be critical to ensure a Direct Registrant's participation in an investor protection fund is commensurate to its size and risk profile. CIPF has, over time, developed a risk model, tools and processes of the highest caliber which are designed to achieve that correspondence. We would be pleased to share our expertise with the CSA in any analysis of this issue.

Similarly, CIPF has developed a web-based platform for member reporting to both CIPF and IIROC. This platform is also accessed by members of the CSA, CDS and CDCC, and serves as a sophisticated database accessible on a discrete basis by each organization. We would, again, be pleased to explore with the CSA using this platform as a model for the development of a comparable reporting platform for Direct Registrants. The use of web-based platforms such as the one developed by CIPF can serve to reduce costs and duplication, accommodate innovation and afford efficient access to market data, each identified as a targeted outcome by the CSA in the Consultation Paper.

There are, we believe, other areas in which such collaborative efforts can help to address concerns raised. For instance, the Consultation Paper identified consistent access to similar products and services for registrants and investors as a targeted outcome. That objective

might be achieved through the introduction of seamless bridging relationships between MFDA members and IIROC members. CIPF would certainly consider exploring recognition of equivalent coverage in the application of MFDA/IPC risk models to IIROC members entering such arrangements.

While CIPF is not an SRO itself, we are subject to the oversight of the CSA and maintain a close relationship with IIROC. Accordingly, we have (and continue to) adhere to stringent principles of governance befitting regulatory bodies. In this context, we paid some attention to those elements of the Consultation Paper addressing SRO governance matters.

In the Consultation Paper, the concerns of certain stakeholders relating to the current SRO governance structure are noted. Among them, is a concern that the close ties to industry enjoyed by "independent" directors of an SRO challenge the SRO's ability to fulfill its public interest mandate and increase the risk of regulatory capture. It must, however, be recognized that the regulation and oversight of capital markets and their participants involves exceedingly complex considerations in a rapidly evolving environment. The importance of expertise and familiarity with capital market operations and practices cannot be understated. CIPF strongly supports measures designed to foster or enhance board independence (including prescribed independence criteria and mandated director term limits) while also recognizing the value of an industry background (even among the independent directors of an SRO). An appropriate balance must be struck between neutrality and objectivity, on the one hand, and experience and expertise, on the other hand. CIPF is of the view that governance policies requiring diversity to be considered in the nomination of all directors will contribute to achieving such balance. A diverse board, comprised of an equal number of independent and industry directors each possessing qualifications, experience and skills of value and relevance to a capital markets SRO instils investor confidence.

In the Consultation Paper, it is also noted that certain stakeholders are of the view that the current SRO governance structure does not result in the SROs being sufficiently accountable to the CSA. Among the concerns raised in relation to the current SRO governance structure is the fact the CSA does not have a seat on the board of any SRO and neither appoints, nor has a veto over SRO board members or key executive staff. CIPF does not view such mechanisms as being necessary for the effective oversight and accountability of an SRO. A robust oversight process that involves sharing of information, guidance, reporting and assessment can well achieve the objective of accountability. Involvement of the independent directors of an SRO in its reporting and assessment processes will also serve to reinforce the CSA's oversight. Conversely, the appointment of directors and/or control over the appointment of directors and key executive staff of an SRO will not, itself, enhance the CSA's oversight of the SRO or the SRO's accountability to the CSA (especially in light of the fiduciary duties of directors and officers). Moreover, such involvement of the CSA in the membership of the board and appointment of key executive staff of an SRO belies the status of the SRO as a non-governmental entity. The SROs in Canada are neither Crown corporations, nor agencies or departments of the government. In our view, the nomination of directors and appointment of key executive staff of an SRO is best entrusted to the nominating committee and board of each SRO.

Again, we appreciate the opportunity to respond to your request for comment and trust that you find our feedback relevant. Please do not hesitate to contact me at rreszel@cipf.ca if you would like to discuss our comments in greater detail.

Yours very truly,
CANADIAN INVESTOR PROTECTION FUND

Rozanne Reszel
President & Chief Executive Officer
On behalf of the Board of Directors of the Canadian Investor Protection Fund

c.c. Debra Hewson, Canadian Investor Protection Fund Board Chair

Kenmar Associates

October 20, 2020

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CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*
https://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20200625_25-402_consultation-self-regulatory-organization-framework.pdf

*"The regulatory framework for these self-regulatory organizations has been in place for several years, and the industry has evolved significantly during this times **In response to requests formulated by market participants**, we believe it is appropriate to revisit the current structure and seek comment from stakeholders."* - Louis Morisset, CSA Chair and President and CEO of the Autorité des marchés financiers

Kenmar Associates is an Ontario-based privately-funded volunteer organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com .Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

Kenmar appreciate the opportunity to provide an input and sincerely hope the CSA will take the time to consider and reflect upon Main Street issues.

EXECUTIVE SUMMARY

We must credit the Ontario Task force to modernize securities regulation for its refreshingly bold proposals for change that quite frankly, we had hoped would have come from the CSA many years ago. The Taskforce did this in a few short months which deserves special recognition. It is a decision making process the CSA should emulate to eliminate the endless consultations, roundtables and meetings spanning years, if not decades.

Pure self-regulation, as the term is commonly understood, is obsolete in the 21st century. The inherent conflicts-of-interests are not what Canadians want or need in order to trust the financial services industry with their life financial goals.

With high personal debt, low investor financial literacy/numeracy, a decline in DB pension plans, a growing number of seniors /retirees, increased investor longevity, increased investing complexity and rapid technological change , Canadian's have increased their dependence on financial advice .The SRO's have a profound influence on the financial health of our society in regulating that advice. We therefore treat the SRO consultation as a socio-economic issue, not solely a SRO framework issue. We are seeking socially- responsible regulation.

Let us begin by making one thing clear. A simple merger of IIROC/MFDA is not a viable solution to achieve the goal of socially- responsible regulation .Trying to merge existing entities with existing cultures and processes is not the way forward. Investors do not want a situation where the longstanding shortcomings of the two existing SRO's are spliced into the DNA of a new SRO. For meaningful change, change that is innovative, bold, and forward- looking, a rethink is needed. The end goal is an SRO that is in keeping with international regulatory best practices, an organization with a new governance structure, enhanced public and CSA involvement and an organization that truly protects investors and serves the Public interest.

We need the CSA to have a detailed discussion of its approach to financial consumers before deciding on how Firms are to be regulated. The U.K. Financial Conduct Authority (FCA) unequivocally places consumers at the centre of its mission. See *FCA Mission: Approach to Consumers* https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf Without this articulated framework it is difficult to ever see Canada truly modernizing its approach to regulation and investor protection. **Kenmar strongly encourage the CSA to better articulate what it defines as "investor protection".**

In a system with provincial jurisdiction, SROs have played an important role in providing nationally-scoped regulation within their respective jurisdictional spaces. The goal should be to create a framework that works for Main Street not just Bay Street. So we say, create a new SRO one with a radically redefined definition of "self". The "self" is a misnomer in today's modern age. "Self" must equate with the balancing of the needs of regulators, the industry AND investors.

If the CSA wants to continue to rely on SROs to help them fulfill their Public interest mandate to protect Canadian investors and promote confidence in Canada's capital markets, major change is needed - changes that address the foundation of self-regulation , not just the framework.

There are numerous forces that justify a re-examination of the SRO framework. The primary drivers are:

- The lack of public confidence in the SRO model and regulatory framework

- The increasing need for trusted financial advice at every level of society (budgeting/ debt management / social benefits at lower income levels and, integrated financial planning)
- Increased financial consumer demand for integrity in financial services (See *Creating an ethical framework for the financial services industry* : J. Black LSE Jan. 2013 http://www.lse.ac.uk/law/people/academic-staff/julia-black/Documents/black10.pdf)
- Decreasing investor trust in the financial services industry
- Dissatisfaction with SRO compliance monitoring , enforcement practices and complaint handling
- Increased emphasis on client compensation in complaint cases
- Calls for more socially responsible regulation

The new SRO (and CSA) must respond to these driving forces. A new SRO will need a new culture, one focussed on investors by changing beliefs and behaviours.

At a high level, Kenmar support a combination of the MFDA and IIROC registrants into a new SRO with a new board, new accountability framework, new mandate and new culture.

The main parameters of such a plan include:

- A clear CSA vision for the advice industry and investor protection
- A definitive CSA decision on self-regulation
- Enhanced CSA oversight of a new SRO (if applicable)
- A new SRO with improved governance, transparency ,accountability, investor engagement and a clear Public interest mandate
- A SRO Board where the investor and CSA voice can be expressed
- Investor involvement in developing policy and rules
- An Investor Advisory Panel supporting the Board of Directors
- Firm accountability for the actions of representatives
- An SRO focussed on robust compliance and enforcement
- An SRO that regulates Firm activities beyond securities selection and investment advice
- A modern client complaint handling and enforcement system that emphasizes investor compensation
- An OBSI with a binding decision mandate

The design of a new SRO must ensure there is no reduction of access to personalized advice to clients of modest income or in smaller communities not well served by large dealers.

We expect the CSA to demonstrate leadership, vision, strategic thinking, decisiveness and investor involvement if the results of the SRO framework review are to be in the Public interest.

INTRODUCTION

"If I were given one hour to save the planet, I would spend 59 minutes defining the problem and one minute resolving it" -Albert Einstein

The nature of the SRO-related issues raised is not congruent with the issues that have been articulated by the investor advocacy community. We comment on this is our formal commentary.

Experience to date indicates that the current SRO model has, until recently, consistently been less focused on the direct views of investors than on the views of industry, government, the CSA and other "organized stakeholders". It is antithetical for a modern day Public interest regulator to ignore or even discount consumer/investor outcomes as a fundamental component of its responsibilities. Systemic issues of governance with respect to consumer outcomes, in the complaint process especially, abound in the current SRO framework. The absence of more focus on the Public interest and investor outcomes in the current consultation represents, is in our view, a missed opportunity for meaningful reform.

The CSA concedes that it has framed the consultation based primarily on industry input. If we had framed the consultation, we would have identified a very different list of SRO issues. For simplicity, we have grouped them together in this summary while acknowledging that they may be significantly more or less applicable to the MFDA or IIROC. Our top issues include:

- Sufficiency / appropriateness of the CSA oversight regime
- Adequacy on how SRO governance deals with conflicts-of-interest
- The level of investor engagement / outreach by the SROs
- The need for greater public / investor input into SRO policy, rulemaking and enforcement priorities
- SRO rulemaking /enforcement and the Public interest
- Inadequate Firm Compliance oversight
- Rules geared to transactions vs. " financial advice"
- Low enforcement intensity and " light touch" sanctions
- Complaint handling (1) does not employ root cause analysis and (2) does not put investor compensation top of mind
- SRO relationship with OBSI is not complementary
- OBSI does not have a binding decision mandate

These issues raise serious questions about the SRO's' level of commitment to regulating Member Firms and protecting investors and ensuring their interests and rights are protected. If the regulatory system is to continue to rely on SROs, practices in all of these areas must be dramatically improved.

Kenmar will use the SRO consultation as an opportunity to examine and discuss the regulatory and social purpose of SRO's from the investor perspective.

The role of the CSA

"When you point one finger, there are three fingers pointing back to you.". Well, while this consultation is focussed on an SRO framework, there is another issue- the CSA itself. Some of the failings of the current regulatory system fall at the feet of the CSA. A frequently used example is when the SROs were expected to regulate dealers and their representatives, but were not given the power to enforce fines or compel the production of evidence or testimony. These shortcomings took away from the credibility of the SROs and indeed, there was a real question of whether the IOSCO guidelines for general deterrence were being achieved. IIROC leadership had to take the initiative to acquire that power by lobbying each province. This should have been led by the CSA, but like so many other investor protection issues, was not.

Another example concerns OBSI. The CSA provided a financial ombudsman service for investment dealers but didn't give it a binding decision mandate. This resulted in Name and Shames and low-ball settlements. The CSA did nothing to address low-balling which eventually led to a broken client complaint system for the investment industry. Investors vent their anger at OBSI and the SRO's but the root cause is the CSA.

Sometimes the CSA actually undermines the SRO's, as was the case in mid-2018. With the CSA planning to propose a ban on the practice of mutual funds paying trailing commissions to discount brokers, IIROC suspended the guidance it previously issued April, guidance which would have required rebates to investors of non-advice related trailing commissions. Then, after waiting until September 2020, the CSA gave discounters 20 months to clean up their investor wealth-destroying act without any enforcement action or a ban. DIY investors were left to fend for themselves instead of receiving rebates that would have been effective years earlier. Such anti-investor actions by the CSA add to investor distrust in the CSA, IIROC and the financial services industry.

The CSA sure didn't provide a role model when it granted the fund industry a whopping 27 months to transition away from toxic DSC option mutual funds. At the same time, it granted the industry an exemption from the investor-friendly CFR conflict-of-interest requirements. All of this in the middle of COVID-19! In addition to the possible harm to retail investors, the CSA decisions put undue pressure on the SROs to divert scarce compliance resources to watch over sales of a product that shouldn't even be sold.

The point we want to make is that for "self-regulation" to work, the CSA and SRO's must work collaboratively in the Public interest so that the overall regulatory system functions well. Together, they form a delicate eco-system that needs constant management.

It takes far too long for the CSA to provide the regulations that would support the SROs in their work to protect investors. **Kenmar urge the CSA to dramatically overhaul its consultation and decision making processes**. The glacial speed of regulatory change is a major impediment to robust investor protection.

Improvement in CSA cycle times will enable the SRO's to function more effectively and efficiently.

We are of the view that the prevailing approach of CSA regulatory focus is not the UK/Australian model, but that of making the distribution model more efficient, less prone to abuse with just sufficient disclosure to limit investor opportunity for complaint**.** This needs to change.

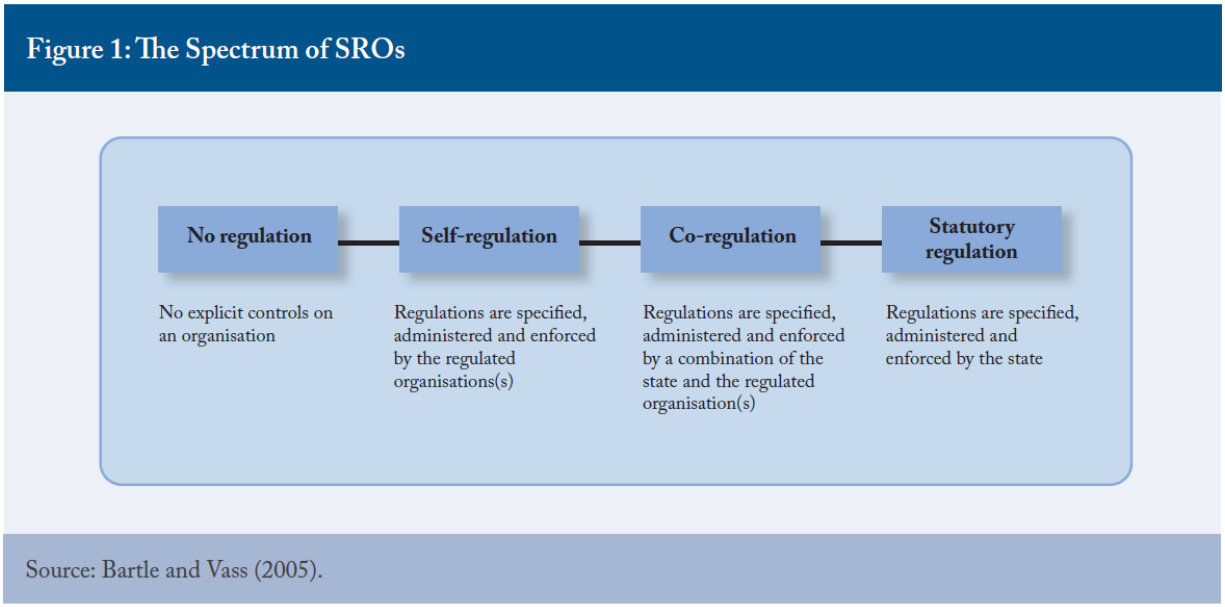
The CSA should seriously consider establishing an Investor Advisory Panel. There is strong evidence that the CSA needs more access to grass roots issues facing Canadian investors. In the U.S., Section 911 of the Dodd-Frank Act established the new Investor Advisory Committee to advise the Commission on regulatory priorities, the regulation of securities products, trading strategies, fee structures, the effectiveness of disclosure, and on initiatives to protect investor interests and to promote investor confidence and the integrity of the securities marketplace. The Dodd-Frank Act authorizes the committee to submit findings and recommendations for review and consideration by the Commission. It is our understanding that this Committee has been a valuable contribution to investor protection in the United States. An IAP could play a very important role in assisting the CSA on investor protection initiatives and with SRO oversight.

Our suggested SRO model

In most cases regulatory reforms are vigorously opposed by industry (SRO Member Firms) with attempts to eliminate them, reduce their scope, delay them or move them into Guidance which is exactly what happened with the Client Focussed Reforms (CFR). This is precisely why we believe there must be fundamental changes in the way SRO's are designed, governed and operated if "self-regulation" is the approach the CSA continues to pursue.

We do acknowledge that in recent times, IIROC has pursued several positive reforms (stronger enforcement powers, positive changes to governance and proposals to create both an Investor Advisory Panel and ensure that disgorgements of improperly earned fees are returned to harmed investors and the MFDA has improved investor outreach. However, these efforts are not enough. Investors should not have to hope that SRO's continue to take positive steps. Structural and governance reform, as part of a consolidation of the two SROs into a new SRO, could provide a positive path for the future.

There are different types of SROs that have varying degrees of power and influence over public policy. These different regimes usually fit within a spectrum. See Figure 1.



Source: C. D. Howe Institute *Who Watches the Watchmen? The Role of the Self-Regulator* file:///C:/Users/OwneHome/Downloads/Commentary_416.pdf

If the CSA is unwilling to regulate MFDA and IIROC Firms directly, Kenmar believe that *co-regulation* may be optimal for Canada – a model where each of the industry, the CSA and investors have important roles to play in regulation.

The structure of an SRO is important in light of the provincial and territorial regulation of the securities industry in Canada. A national SRO can provide for a more uniform level of regulation and supervision across the country with one set of rules applicable to all SRO members. This is one argument for unifying IIROC and the MFDA registrants under a new SRO.

Of course, this doesn't necessarily mean that a single SRO is appropriate to regulate all registration categories. We look forward to seeing multiple stakeholder viewpoints on this issue.

Unlike the MFDA, IIROC currently regulates more than just the retail investor activities of its members. It regulates retail only firms and institutional only firms, boutique oil and gas capital raising firms -investment banking, M&A, IPO's, fixed income trading and of course all trading on every Canadian exchange. It also handles registration, unlike the MFDA which the CSA does for it.

Pure self- regulation, given demonstrated industry behaviour and the socio-economic needs of Canadians, constitutes an irreconcilable material risk for retail investor protection. In our view, **Co-regulation** is a more appropriate SRO structure if the CSA does not want to regulate certain parts of the market themselves. Enhanced governance is a starting point.

We will respond to the Consultation from the retail investor perspective. We do this in two parts:

Part I Comments on the CSA defined consultation issues
Part II Recommendations for reform

We also append two appendices to elaborate on several issues

APPENDIX I Describes the investor issues with the current SRO system
APPENDIX II Express concerns related to a SRO consolidation

PART I COMMENTS ON THE CSA DEFINED CONSULTATION IISUES

"*Should you find yourself in a chronically leaking boat, energy devoted to changing vessels is likely to be more productive than energy devoted to patching leaks*"- Warren Buffett

The CSA has done a good job explaining the industry issues in plain language and providing relevant background materials. However, we found the articulation of issues incomplete and targeted outcomes concerning. For example," **A regulatory framework that is easily understood by investors and provides appropriate investor protection.** How should retail investors react to such an unambitious outcome? The outcomes identified in the CSA paper will not materially improve the regulatory system's efficacy in protecting investors or compliance with the Public interest mandate.

The consultation asks *Describe the difficulties clients face in easily navigating complaint resolution processes.* The client complaint handling process is complex, lengthy, unfair and designed to wear down complainants. There is nothing new here as we have, for at least a decade, advised the CSA of the difficulties retail investors have in navigating the dealer complaint handling system and obtaining a just result. Like so many issues, the root cause of the issues lies with the CSA inaction, not the SRO's. [Key statistic: In 2019, a whopping 47% (180 of 387) of investment complaints to OBSI ended with a monetary compensation recommendation, a sad reflection on dealer complaint handling efficacy.] The complaint process is so complex and treacherous that MBC Law Professional Corp. prepared a 29 page Handbook *The Complaints Process for Retail Investments in Canada: A Handbook for Investors*
https://static1.squarespace.com/static/58350df5b3db2bbc30614fbf/t/5b2444c86d2a734942edff91/1529103562413/Complaints+Process+for+Retail+Investments+in+Canada.Handbook.MBC+FLAG+2018.pdf

The elephant in the room really is SRO conflicts-of-interests, real and perceived. With pure self-regulation there is the temptation to use a facade of industry regulation as a shield to ward off more meaningful regulation, the tendency for businesspersons to use collective action to advance their interests through the imposition of anti-competitive restraints as opposed to those justified by Public interest needs, light touch enforcement and a resistance to reforms in the regulatory environment. SROs are not subject to Freedom of Information legislation

that allows the public to require the production of information. Unlike a statutory regulator, an SRO is not accountable directly to the Government.

The Consultation Paper makes little reference as to how SRO's have discharged their Public interest mandate and how it should be addressed going forward.

Over the years, there have been calls for reform of the SRO framework ranging from the elimination of the SRO approach to mergers to creation of a super SRO. Most of the calls have been from industry participants who want to see reduced regulatory "burden" and maybe even less regulation altogether. But what about the retail investor? How has the self-regulatory system worked out for Main Street?

Quite frankly, we were expecting a deeper review of the self-regulatory framework. Should the CSA rely solely on industry evidence? Is SRO governance adequate to satisfy the Public interest mandate? Is self-regulation working to protect retail investors from financial assault? Do SRO rules consider the impact on Main Street? Is enforcement meeting IOSCO guidelines for effective deterrence? Are investors fairly compensated when rules are broken? Should other distribution channels (e.g. EMD's) be under a separate fit-for-purpose SRO? How does OBSI fit into the framework? Is market regulation meeting CSA and international standards? These important issues need to be addressed by the CSA.

At this stage, the CSA is not recommending any particular regulatory model or reforms. Instead, the Consultation Paper describes the existing SRO framework, summarizes its interpretation of the results of the CSA's recent consultations with stakeholders, and seeks feedback on the issues raised by those consultations. The Consultation states that certain Stakeholders raised some issues about the existing system, including the following:

§ **Product-based regulation:** Some stakeholders think that there is an unlevel playing field and potential for regulatory arbitrage because similar products and services are subject to different rules, or differing interpretations of similar rules, depending on which organization's rules apply.
§ **Duplicative operating costs:** There also are concerns that the lack of common oversight standards and differing interpretations of similar rules have led to duplicative operating costs for dealers who operate under both the IIROC and MFDA platforms.
§ **Structural inflexibility:** Some stakeholders think that the existing framework makes it harder for dealers to accommodate evolving investor preferences (e.g. to access a wider range of products from a single registrant), creates succession planning challenges for mutual fund dealers and their representatives (because of the limited product shelf they can offer their clients), and/or limits investment dealers' ability to grow their businesses due to difficulties in attracting mutual fund dealing representatives because of the additional proficiency requirements.
§ **Investor confusion:** Investors and their advocates stated that layers of regulation have contributed to investor confusion because investors can't access a broad range of products from one representative and/or are unsure whom to turn to if an issue arises.

§ **Public confidence in SRO system:** Some stakeholders see this project as an opportunity to enhance the SROs' governance structures to focus on their public interest mandates and strengthen complaint resolution mechanisms.

An IIROC financed study by Deloitte LLP *An Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation* https://www.iiroc.ca/industry/sro-proposal/Documents/Deloitte_Assessment_of_Benefits_and_Costs_of_SRO_Consolidation_Final_EN.pdf estimated that hundreds of millions of dollars could be saved over the next decade with a combined MFDA /IIROC. Let's call it $500 million spread over 10 years or $50 million a year on average. While not insignificant, these savings should be compared to the hundreds of millions of dollars a year that investors would have saved if advice-based trailing commissions had been rebated or banned in discount brokers. Or contrast that estimated modest savings with the pain and anguish the DSC sold mutual fund has caused Main Street for at least two decades.

Kenmar sees this consultation primarily as an industry-driven initiative to reduce the "burden" of regulation. **Important investor issues appear to be incidental to the main discussion**.

No doubt some cost reduction opportunities can be found but we are looking for a more fulsome examination of "self-regulation". Kenmar's emphasis is on making "self-regulation" better by making the SRO's more accountable and better governed for improved investor outcomes.

The primary concern and risk with SROs is that their governance structure is inadequate to resist industry pressure to propose rules that promote their own economic interests. This is of particular concern because SRO members pay the fees to run the organizations and are incented to limit the resources available to pursue regulation. We believe that the current 50 / 50 split of industry and independent Directors on the SRO Boards is evidence of that. To their credit, IIROC has proposed, as part of its response to the Ontario Taskforce on Capital Markets Modernization, that independent Directors form an outright majority on the Board of the consolidated SRO. See *IIROC Comment letter to Ontario Taskforce to modernize securities regulation* https://www.iiroc.ca/industry/sro-proposal/Documents/IIROC%20Management%20Response%20-%20Digital-Version.pdf We agree with the principle of this recommendation.

We are concerned that the CSA has allowed industry concerns to overly influence the agenda for the consultation and we hope to balance the focus by highlighting the needs of the retail investor.

Product-based regulation

In the current investment environment, investors are moving away from transactions and gravitating towards holistic advice. In this context, it is quite appropriate to question the rationale for product-based and transaction-based

regulation .A modern SRO needs to concentrate on the regulation of financial advice as a service.

The consultation paper acknowledges a prevailing criticism that there is a lack of rule harmonization among the SROs and the CSA. From our observations, we find the relationship between the SRO's strained, despite the fact that both SRO's are headquartered at 121 King St W. in Toronto.

A consolidation of rules of the MFDA and IIROC as part of a new SRO would provide for harmonization of policies/rules. A modern complaint handling rule and more effective enforcement practices would have to be among the first priorities of any such harmonization.

We suspect there is potential for arbitrage in the exempt market as MFDA, EMD's and IIROC dealers compete for business. If this is the case, the CSA should take appropriate action to reduce or eliminate this scenario. Perhaps a national EMD SRO is needed with CSA oversight. Alternatively, the EMD's could be folded into a super SRO if it is formed, but we would caution blending holistic advice Firms with product marketeers and promoters.

Of course, there is regulatory arbitrage because of the nature of the Canadian regulatory environment. Each province is responsible for the regulation of securities in its domain with the CSA trying to cobble together mutual agreements that can be translated into National Instruments and inter-provincial agreements. One of the biggest occurrences of potential regulatory arbitrage is between provincially regulated investment dealers and the insurance industry. As this is not part of the consultation, we will not spend much time on this aspect. A large proportion of MFDA Approved Persons are dually-licenced so that regulatory arbitrage is easy, say as between mutual funds and Segregated funds. With the onset of CFR and DSC prohibition/restrictions on mutual funds, this could become a huge arbitrage issue for regulators and investors. Governments have a ripe opportunity to cut back on this regulatory arbitrage.

At a minimum, we recommend that each provincial securities regulator have a transparent mutual Recognition agreement that would detail the steps they are taking to minimize or eliminate regulatory arbitrage between the investment and insurance sectors within the province. We also recommend that the SROs have similar agreements with the FCAC, because of the popularity of index- linked GICs, Principal-Protected Notes and other innovative "banking" products that mimic securities (it is our understanding that a number of such Agreements are in place but we do not know how well they are working).

Combining the MFDA, IIROC and SPD's into a new SRO makes sense although it is not a top priority for retail investors. We argue that a new SRO should focus on SRO governance and regulation of personalized financial advice rather than sales transactions related to certain investment products and that this change in priority should be made as part of any consolidation.

Duplicative Operating Costs

There is no question that regulation could be simplified if a single SRO were created. What is not so clear is how to ensure the new entity regulates distribution, particularly mutual fund distribution, better and acts in the Public interest.

We read about the costs of maintaining dual platforms, about how burdensome it is. A study conducted by Deloitte LLP shows that a consolidation of the two SRO's would result in savings of between $380 million and $490 million for the financial services industry or about $49 million pa. max. p.a. This is really peanuts in a multi-trillion dollar industry. It is nothing compared to the costs incurred by Main Street attributable to the self-interests demonstrated by self-regulation. We encourage the industry to consider an investment in Regtech. This would reduce costs significantly and simultaneously enhance supervision and compliance capability. With CFR coming on stream, now is a good time to make these investments.

The expected efficiencies, cost savings and economies of scale resulting from the implementation of a single SRO will disproportionately benefit large Firms, notably the Big Bank dealers whose operations now fall under separate SRO platforms that would consequently be subject to a single oversight and rule-making authority. **The small and mid-sized Firms will gain less than the larger Firms, possibly driving more industry consolidation, decreasing competition and reducing investor access to advice.** See also *Small dealers facing consolidation: IIAC* https://www.investmentexecutive.com/news/research-and-markets/small-dealers-facing-consolidation-iiac/ [Currently, an estimated 80 % of distribution of investment products to investors is through bank-owned shelf distribution channels.]

While the consultation focusses on duplicative costs, investor advocates ask themselves why NI81-105 *Mutual Fund Sales practices* was not enforced by the MFDA /IIROC (or the CSA) until 20 years after it came into effect. Why has it taken multiple class action litigation to prompt the CSA to ban trailing commissions to discount brokers who do not and cannot provide advice ...and why did the IIROC/CSA let the practice prevail in plain sight for well over a decade? These are the grass roots issues with self-regulation and securities regulation in general.

As of mid-2019, IIROC-regulated dealer Firms managed approximately $2.9 trillion in client net equity as compared to the approximately $560 billion in mutual funds MFDA Firms. This suggests that about a third of the IIROC base is currently mutual funds since total mutual fund AUM is about $1.6 trillion. If the two SRO's were combined into one, mutual funds would represent about 45% of "new SRO" assets. IIROC's regulation of mutual fund distribution has been deficient, so a melding with experts in mutual fund regulation should improve overall investor protection.

If a mutual fund dealer continued as a mutual fund only dealer and stayed in IIROC's proposed mutual fund division, the rules that are today the MFDA's would continue to apply. In parallel, the same would be true on the IIROC side in what

would become the investment dealer division. If a dual- platform dealer wanted to move their people across and consolidate in one legal entity (presumably in the investment dealer), the investment dealer rules would apply. This may reduce regulatory burden at the margin but would still leave the advice industry with two sets of rules, neither of which meet the criteria we believe are necessary for a modern SRO. As part of a consolidation, we would expect to see a plan for an improvement in and harmonization of rules as an initial step.

We expect that the Client- Focused Reforms (CFR) initiative will, by its nature, help harmonize registration-related rules across the industry. In fact, that is one of the stated objectives of CFR. Kenmar appreciate that the application, interpretation and enforcement intensity of even those rules across the SROs may vary somewhat but we would not expect them to be materially different. Oftentimes, we see greater variability in the application of rules between Firms in the same registration category than between Firms in different categories.

A benefit of an SRO is that the sanctions (fines) available to the SRO's are larger than the statutory regulators. For example, IIROC currently can impose fines, up to a maximum of $5 million per contravention or an amount equal to three times the profit made or loss avoided due to the contravention. The OSC, a statutory regulator, is only given power to order the payment of an administrative penalty of up to **$**1 million and to order the disgorgement of amounts obtained as a result of the non-compliance. In effect, enforcement and general deterrence is impaired when an EMD or PM enforcement case is handled by a statutory regular. **We recommend that provincial securities regulators take decisive steps to ensure that their sanction toolkit is at least equal to that of the SRO(s).**

If the two SRO's were consolidated into a new SRO, the available protection funds cap would remain at $1 million. For investors who have money invested with both MFDA and IIROC dealers, the maximum available insurance coverage cap would therefore be reduced unless adjustments were made. On the other hand, if all the other categories were consolidated into one super SRO, EMD, PM and SPD investors would obtain access to investor protection funds that they currently do not have (some digital advisors regulated directly by Commissions would still not have access to an investor protection fund). **Kenmar recommend that, as a minimum, the CSA consider making the existing caps subject to a periodic adjustment formula and requiring that the registration categories not currently covered by any investor protection fund, establish an Investor Protection fund as deemed appropriate for those registration categories.**

Bringing the MFDA and IIROC registrants into a new single SRO could, in principle, improve investor protection by achieving a common culture across the regulatory entities for greater consistency in compliance practices and enforcement.

By improving governance, as part of the consolidation and in particular, by ensuring a majority of independent Directors, the CSA can support the development of a truly modern Public interest SRO.

Structural Inflexibility

Increasing the number of product choices and adding complexity is not the primary objective of Main Street investors. A large variety of products can be shopped for at a discount broker, many more than the typical retail investor needs to satisfy basic financial objectives. A recent NASAA report https://www.nasaa.org/55758/nasaa-releases-results-of-benchmarking-initiative-to-help-measure-effectiveness-of-regulation-best-interest/ found that broker-dealers working under a suitability standard offered a more diverse set of product offerings than fiduciary investment advisers. Many of the products avoided by the professionals were complex, hard to analyze and expensive. Expanding the product shelf for Main Street is lower on the priority list than unbiased financial advice and improved problem resolution.

What retail investors want and need is trustworthy financial advice on issues that range far broader than security choices and selection. They need financial plans for themselves and their families, adequate insurance coverage, help with tax and social benefit programs, investments that reflect personal values, discussion of charitable giving and philanthropic goals and help with estate planning. They also want a clear explanation of advisory fees and services. From our perspective, neither the CSA nor the SRO's are well equipped to mould financial advice giving into a profession.

Investors want unbiased advice. According to a April 2020 CFA Institute study *Earning Investors' Trust: How the Desire for Information, Innovation, and Influence Is Shaping Client Relationships* https://trust.cfainstitute.org/wp-content/uploads/2020/05/CFAI_TrustReport2020_FINAL.pdf trust is key with investors .From our perspective , advisors and Firms have to improve their trust level with clients. In Canada, trust in financial services was unchanged in the latest study, with just 51% of respondents saying they trust the industry. A decreasing percentage of respondents said their advisors were their most trusted source of advice: 59% of investors compared to 65% in 2018. The percentage of investors who said their advisors always put their interests first- a mere 35%. Most investors (75%) believed their financial advisors were legally required to do so. In response to the question: IN THREE YEARS, WHICH OF THE FOLLOWING DO YOU THINK WILL BE MORE IMPORTANT TO YOU? (a) Having access to the latest technology platforms and tools to execute my retail investment strategy or (b) Having a person to help navigate what is best for me and execute on my retail investment strategy, having a person help with financial navigation scored 67%, twice as much as platforms and tools. We believe a step-function change in the SRO model can materially help improve these sombre statistics.

Corporate inefficiencies should not be indiscriminately and solely blamed on regulators or regulations. We have no problem with eliminating wasteful regulation, but we would sure like to see the industry proactively invest more in innovation, technology, RegTech and modern IT systems to increase productivity and reduce cost structure. BCG's Global Wealth 2020 Report states, ".*over the past decade, wealth management providers have faced an unprecedented surge in regulatory requirements and scrutiny. But rather than design an integrated operating model to*

address these issues, most fell back on ad hoc responses that generated isolated processes, teams, and tools. The result has been a massive spike in costs and a huge administrative burden that has slowed response times, contributed to mounting client frustration, and heightened the risk of error." Re https://image-src.bcg.com/Images/BCG-Global-Wealth-2020-Jun-2020_tcm9-251066.pdf In other words, the investment industry has a part to play for many of the productivity shortfalls and should not lay all the blame on structural inefficiency.

The Consultation paper states that the structural inflexibility is posing challenges for dealers to accommodate changing investor preferences and to access to a wider range of products and services from a single registrant. There is nothing in legislation that prohibits a fund dealer from offering ETF's, assuming the advisor has the necessary proficiency. It is certainly true that some mutual fund investors are now more open to purchasing ETF's but few mutual fund dealers have made the adjustments to permit this, in part because of the structural limitations on offering such products economically. In fact, Investors Group Financial Services Inc. have started offering ETFs in the IG Advisory Account, their fee-based account. It is just not as economical to offer an ETF with no trailing commissions in the MFDA channel, so fee-based accounts are required. Of course, any investor can open up a discount broker account and purchase ETF's and even actively-managed ETF's and many do for $9.95 a trade instead of $150 or more with a full service brokerage.

Increased access to low cost ETF's could be a positive for investors but there is little evidence mutual fund investors are identifying such access as a high priority. According to the IFIC Pollara 2020 Investor Survey: (a) Mutual fund investors continue to have more confidence in mutual funds than in other investment vehicles (stocks, GICs, bonds and ETFs) and (b) Confidence in mutual funds by mutual fund investors is at an all-time high, with 92% of respondents stating that they are somewhat confident, confident, or completely confident in mutual funds. https://www.ific.ca/wp-content/uploads/2020/09/IFIC-and-Pollara-Strategic-Insights-Investor-Survey-September-2020.pdf/25588/ Mutual fund investors appreciate the low initial investment amounts, monthly contribution plans, automatic reinvestment of distributions , ease of access, liquidity (except for DSC) and the relative simplicity of mutual fund ownership.

If there is a changing investor preference among retail mutual fund investors, it is a second order effect compared to the investor protection issues with self-regulation being raised.

People with modest amounts to invest cannot readily access IIROC dealers due to minimum account size constraints (average MFDA account size= $70K approx.), not due to regulatory structural constraints. More recently, a constraint has been placed on minimum annual commission/fee "production "on accounts. Such practices reduce access to advice for ordinary Canadians.

We're also told that the higher IIROC proficiency standards make the transition from mutual fund dealer to investment dealer challenging. That is as it should be

given that IIROC salespersons can offer a greater range of products (including Alt mutual funds) and alternative investment strategies.

With CFR, rules that make it harder for lower- qualified salespersons to provide personalized financial advice is a good thing. We expect that higher CFR KYC, conduct and disclosure standards will also present challenges for mutual fund dealers and salespersons who sell DSC and embedded commission mutual funds. That was the whole idea of CFR- to raise professional standards for the provision of personalized financial advice and improve investor outcomes.

It is our understanding that the AMF does not recognize the MFDA in Quebec. Surely, this adds costs and burden for the mutual fund industry and ultimately investors. **We strongly recommend that ALL Canadian jurisdictions should have common recognition of the SROs.** There should be no regulatory fragmentation or structural inefficiency caused by individual CSA jurisdictions.

A fundamental discussion point going forward will be the extent to which "self" regulation is both necessary, effective and desirable and in respect of market surveillance – and the pros and cons of such regulation. Although we comprehend the allure of ensuring a system of regulation that is consistent for all registrants and including all such registrants in a single SRO, the CSA would have to articulate the reasons why bulkier "self" regulation is better than the status quo framework, while acknowledging the material differences amongst the business models, products and services of registrants.

Investor confusion

We're just not hearing registration category confusion as a major investor protection issue but if it is, better educational materials are required. The addition of SRO notations on account statements has helped reduce confusion. On the other hand, the OSC decision to deviate from the CSA decision on the DSC prohibition issue will add to regulatory burden and investor confusion.

Despite the CSA consultation assertion, Kenmar are not sensing a major retail investor drive for "one stop shopping". HNW investor needs are well served. To the extent retail investors do want one stop shopping, they already have it- any bank branch offers deposit services, mortgages, car loans, HELOC's for investments, ATM/cash withdrawals, bill payment, GIC's , PPN's , mutual funds and index-linked GIC's etc.

However, we see investor disappointment that bank-owned dealers in bank branches offer only a proprietary product shelf, a point made by the Ontario Taskforce to modernize securities regulation. Retail investors are not the driving force behind one- stop shopping but they do want a cost/fee report that is "one-stop" –investors continue to be confused by CSA designed CRM2 cost reporting that omits about half the cost of investing in mutual funds . A better, common complaint handling rule for the new SRO would really reduce investor confusion and distress.

Consider the long standing investor beef about long account transfer times. In response to a recent MFDA consultation on the issue ,the IIAC stated that aside from a negative and inconsistent client experience, that the dependence on manual processes at MFDA firms has created added costs for its Members, who have had to deploy additional resource to process transfer requests as well as any follow-ups. The entire process can become onerous in situations where the account concerned holds many security positions at various fund companies. https://www.wealthprofessional.ca/news/industry-news/ific-iiac-weigh-in-on-account-transfer-issues/333755 We're pretty sure this isn't the full story but it is an example of where the problem is not only related to regulatory structure- it has to do with the industry not making the digitalization investments and process changes needed to reduce operational burden, improve process cycle times and eliminate investor aggravation.

It goes without saying that investors are confused when their complaints are rejected or low-balled, especially those cases where OBSI has made a reasoned, fair recommendation for compensation. Such actions harm the retirement income security of Canadians. As evident from the Comment letters on the consultation involving discount brokers receiving trailing commissions, retail investors are confused and angered that regulators have not acted on such an obvious exploitation of investors for well over a decade. They are bewildered by a Sept. 17 CSA decision to allow discount brokers to overcharge A series unitholders until June 1, 2022. This will cost Canadians many times more than industry annual savings.

We have not identified investor confusion over investor protection funds as a significant retail investor issue either. However, investors do not understand why EMD's and PM's are not required to be covered by Investor Protection funds.

It took many years of investor advocacy for SRO's to require their logos to appear on Member client account statements clarifying who the applicable regulator is. It is certainly possible that resistance by the industry contributed to the delay and that is another reason that a majority independent Board at the new SRO is necessary.

What confuses investors is dozens of misleading "advisor" tiles and designations, multiple registration categories and the obligations representatives have to deal fairly and honestly with clients. A September 2015 OSC mystery shop observed an extensive variety of business titles approved by SRO Member Firms across all platforms. In all, 48 different titles were used by "advisors" on the four platforms shopped. From the perspective of an investor, the number and variety of business titles encountered when shopping for advice makes the process of choosing an "advisor" a confusing and complex one. https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf Title confusion has been going on for years and requires prompt CSA action. **Kenmar recommend that title reform be an objective of a modern SRO.**

Non-standardized mutual fund class designations also confuses investors. The complex complaint handling system confuses Main Street investors. Investors are

confused by mutual fund CSA- designed risk ratings based solely on the standard deviation. See *Fund and ETF risk ratings didn't prepare investors for this year's bear market* – Dan Hallett -The Globe and Mail https://www.theglobeandmail.com/investing/investment-ideas/article-fund-etf-risk-ratings-didnt-prepare-investors-for-this-years-bear/ The use of this misleading rating system was mandated by the CSA despite strong investor opposition .

Investors are confused as to why this Consultation focuses on increased access to more sophisticated products but barely mentions the need for increased advisor proficiency to advise clients on those products. As products and client needs increase in complexity, the CSA should be concentrating on prioritizing increased advisor proficiency especially in dealing with de-accumulating accounts. Kenmar is of the view that high entry and ongoing proficiency standards play a key role in investor protection and the integrity and efficiency of capital markets. The need for a continuing education program is essential. What is the point of having access to more complex products and strategies if advisors do not have the necessary proficiency to provide professional advice?

Public confidence in SRO's

A January, 2020 IIROC sponsored survey found that while 76% of current investors were confident that the investment industry in Canada is properly regulated but less than half (48%) of aspiring investors share that confidence. Survey report at https://www.iiroc.ca/investors/Documents/Access-to-Advice-Presentation-FD_en.pdf

According to a Sept. 8, 2020 MFDA sponsored investor survey *What Canadian investors want in a modern SRO* , less than half (48%) of respondents trust the investment industry to make decisions that are in the public interest and not their own. Three-quarters (76%) think conflicts-of-interest among board members who govern these SROs happen frequently and are not declared or eliminated before making important decision. Source: https://mfda.ca/news-release/invsro/

These surveys indicate that the core issue is not so much about investor confusion or the need to access new products- it's about distrust of the wealth management industry, its advice-skewing compensation schemes and its client complaint handling practices.

The CSA review of the SRO framework is an ideal opportunity to increase confidence in SRO's and regulators generally.

Some tough questions have to be asked. Why were discount brokers allowed to collect about $250,000,000 p.a. in trailing commissions for over a decade without the obligation to provide personalized advice or unique services? (Per the Canada Anti-Fraud Centre, in 2019 in Canada, there were 19,285 victims of fraud and $98 million lost to fraud, not including unreported cases.)

Too often we see Settlement agreements where the Representative has broken the rules over an extended period of time and no sanction is applied to the Firm for weak systems, defective compliance monitoring and inadequate supervision. The individual is fined but the Firm evades accountability. Enforcement intensity and the level of sanctions also have drawn criticism from the investor advocacy community. This needs to change if there is to be a cultural change at the Firms.

The CSA should try to understand why a very small percentage of complaints to SRO's are investigated and reach enforcement.

Public concerns about the effectiveness of enforcement of securities laws by the CSA jurisdictions and the SROs, IIROC and the MFDA are aggravated by the fact that in most cases the victims recover very little, if any, of their losses. This has undermined confidence in the integrity and fairness of the capital markets and trust in regulators ability to provide meaningful investor protection.

Neither IIROC nor the MFDA are permitted to order investor restitution. IIROC's move to return disgorgement of ill-gotten earnings to harmed investors is positive but is not comprehensive enough.

IIROC has made significant strides in governance recently, including revising its Director qualifications to include consumer protection experience and announcing the creation of an investor advisory panel. IIROC also called for a majority of directors on the proposed new SRO board to be independent.

However, these measures took too long and have not been codified as requirements by the CSA so they are not necessarily permanent. In the absence of CSA changes requiring these measures at a new consolidated SRO, it is hard for the public to be confident that these hard fought for successes will be maintained.

IIROC's Client compliant handling rule (2500B) was labelled as flawed from the moment it was enacted. Investor advocate input was ignored. We informed IIROC (and the CSA) of its deficiencies in a documented report https://drive.google.com/file/d/0ByxIhlsExjE3ZGp5MWc1TUI4RzA/view several years ago. After constant follow-up, it now appears that IIROC will be addressing the issue. Why do investor advocates have to devote so much of their limited resources chasing SRO's to do the right thing? **The new SRO founding principles and culture must be more deeply responsive to Main Street.**

On October 10, 2019 IIROC published Guidance advising its Members to review their retail client account agreements and to change or remove clauses that absolve them of liability, or that are inconsistent with regulatory obligations. During reviews of agreements from a variety of firms, IIROC discovered clauses that raise regulatory concerns by excluding a firm's liability for losses, including those caused by the firm, or relieving a firm from its securities law obligations, such as suitability. The Guidance encouraged Members to review and revise inappropriate limitation of liability clauses and to notify clients of changes. In upcoming examinations, IIROC said it would review agreements, flag issues and depending on the severity, it

would recommend corrections and in egregious cases, refer the matter for investigation and possible disciplinary action. Why this lame approach to dealing with a clear and present danger for investors? Such actions send the wrong message to the public. **We recommend a dramatically enhanced approach to SRO enforcement practices.**

Kenmar have also been especially critical of the SRO's disproportionate focus on individuals rather than Firms in enforcement proceedings According to the IIROC's 2019 Enforcement Report, 104 investigations were completed, with 28 individuals and eight firms prosecuted. That compares to 127 completed investigations in 2018, with 42 individuals and 10 Firms prosecuted. The emphasis on individuals seems to be at odds with the generally accepted management principle that Firms (i.e. their management, CCO, UDP) are responsible for the vast majority of problems. **In any future SRO, we would expect the ratios to be reversed.** We're reminded of Dr. W. Edwards Deming's famous quote where he said "**90% of all problems were management's responsibility and workers were only responsible for 10% of all problems"**.

The emphasis on levying fines vs. compliance is another issue. See Canadian Fund Watch: **IIROC fines on individuals- Are they a deterrent?** http://www.canadianfundwatch.com/2017/04/iiroc-fines-on-individuals-are-they.html and Canadian Fund Watch**: Fine collection, IIROC and Best interests** http://www.canadianfundwatch.com/2016/04/fine-collection-iiroc-and-best-interests.html It is our opinion that the emphasis on fines and use of principles-based sanction guidelines has led to an increase in contested cases. This could lead to a diversion of precious SRO resources from grass roots investor protection. It could also lead to a constraint on the cash available for investor compensation. More emphasis on compliance may yield better outcomes for investors. **The new CSA SRO mandate should provide the SRO (and OBSI) with the tools necessary to address the underlying issue(s) in a fair and equitable manner.**

The infamous double-billing scandal illustrated just how deficient supervision and compliance systems was even among the largest financial institutions. The industry-wide overcharging of investors was a systemic compliance system failure. Overall, including the settlements involving overcharging, the OSC no-contest settlement program resolved over 15 cases, resulting in over $350 million being returned to investors collectively. Every major investment dealer overcharged their clients. Why did so many dealer supervisory and compliance controls fail and their failure remain undetected by compliance and regulators, some dating back to 2000? We need to understand the failure mechanisms. Perhaps more importantly, why has there not been a CSA review of IIROC dealer compliance oversight efficacy to get at root causes of the compliance failure? The new SRO should be designed so that similar compliance breakdowns do not recur.

Significant "no contest" settlements related to overcharging clients on fees

COMPANIES AFFILIATED WITH:	OVER-CHARGING OCCURRED	DATE OF SELF-REPORTING TO THE OSC	"NO CONTEST" SETTLEMENT DATE	NO. OF CLIENTS AFFECTED	EST. CLIENT COMPENSATION DUE	VOLUNTARY PAYMENT (INCL. COSTS)	PAYMENT AS % OF CLIENT COMP.
Toronto-Dominion Bank	2000-14	May 2014	Nov. 13, 2014	10,520	$13,500,000	$650,000	4.8
Bank of Nova Scotia	2008-15	Feb. 2015	July 29, 2016	45,703	$19,997,821	$850,000	4.3
Canadian Imperial Bank of Commerce	2002-16	March 2015	Oct. 28, 2016	81,755	$73,260,104	$3,050,000	4.2
Bank of Montreal	2008-16	Feb. 2015	Dec. 15, 2016	60,393	$49,885,661	$2,190,000	4.4
Royal Bank of Canada	2005-16	Feb. 2015	June 27, 2017	50,447	$21,802,231	$975,000	4.5
Manulife Financial Corp.	2005-16	June 2015	July 13, 2017	9,420	$11,700,000	$520,000	4.4

SOURCE: INVESTMENT EXECUTIVE RESEARCH INVESTMENT EXECUTIVE CHART

Source: http://www.investmentexecutive.com/-/osc-firms-focus-on-overcharging
NOTE: The positive aspect of "no-contest "settlements is that they have resulted in investor compensation.

IIROC's proposed Early Resolution Offers (ERO) is telling. It portrays a sense of frustration in dealing with Members. ERO offers Dealers and Approved Persons who choose to resolve a case by Early Resolution Offer a whopping 30% discount on the sanctions Staff would otherwise seek in a settlement agreement and a quicker resolution of the proposed enforcement proceeding. The justification for the huge discount is that it will save IIROC considerable time and effort to close the case because of the **"extensive negotiations "involved**. These negotiations consume limited IIROC resources .How does such a practice give investors' confidence that the industry is well regulated? **Better industry compliance oversight is critical.**

Do SRO's rely too much reliance on sanction principles as opposed to rules? Are such practices congruent with IOSCO's *Credible Deterrence In The Enforcement Of Securities Regulation* guidelines (https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf) for effective deterrence? These are the questions the CSA needs to answer. **We recommend that the SRO's move away from 100% principles-based sanctions.**

When sanction reductions are utilized, they should relate to taking affirmative corrective action to prevent (not just deter) recurrence and a definitive commitment to fairly compensate all harmed investors. That's what the Public think of as "investor protection" and the duties of a modern SRO.

To its credit, IIROC recently announced it would pursue changes to its Recognition Order to permit the returning of disgorgements to harmed investors. Importantly, any such program should also require not only require individual registrants to disgorge wrongfully earned income but also the Firms that employ them. Why did it take so long for SRO's to challenge the CSA on the restriction to order compensation? **Kenmar recommend that disgorgement cash received by an SRO be returned to victims**. [According to its 2019 enforcement report, IIROC imposed $0 in 2019; in 4 of the past five years no disgorgements on Firms were imposed. Individuals however, were asked to pay $135,071. Unlike IIROC, the MFDA does not utilize a specific sanction involving disgorgement.

https://www.iiroc.ca/news/Documents/IIROC2019EnforcementReport_en.pdf] It appears that the use of disgorgement as a sanction can also be expanded.

The Edelman Trust Barometer Canada 2020 report found that financial services sits towards the bottom end of the scale with **just 56% saying they trust the industry, down 8 percentage points from 2019.** This puts the industry between telecoms (52%) and consumer packaged goods (57%) but well behind technology (68%) and professional services (67%). Education ranks the highest (70%). Source: https://www.edelman.ca/sites/g/files/aatuss376/files/2020-02/2020%20Edelman%20Trust%20Barometer%20Canada%20-%20FINAL.pdf Better CSA oversight/SRO governance can help change the trend and move the level of trust upward.

A CSA report *CSA Summary Report 2016-2019 Investor Research Findings on the Impact of CRM2 and POS on Investor Knowledge, Attitudes, and Behaviour* on investor behaviour found that there was a slight regression in 2019 in the percentage of investors who said they have an investment plan: just 41% in 2019, down from a lowly 42% a year earlier. In relation to the discussion of fees prior to making a purchase, less than half of investors who had made a purchase in 2019 (44%) said this occurred, As for switching advisors, one quarter (25%) of respondents said they had or were likely to in 2019, up from 22% in 2016. Source: https://www.osc.gov.on.ca/documents/en/Publications/20200827_csa-summary-report-research-findings-impact-of-crm-2-pos-investor-knowledge-attitudes-behaviour.PDF This data suggests that the regulation of SRO Member firms is failing investors seeking personalized financial advice.

We could go on, but we think more than sufficient evidence is available justifying that fundamental reform is required by the SRO's **and** CSA. The status quo is not acceptable. You cannot achieve public confidence built on a foundation of Jell-O and quicksand.

PART II RECOMMENDATIONS TO IMPROVE THE SRO FRAMEWORK

The first priority of the CSA should be to articulate an unambiguously clear mission statement that puts the financial consumer at the heart of its operations.

CSA oversight of SRO's

Currently, the CSA Recognizing Regulators have adopted a risk-based methodology to determine the scope of SRO oversight Reviews. Based on CSA members' annual oversight reports, it appears that the focus is primarily on narrow technical issues with specific regulatory programs and whether the SRO is meeting the conditions set out in its Recognition orders. This limitation is a weakness and the scope of review should broaden to include governance, rule making compliance, enforcement and investor engagement (and complaint handling).

The oversight process could be focused on achievement of identified, high-level outcomes and mandates, metrics and standards rather than on the adequacy and thoroughness of internal processes. **Kenmar recommend that this oversight**

function should be elevated to compliance monitoring with enhanced public transparency of activities and results.

The proposals regarding SRO oversight are critical to the success of a new SRO. In our view, OSC/CSA SRO oversight reporting would include, but not be limited to:

- Review of resources and financial position
- Corporate governance
- Transparency of SROs governance and activities
- Fee schedules
- Rules and decisions
- Effectiveness and fairness of SRO's rules
- Material changes to its operations
- Reporting on its regulatory activities including enforcement
- Governance/Executive compensation practices.
- Complaint handling/Arbitration services provided
- Use of funding to support SRO's mission, including the methods and sufficiency of funding, how SRO invests funds pending use, and the impact of these aspects on SRO's regulatory enforcement.
- Policies on the employment of former employees of SRO regulated entities.
- Cooperation with and assistance to statutory regulators and OBSI
- Reviews performed by SRO of advertising by its Members

If deficiencies are found as a result of a review, the oversight unit would need to define needed corrective actions and closely monitor SRO implementation progress. We expect the new SRO will have to meet a set of operational metrics such as enforcement cycle time, project milestones, enforcement intensity and stakeholder satisfaction results. **An annual assessment report card should be made public as a means to assess whether the SRO was fulfilling its investor protection and Public interest mandates.**

Kenmar recommend that SRO oversight should be undertaken by a dedicated unit within the CSA. This oversight activity needs to be fully transparent to the public. The SEC has established such a dedicated oversight unit for FINRA; the OSC/CSA should consider this option for the new SRO. Re *Watching the Detectives: The SEC Launches a Dedicated FINRA Oversight Unit* https://www.lexology.com/library/detail.aspx?g=bf70315c-13d3-428e-87c6-62d91d5f0c7c Operating costs for this unit would come out of the CSA operating. The unit should be sufficiently resourced so that SRO oversight is fulsome and continuous. On an annual basis, the Oversight unit would publicly disclose a full report of its oversight activities to provide confidence to the public and legislatures that the SRO is compliant with its obligations.

The bigger the role an SRO plays in protecting investors and regulating the financial advice industry, the more important it becomes for the CSA to ensure that its oversight system is comprehensive and effective in ensuring that the new SRO is accountable and responsive to the Public interest. The new SRO, if formed, would be responsible for providing personalized financial advice to millions of Canadians.

The vast majority of these investments are intended to provide retirement income security for unitholders.

We strongly recommend that a CSA IAP also be established. A CSA IAP will bring the voice of Main Street directly to the CSA policy makers.

SRO Governance

SRO governance and oversight framework should be restructured to align better with the Public interest and enable greater stakeholder input**. We recommend that the SRO's (a) continue to submit annual updates to the strategic plan, (b) set priorities for the year ahead, (c) publicly provide results and progress against the prior years' priorities and strategic objectives.** This information could inform the CSA of any needed amendments to the Recognition Order.

The compensation and incentive structure applicable to SRO executives should be tied to their successful delivery of their Public interest and policy mandate and possibly include investor satisfaction survey results as we recommended in our response to the Ontario Taskforce on securities Modernization.

Kenmar also recommend that the CSA have a veto on any significant publication, including guidance or rule interpretations; and that the CSA have a veto for the appointment of the Chair, based on a fit for purpose test.

At least one Board position should be reserved for a "retail investor" at the table per the Board's skills matrix. This is critical as the addition of an investor voice should lead to better SRO practices, rule making, enforcement and investor engagement.

Kenmar recommend that a majority of the Board be independent and that the nominations be opened up to the public with a carve-out for a portion of CSA appointees. The Board's skills matrix should also be made public**.** The CSA must ensure that provisions governing the Board nomination process are transparent, balanced and fair and be perceived to be fair. The nominations process for independent directors should be run entirely by the Governance or Nominations Committee of the Board.

Independent Directors should be, and be perceived to be, industry-independent. SRO nomination practices have shown a tolerance for "public" members with significant historical connections to the financial services industry. Some public Directors have had long industry careers. While these backgrounds may increase the likelihood that public representatives understand issues, this benefit comes with a risk that public representatives will naturally sympathize with industry more than public concerns. See *The Dark Side of Self-Regulation* Benjamin P. Edwards, University of Nevada, LV
https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=2141&context=facpub

The definition of independence for director candidates needs to be changed so that the Board isn't stacked with industry and ex-industry directors. As well, the nomination process for independent seats on advisory committees needs to be revisited as should the qualifications and experience required of candidates for independent directors.

Our definition of independent director makes no provision for anyone from the industry or its professional suppliers occupying seats intended for people that are not and have never been part of the Bay street culture. There is no shortage of very qualified, truly industry-independent people that can become valuable directors. Their seats at the Board table should be protected. **If this constraint proves unworkable, we recommend a cooling off period of at least 3 years and a maximum of one such Director.**

Some of the unique knowledge and skills independent directors can bring include senior/vulnerable investor issues, client risk profiling expertise ,form design, root cause analysis, six sigma/TQM , quantitative methods, CJS knowledge, contemporary complaint handling ,best governance practices, Human Resources, investor rights, human rights, cyber security , behavioural Finance, employment equity, international investor protection developments ,ESG, plain language etc. With the rise of automated advice platforms and RegTech, it is important to also have an independent director with a strong tech background and awareness and experience with digital tools, as well as Board members who focus on working with different socio-economic levels and underserved communities. "Consumer" Directors should be, first and foremost, knowledgeable in consumer protection issues.

As suggested in a CFA Institute position paper entitled *SELF-REGULATION IN THE SECURITIES MARKETS: Transitions and New Possibilities:* CFA Institute https://www.cfainstitute.org/-/media/documents/article/position-paper/self-regulation-in-securities-markets-transitions-new-possibilities.ashx , **SROs should be subject to the same transparency and public reporting requirements imposed on statutory regulators.**

We support the CSA appointing a Director to the SRO Board- this is integral to the co-regulation model of-self-regulation. A CSA appointed Director would bring the CSA perspective to the Boardroom table, thus streamlining discussion and decision making. CSA participation could also improve the CSA-SRO relationship via greater harmonization of thought, policy and collaboration. In addition, the CSA would become aware of emerging issues earlier than is now the case. That being said, the SRO and the CSA must agree on the criteria for Board selection for directors of the Board. It should be understood that all Directors of the SRO must at all times act in the best interests of the SRO and comply with generally accepted practices for Directors.

We note that in their response to the Ontario Task force on modernization of securities regulation, the IIAC (the investment industry trade Association) supported the Ontario Taskforce's proposal to have the CSA appoint up to half of

the directors on the SRO Board, subject to an agreement between the SRO and the CSA on the criteria for Board selection for independent and non-independent directors of the Board.

All SRO Board policy committees should be chaired by an independent Director.

As for term limits for Directors , we recommend 8 years, as that figure seems to be generally accepted by governance experts. Entrenched directors can lead to a stifling of thought and decisions and blockage of fresh ideas and deserving nominees.

We recommend that any CSA-recognized SRO be required to maintain a funded IAP. The IAP shall be provided with appropriate administrative support and funding for at least one research project p.a. A good benchmark for an IAP is the OSC IAP. In March, IIROC announced that is planning to establish an Expert Investor Issues Panel for which it will seek feedback and recruit qualified members later this year. The MFDA does not currently have an IAP but holds periodic informal meetings with investor advocates.

Operations

FINRA, a U.S. SRO has 16 advisory committees that provide feedback on rule proposals, regulatory initiatives and industry issues. More than 160 industry members and 35 non-industry members serve on these committees .The benefit of increased investor inclusion on these committees is that proposals will be put forward that have had a 360 degree review. Without this inclusion, proposals can be put forward with entrenched views that may (a) not adequately consider investor protection and/or (b) have a bias unduly favouring industry interests. This could give rise to public consultations that are deficient by the design of the rule formulation process.

The SROs' public consultation processes should be amended. The SROs have formal procedures for consulting with the public and stakeholders on their regulatory proposals, such as new rules, through a public notice and comment process. But the consultations are dominated by industry participants and it is difficult for organizations representing investors to respond effectively, let alone for individual investors and members of the public. Internal discussions and comment through committees, which are part of the SROs' policy and rule development processes are, by definition dominated by SRO members Firms .By the time a consultation paper is released many ideas are cast in stone. **Kenmar recommend that the SROs should be required to include the public on its committees/Councils to ensure a balanced input and comment on regulatory issues, policies, rules and proposals.**

Since SRO's have a mandate to operate in the Public interest, we recommend that they provide documented service standards and publicly release on an annual basis, their actual performance against the standards.

Participating Firms utilize a book-loss approach in calculating losses while OBSI uses an opportunity-cost approach. It is irrational to have two different standards for the calculation of losses. This can lead to investor confusion, sour OBSI-industry relations and reflect poorly on the industry and its regulators. **Kenmar recommend that the CSA take steps to ensure that SRO (and other dealers) complaint handling rules and OBSI's loss calculation methodology are reconciled**. Kenmar support OBSI's fairness principles, so we expect the CSA to require the SRO(s) to update their rules accordingly. Since CFR requires conflicts - of-interest to be resolved in the best interests of clients, the OBSI methodology is the appropriate approach. Furthermore, since the industry asserts it provides personalized, trustworthy financial advice (not just transactional advice), a *book loss* approach to loss calculation makes no sense. **This is a systemic issue that the CSA JRC must address and resolve.** Adoption of an opportunity- cost loss calculation methodology will also incent OBSI Participaing Firms to sharpen their internal risk profiling, KYC and related processes in the best interests of clients.

Investors are the market participants who experience the harm for which the penalty is levied and therefore their protection should be the focus of use of the proceeds collected. Besides being unfair, failure to do this could create a perception among investors that the SRO lacks empathy towards investors. The adverse financial and emotional impact on financial consumers due to economic loss when compensation is unfair is well documented. **Investor compensation should be top of mind for the SRO's during enforcement proceedings.** See 2007 *CSA Investor Study: Understanding the Social Impact of Investment Fraud* http://www.sipa.ca/library/SIPAdocs/770-CSA-2007InvestorStudy-ExecSummary.pdf

The staff at SRO (and Commission) regulated investment Firms are in a unique position to detect rule breaches and fraudulent activity. The SEC has reported phenomenal success with its whistleblowing program due in large part of the compensation available. The SRO run whistleblowing programs do not offer financial rewards to whistleblowers .The details provided on the websites are inadequate for employees of regulated firms to take a chance in coming forward as a whistleblower. There do not appear to be any provisions that voids certain contractual provisions between employers and employees of regulated Firms designed to silence whistleblowers from reporting securities related misconduct re https://www.osc.gov.on.ca/en/protections.htm **.** That would be a powerful investor protection tool that would harness the intelligence of industry insiders. The fines collected could also be used to compensate victims of wrongdoing.

SRO's should require Member Firms to have to inform their employees and other related persons about their right to use the whistleblowing programs provided by regulators. See this OSHA posting citing employee rights. https://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf as an example.

Kenmar recommend that all CSA jurisdictions adopt whistleblowing programs similar to the OSC

The division of responsibilities among SROs, between the regulators and the entities they oversee must be made clear. **The CSA should clarify and make public their respective regulatory roles and describe in plain language the processes in place to address duplications, inconsistencies and gaps between it and SROs**.

Compliance

SRO compliance needs to be more intensive, robust, frequent and effective. Many problems can be prevented if they are detected early and action taken. Creating a culture of compliance within Member Firms should be high priority for an SRO. **Compliance and Enforcement strategies need to be coordinated and intensified.**

Given the increasing importance of compliance, Kenmar recommend the public release of an Annual compliance report. We are aware that there have been special reports issued through bulletins on specific reviews/findings. For example: https://mfda.ca/policy-and-regulation/bulletins/?wpv-bulletin-date=All&wpv-wpcf-bulletin-type=Compliance

Enforcement

"Efficiency is doing things right; effectiveness is doing the right things".-Peter Drucker

We have seen cases where a salesperson forges a signature, uses a blank signed form or adulterates signed forms for multiple clients and receives a few months suspension and a modest fine….if he/she pays the fine, the salesperson is back in business. No requirements are imposed to improve the Firm's supervision and compliance processes.

Kenmar have been decrying for years that the CSA and SRO's have low enforcement intensity and long response times to addressing systemic issues impacting the retail investor. We have provided a number of examples in this Comment letter. Professor Mark Lokanan has published empirical research on IIROC enforcement *intensity An update on self-regulation in the Canadian securities industry (2009-2016): Funnel in, funnel out and funnel away* **:** https://viurrspace.ca/bitstream/handle/10613/6069/IIROC_Funnel_Study_JFRC.pdf?sequence=5&isAllowed=y He concluded that a significant proportion of complaints were "funneled out" at the investigation and prosecution stages of the enforcement process, investigation only received 13% of the cases that came through IIROC's reporting system and only 3% made their way through to prosecution. Does the CSA expect investors to have confidence in such a regulatory system?

Firms must be held accountable for the actions of their Representatives.

Firm accountability is in accordance with client expectations when they engage an SRO registered firm, open an account with a Member firm and the *G20 High Level Principles of Financial Consumer Protection* para 6 to which Canada is a signatory. In essence, in any case where the Member Firm's systems, compliance monitoring,

supervisory practices, recruitment protocols, Rep training program, risk assessment tools, and compensation scheme and the like are the root cause(s) of the wrongdoing, the Firm shall be held responsible and accountable. The contract is between the investor and the Firm. The contract is not between the customer and any of its employees/agents. All responsibility for any Rep negligence or wrongdoing is for the Firm to subsequently assess and resolve, consistent with applicable laws. This is not to say that in some cases like OBA or Off-Book, that the salesperson should also not be held accountable. OBSI treat all client complaints as against Participating Firms, not individuals representing the Firms.

Enforcement needs to focus more on investor restitution, holding Firms responsible for the actions and inactions of their Representatives and identifying systemic issues. Adoption of such a philosophy by a new SRO would incent Firms to improve their systems, processes and practices.

We have discussed enforcement shortcomings at length in this Comment letter and in many interactions over the years.Our commentary on the MFDA and IIROC 2019 annual enforcement reports, which we distributed to all CSA jurisdictions, provides an enumeration of a number of process improvement opportunities. All that needs to be done is for the CSA and SRO(s) to prepare a joint project plan for resolution and demonstrate the necessary determination and sense of urgency to effect reforms.

SRO's need to place more emphasis on improving the "system". Kenmar strongly believe that increased focus on root cause analysis/ corrective/preventative action will lead to better outcomes for investors, improved processes and increased trust in regulators and the wealth management industry. implement Root Cause Analysis. See Canadian Fund Watch: *Root Cause Analysis: Increasing the utility of IIROC Hearing Panels* http://www.canadianfundwatch.com/2019/02/root-cause-analysis-increasing-utility.html and

The issue of document adulteration, signature forgery (fraud) and the use of pre-signed blank forms merits close CSA attention**. Kenmar recommend that the SRO sanctions for such acts be loss of registration rather than just a modest fine and retaking the CPH course.** These acts are a breach of trust and should be treated severely. They contaminate the KYC system and could harm investors. Treating these acts with a soft touch is not an effective deterrent .In fact, it gives Canadians more reasons for investors to distrust self-regulation. See *FORGERY Falsified Documents An Aid to Deception*: SIPA http://www.sipa.ca/library/SIPAsubmissions/160%20SIPA%20REPORT_FalsifiedDocuments_20170526.pdf Soft-touch penalties do nothing to help build up the profession of advice giving or increase trust in the financial services industry. Eliminating rogues, document adulterators, liars and forgers will.

A Comment letter by an individual to the Ontario Taskforce quoted empirical research that made these observations :

- Enhanced investor protection can be achieved by focussing effort on seniors

(>65), retiree, females, limited investment knowledge, and net worth since they are at greater risk of being victimized from investment fraud
• The Hearing panels need to follow a standardized format of reporting the 'Decision and Reasons' in each case so cases can be analyzed to assist future decision-making and policy.
• Remove quasi-criminal offences from the jurisdiction of the SROs because the internal resolution of such cases provides an opportunity for the offenders to get away with relatively benign penalties.
• Strong support for a binding decision for OBSI
Source: https://osc.gov.on.ca/documents/en/Securities-Category2-Comments/com_2020928_25-402_whitehousep.pdf These ideas are worth pursuing by the CSA.

Victim impact statements (VIS) have an important role to play in improving SRO enforcement. **We recommend that the new SRO establish mechanisms that would make it easy for investors to submit Victim Impact Statements as part of a complaint or as evidence in Hearing Panel proceedings.** Such Statements can have a sobering effect on wrongdoers and potential wrongdoers and can lead to stronger sanctions by Hearing Panels. The use of VIS's would also increase the usage of aggravating factors in settlement agreements and lead to tougher sanctions.

Complaint handling
The current system is not working for Main Street. Complaint handling is unfair, complex and too often leaves investors short-changed. In some cases the unfair treatment is a life-altering event. See Canadian Fund Watch: *CSA- please make complaint handling tolerable for retail investors*
http://www.canadianfundwatch.com/2019/02/csa-please-make-complaint-handling.html

We encourage the CSA to view this CBC video and see firsthand how abusive complaint handling impairs the financial, mental and physical health of Canadians. See Mutual *fund salesman faked signatures, couple out $80K.*
https://www.cbc.ca/news/canada/toronto/mutual-fund-salesman-faked-signatures-couple-out-80k-1.2659909 The video also demonstrates how depressing it is for complainants to have OBSI agree with compensation and the Firm still refuses to pay up.

The CSA need to better articulate their expectations for effective complaint handling so that the SRO's can make robust rules for their Member Firms. A good example of such expectations comes from the U.K. FCA Handbook.
https://www.handbook.fca.org.uk/handbook/DISP/1/3.html

We would be glad to meet with the CSA to discuss a new system - one that would be fair and help repair the reputation of regulators, the SRO's and the industry.

Focus on investor compensation

The 2016 Battell Report found that 18% of OBSI recommendations were low-balled -with no negative ramifications for Firms. This percentage has come down as Firms exploit this flaw in OBSI powers and now low-ball at every step of the complaint handling process. As a result, complainants are forced to settle for less than the fair amount. Such a system is fundamentally flawed, unfair and increases consumer distrust of regulators and the industry.

A focus on investor compensation by securities regulators will foster investor confidence in the integrity and fairness of capital markets, which will lead to increased investment and strengthen Canada's capital markets. The process for investors who seek financial compensation for such misconduct should be made more fair, simple, expeditious and effective, and brought into line with international standards.

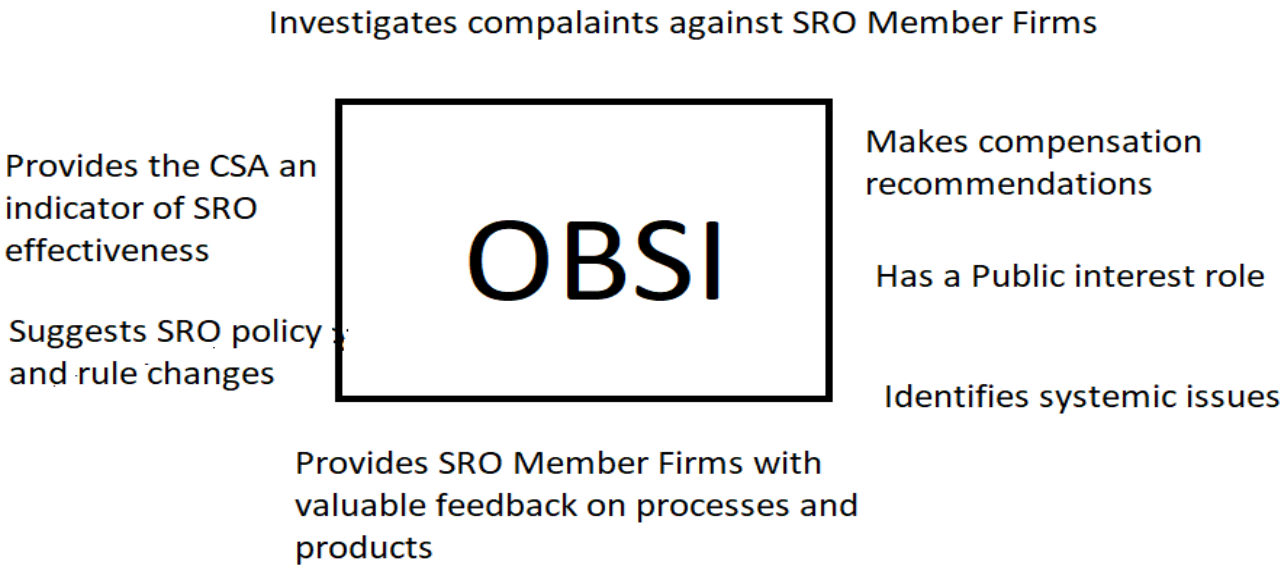
Similarly, the SRO's should be permitted to prioritize compensation for investors who are victimized by misconduct of investment dealers and advisors, and be more transparent in enforcement cases about whether or not there has been disgorgement and investor compensation.

The NASAA is currently seeking comments on a model Act that provinces and States could the CSA could use as a baseline for investor restitution. https://www.nasaa.org/55241/nasaa-seeks-public-comment-on-proposed-model-act-to-establish-restitution-fund-for-victims-of-securities-law-violations/ The proposed model legislation establishes restitution assistance funds for victims of securities law violations. **Such a fund should be considered by the CSA.** Research on investor compensation funds can be found at: *The Investor Compensation Fund* https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1118&context=articles

Investor Satisfaction surveys

We recommend that the SRO should conduct an annual investor satisfaction survey to gauge the level of financial consumer satisfaction with the regulator and identify areas for improvement. This would provide valuable feedback to SRO leadership to assist with continuous improvement, improve investor engagement and connect the SRO to its Public interest obligation.

Ombudsman for Banking Services and Investments (OBSI)



Although OBSI is not strictly speaking an SRO, it is recognized as a key component of investor protection in Canada and, like the SRO's, has a Public interest mandate. It is enabled via NI31-103 and like the MFDA and IIROC, is overseen by the CSA. Both the MFDA and IIROC are given the privilege to nominate Directors for OBSI's Board of Directors. Both SRO's are also members of the Joint Regulators Committee (JRC) which oversees OBSI. The JRC meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system and outcomes for retail investors. OBSI is an integral component of the SRO framework.

Bringing the MFDA and IIROC into a new SRO would in effect create THE regulator for the vast majority of retail investors in Canada. Given the relatively low advisory standards of conduct (non-fiduciary) in Canada by SRO Member Firms and their representatives and their demonstrated behaviour, it is essential to provide an independent OBSI with a binding decision mandate. OBSI cannot be a true financial Ombudsman service without the mandate to make binding decisions on Participating Firms. A binding decision mandate would curtail Bay Street bullying of retail investors via low-ball settlements and offers. The JRC has sat on the issue for far too long- it's time to make a decision to grant OBSI a binding decision mandate. Indeed, a binding decision mandate is overdue, independent of any SRO restructuring.

An OBSI with a binding decision mandate will make the role of the SRO(s) easier by providing a backstop on deficient or unfair complaint handling. SRO and other

regulated Dealers will be less inclined to low-ball clients if they know that OBSI recommendations will be binding. In addition, eliminating the use of bank "internal ombudsman" will cause improved dealer complaint handling because (a) there will be a greater will to do the job right the first time and (b) there will be less diversions away from OBSI. Ultimately, a binding decision mandate will allow OBSI to be a true value-add by helping improve industry rules, practices, processes and products as well as regulation. Most importantly, it will help improve investor trust in the industry and the CSA.

Such a mandate has been recommended by two independent reviews and by the OBSI Board itself. It has also been recommended by the Ontario Taskforce on Securities Modernization. **It is our firm recommendation that in considering changes to the SRO framework, a binding decision mandate for OBSI is critical to improve the SRO "system".**

The 2007/2008 Navigator report called OBSI's inability to investigate systemic issues "a significant gap in Canada's consumer protection framework." The Report pointed out that this latitude exists in the various Ombudservice schemes in Australia and the U.K., and suggests that this current gap undermines OBSI's reputation: "OBSI cannot risk being seen to be doing nothing when a clear flaw in the consumer protection framework exists. It is obligated to work to correct the problem." **We recommend OBSI have a mandate to investigate systemic issues.**

We recommend that SRO's make more use of OBSI. OBSI maintains a valuable information database on "system "failures. It can also function as an early warning detector of emerging compliance and other issues. Working closely with OBSI can help uncover systemic issues, product design problems, disclosure process shortcomings, deficient or unclear rules, defective complaint handling, a need for increased Rep proficiency, service issues etc. While a financial ombudsman service is not a regulator, it can help improve regulation and investor protection.

We recommend increasing the OBSI compensation cap to $500,000 reviewable annually as proposed by the Ontario Taskforce to modernize securities regulation. At the same time, we recommend re-assessing IIROC's rarely used arbitration program.

Kenmar also recommend that the CSA also establish a fund, or the use of an existing industry fund, to ensure that where investor losses are attributable to a Firm that is no longer solvent or no longer registered, OBSI recommended compensation is available for harmed investors.

To enable internal appeals, we recommend amending OBSI's Reconsideration provisions to allow either party to make use of the provision and introduce a separate Appeals unit within OBSI. All appeals by Firms would be made public. We recommend (1) a cap for appeals by Firms in the $15-$25 K range to dissuade abuse of the appeals process by Firms and (2) that

appeals be effected expeditiously. The OBSI loss calculation methodology would be the standard for loss calculation on appeal.

Regulation of Portfolio Managers

Unlike IIROC / MFDA registrants, PM's work to a fiduciary standard. Neither the PM (or EMD) registration categories are accustomed to the SRO model and have already signaled resistance to any suggestion that they be folded in to a new SRO. A political battle should not be unexpected. The CSA will have to demonstrate true leadership in its SRO framework review and decide the merits (or not) of a super SRO.

This Ontario Taskforce proposal of a new SRO including all investment dealers has an attractive tone but opposition is already apparent. We know that PMAC do not support the proposal, See PMAC Letter: Fundamental changes to regulatory landscape in the air. Unless there is evidence to the contrary that PM's should be regulated by an SRO, it is not obvious that such a change to the regulatory structure would be justified by hard data. (It should be noted that IFM's were not part of the Ontario Taskforce proposal).

It appears that the NASAA prefers that PM's be under the watchful eye of a statutory regulator rather than an SRO. See NASAA *State Securities Regulators Outline Opposition to Investment Adviser SRO* - https://www.nasaa.org/5590/state-securities-regulators-outline-opposition-to-investment-adviser-sro/

NASAA recently released results of a Benchmarking Initiative To Help Measure Effectiveness of Regulation Best Interest - The examinations found notable differences between broker-dealers operating under a suitability standard and investment advisers operating under fiduciary duties Among other things, the regulators found that "investment advisers generally took more conservative investment approaches overall, avoiding higher cost, riskier, and complex products." When complex products were sold, broker-dealers were twice as likely as investment advisers to recommend the purchase of leveraged and inverse ETFs, seven times as likely to recommend private placements, eight times as likely to recommend variable annuities, and nine times as likely to recommend non-traded REITs. These kinds of Firms also had more robust due diligence, disclosure and conflict management practices. "https://www.nasaa.org/55758/nasaa-releases-results-of-benchmarking-initiative-to-help-measure-effectiveness-of-regulation-best-interest/ If one correlates PM's versus RR's (dealing representatives) in Canada, the differences in behaviour are startling. Integrating such a regime into the current SRO framework needs to be thoughtfully evaluated on the basis of logical arguments and evidence.

That being said, if certain PM business models migrate into relationships similar to the MFDA-IIROC client relationships, then such PM's should be subject to the oversight of the new SRO.

Regulation of EMD's

Regulatory reviews of exempt-market dealers have raised concerns about their compliance with the "know your client" and suitability rules, as well as about significant conflicts-of-interest, particularly among firms that trade in the products of related issuers. Investment dealers have run into trouble in the exempt market, too. The high risks of operational failure, the limited options with respect to selling and the risks of losing out to inside information makes many exempt market investments unsuitable for most retail investors.

We have little more to contribute here except to note that per Appendix C of the consultation there are 240 firms registered as EMDs only (1,140 individuals) ; in the PM Category 330 firms registered as EMDs (1,500 individuals) and in the IFM Category, 520 firms also registered as PMs and EMDs (4,140 individuals) . This (1090 Firms) is not a trivial amount of Firms or individuals (6780). OBSI counts just 234 EMD's as Participating Firms. According to the OBSI 2019 Annual Report, only 7 complaint cases were opened. However, a 2017 research Paper posted on SSRN by Jeffrey G. MacIntosh *Enforcement Issues Associated with Prospectus Exemptions in Canada* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3080727 suggests there may be enforcement issues with this market. According to the paper, there are relatively few enforcement cases against EMDs, which are regulated directly by the provincial securities commissions pointing to the lack of an SRO as one possible reason for a lack of enforcement activity involving EMDs. The lack of an SRO "almost certainly reduces both the quality of monitoring and the likelihood of discipline should the dealer misbehave" .The paper proposes that securities regulators should consider requiring EMDs to belong to an SRO. The SRO framework review should consider (a) the future integration of EMD's (or not) into a new SRO; (b) a dedicated EMD SRO or (c) retain the status quo.

Regulation of SPDs

Scholarship Plan Dealers (SPD's) are a single purpose type of dealer, focussed on Canadian's savings for their children's education, enabled by favourable Federal tax legislation. There should not be any major problems in folding them in under a new SRO or an existing SRO.

For several years now we have been calling for better regulation and enforcement of Scholarship Plan Dealers. Group scholarship plans are generally poor savings vehicles with little or no benefits to consumers. They are often aggressively marketed and advertised, and commonly target modest or lower income Canadians. Many purchasers are urged to invest in these plans to take advantage of the government grants associated with them Per the Consultation paper there are 6 such dealers involving 2446 individuals. Like the DSC, this is a toxic product and service offering. Per the OBSI 2019 Annual report, there were 27 complaint cases opened for the 6 Participating SPD's. This is a high number for such a small number of Firms. This suggests to us that these dealers are not adequately regulated, enforcement intensity is questionable and/or complaint handling processes are

poor. A June 2018 SEED Canada research report *THE REGULATION OF GROUP PLAN RESPS AND THE EXPERIENCES OF LOW-INCOME SUBSCRIBERS* http://seedwinnipeg.ca/files/The_Regulation_of_Group_Plan_RESPs_and_the_Experiences_of_Low-income_Subscribers.pdf confirms the issues in this marketplace. **The CSA should consider offloading the 6 Firms to an existing SRO as part of an integrated plan or better yet, toughen up the regulatory standards for these Firms.**

Other recommendations

Are self-regulatory organisations sufficiently independent, adequately resourced and able to effectively represent the wider public interest in the development of modern financial services regulation? Are they charging the industry enough to give themselves the needed resources? These are the sort of questions the CSA needs to ask and answer.

Our focus on independent expert regulators is supported by a recent Bank of International Settlements report into financial market regulation. *"Independent regulators with well-defined objectives, adequate resources and credible enforcement powers are better able to protect investors, lower issuance costs and ensure that capital markets are fair, effective and transparent".*

Kenmar recommend amendments to provincial Securities Acts so that the Regulators would be empowered to make restitution orders directly. We see that as a key priority for modern regulation.

Any decision to roll up all investment dealers into a single SRO, would effectively create **FINRA North**. Benchmarking FINRA would be helpful in coming to a decision on a SRO framework. The Taskforce should consider contacting the SEC, PIABA, the Consumer Federation of America and others to learn of issues related to FINRA. We encourage the Taskforce team to review *The Financial Industry Regulatory Authority: Not Self-Regulation after All*: Mercatus Center, George Mason U. 2015 https://www.mercatus.org/system/files/Peirce-FINRA.pdf and *Reforming FINRA* https://www.heritage.org/sites/default/files/2017-02/BG3181.pdf This could be useful in learning about pitfalls to avoid and Best practices to utilize in establishing a new SRO framework in Canada.

Different provincial governments have provided varying Powers and rights to the SRO's .Kenmar call on all CSA jurisdictions to work with their government so that there is uniformity across Canada. This consultation is a unique opportunity to eliminate fragmentation and enhance investor protection.

Like the Dec. 2006 Report of the CSA SRO Oversight Project Committee**, Kenmar recommends that any proposal for a new SRO assess how the new SRO is in the Public interest. In addition, we agree with the Oversight Project Committee that to help guide CSA decisions, a number of high level evaluation criteria should be articulated.** Re. https://www.bcsc.bc.ca/-

/media/PWS/Resources/Securities_Law/Policies/Policy2/CSA_Notice_24303.pdf#page7

Summation

"*…If we are going to enhance the customer experience, having a unified SRO that serves the entire investment industry is going to help the industry move into a digital age, which customers really want…While some believe a merger of IIROC and MFDA is the best route, Mr. Annaert prefers a model rebuilt from the ground up. "That way, you aren't trying to merge existing entities with existing biases and existing models. If you're going to do something broad and bold, start from scratch .That's how you get one set of rules, one set of practices ... and look at getting best practices across the board…."*- Rick Annaert is head of advisory services at Manulife Financial Corp. and President and Chief Executive Officer at Manulife Securities Inc. https://www.theglobeandmail.com/investing/globe-advisor/advisor-news/article-investment-industry-in-lockstep-behind-a-single-sro/

As we have said many times before, enhanced CSA oversight is essential as SRO's effectively are advising Canadians on their pensions, a socio-economic issue .Any decision on the SRO framework will impact millions of Canadians and their financial future. A decision on a SRO framework requires deep reflection, analysis, strategic thinking and an integrated plan. The Public interest objectives of the SROs must be aligned with the Public interest objectives of the statutory regulators. That is why we keep harping, *let's do it right*.

Investors want to see a clear plan laid out for the future of SRO's in Canada rather than just a quick -fix for the narrowly defined MFDA -IIROC issues. A new self-regulatory model must seek to redefine the broader social role of the private financial sector.

The case needs to be made that SROs are able to carry out the regulatory responsibilities in question at least as effectively – if not more effectively – as the statutory regulators would be able to perform them.

Increasingly, OBSI is also an important source of information for regulators, policymakers and industry leaders interested in better understanding points of greatest difficulty or friction for consumers in the marketplace and identifying potential systemic issues. That is why we ask the CSA to make OBSI part of the assessment process.

In conclusion, we do not believe the investment or fund industry has earned the privilege or investor trust to self-regulate in the traditional sense. The collective experience demonstrates that SROs are unable to adequately contain their Members. There are too many conflicts-of-interests to address. If the CSA is unwilling or unable to regulate dealers directly, the formation of a new SRO based on Co-regulation principles in this Comment letter and other research is required.

We urge the CSA to decide on this issue as expeditiously as possible. The careers of many dedicated people will be impacted by the CSA decision. It would not be fair to keep them in a prolonged state of uncertainty. An undue delay could also adversely impact investor protection.

By working together and staying current on investor needs and preferences the industry can adapt capital markets evolution and innovation to ensure regulation is more effective and ultimately leads to better outcomes for Canadians.

We certainly hope the CSA takes this consultation as an opportunity to resolve long festering investor issues in the industry.

Kenmar expect the results of the consultation will be carefully reviewed and recommendations will be made in a timely manner. The process should be transparent so the public can understand the choices made and not made.

If the CSA decide to go beyond proposing bringing the MFDA -IIROC into a new SRO, there should be a publicly disclosed time phased project plan for bringing other registration categories into a super SRO to prevent disruption and a decline in regulatory efficacy during transition.

Kenmar hope the input is useful to the CSA in its deliberations on this important socio-economic issue.

We look forward to meeting with the CSA to discuss this letter in more detail.

K. Kivenko President
Kenmar Associates

APPENDIX I: The SRO ISSUES AS SEEN BY INVESTORS

Potential conflicts-of-interest in any self-regulatory structure tops the list. This is one reason why robust governance is critical.

Kenmar believe that it is vital to address significant shortcomings in the way that the SROs currently govern and operate before the CSA considers establishing a new SRO .The design of the new SRO should not only address current shortcomings but also have the structure to embrace change; it should be forward-looking built on socially responsible principles. In any new SRO structure, the investor should be top of mind.

Many of the elements of personalized financial advice today are not related to security selection, transactions or even securities. This suggests that there may be a need for changes in legislation covering the financial advice industry. Provincial Securities Acts may not be adequate to provide the legal coverage required. For example: errors in tax advice, failure to make a timely RESP contribution or RRIF withdrawal recommendation or not ensuring the client has adequate life insurance ,

This is a task for the CSA to undertake since the industry has moved well beyond trading and providing advice on securities. This is the foundation of a modern SRO, one that matches regulation to the services being offered. It must look to the future of advice.

For the vast majority of Canadians, the MFDA and IIROC are the face of securities regulation (investor protection). To the extent that these two SROs perform their mandates effectively, it is to that extent to which Canadians can feel confident in investing their life savings with dealers. The structures of these self-regulators have evidenced flaws that warrant determined CSA actions to improve the self-regulatory framework or to regulate directly. Any new framework must earn and maintain investor trust and confidence.

According to the latest published CSA SRO Oversight reports, both the MFDA and IIROC are congruent with their Recognition Orders. Yet, any grass roots assessment of retail investor protection in Canada would suggest that there are many deficiencies, some systemic. From the Kenmar perspective ,the most prominent regulatory issues are relatively weak conduct standards, regulatory reforms occurring at glacial speed, low enforcement intensity aggravated by wrist slap sanctions, exploitive complaint handling ("low-balling") and of course an OBSI that is nowhere near its full potential as a true financial ombudsman service.

Investor advocates support a new structure that deals with the issues of the current structure and the opportunities of a fresh approach with enhanced retail investor protection.

One cannot expect the public to have confidence in the regulatory system or the industry if enforcement intensity is low and worse if sanctions are "light touch". As the old expression goes, "*There is no speeding, where there are no cops*". We believe enhanced enforcement (and compliance monitoring) intensity will be a Win-Win for all stakeholders. Embedding investor -centric individuals on the SRO and OBSI Boards will give investors the voice they need to motivate decision makers into decisive action. Investor advisory committees can also play an important role in highlighting investor issues, exposing wrongdoing, identifying emerging trends and offering solutions. A recent article *Support lacking for investor advocates i*n Investment Executive https://www.investmentexecutive.com/newspaper_/news-newspaper/support-lacking-for-investor-advocates/ explained how limited the voice of the investor is in regulatory circles. Inventor advocacy in Canada is very limited - there is not an effective feedback loop between a well-financed investor advocacy group(s) and regulatory bodies. In a highly concentrated market like Canada where over half the assets invested in mutual funds and ETFs reside with just seven companies, it is imperative that the investor's voice is well represented for a fair and efficient market to thrive. Increased investor participation on SRO Boards, Panels and Committees will help level the playing field.

If governments and the CSA aren't going to support independent investor advocacy in Canada, then the least the CSA must do is establish and finance an Investor

Advisory Panel. **Accordingly, we urge the CSA to establish and fund an Investor Advisory Panel.**

We also recommend that individual CSA jurisdictions could lead by example and follow the lead of the AMF and OSC in establishing Investor Advisory Panels.

For both SRO's, we find corrective action is subservient to deterrence," light touch" fines are imposed and most complaints are not fully investigated to root causes. For example when an individual is sanctioned, the investigation should uncover the root causes of failure. Does the compensation system drive behaviour in the wrong direction? Was the individual properly trained? Was outdated monitoring software or weak risk profiling tools the cause? Addressing only the salespersons actions will not prevent recurrence. In essence what we are saying and keep saying, is that sanctioning and fining individuals is necessary but not sufficient to improve the overall "system". This is control systems theory 101. **Kenmar recommend formal adoption of Root Cause analysis throughout the regulatory system.** That is more likely to root out systemic issues at the branch, Firm or industry level. See U.K. FCA DISP App 3.4 Root Cause Analysis https://www.handbook.fca.org.uk/handbook/DISP/App/3/4.html

Criminal and quasi-criminal activity is not leading to justice in securities markets. Kenmar do not fully understand the legal and other ramifications in dealing with criminality, forgery, asset misappropriation and the like but we do feel Canada ought to do better. We look forward to reviewing the Comment letters from consultation respondents in this regard.

SRO's seem more concerned with finding mitigating factors to disciplinary measures and lowering fines than in identifying aggravating ones and increasing fines/sanctions. In most settlement cases, mitigating factors swamp out aggravating factors. Professor M. Lokanan suggests there should be more use of aggravating factors in settlement agreements *Comment letter to Ontario Taskforce to modernize securities regulation* https://viurrspace.ca/bitstream/handle/10613/23361/Comment_Letter_Taskforce.pdf?sequence=1&isAllowed=y This disparity contributes to a pervasive perception that the SRO is more concerned with protecting the industry than protecting the investing public. The more aggravating factors, the tougher the sanction, resulting in greater deterrence value.

Individuals are sanctioned far more often than Member Firm's when SRO's should focus on Member Firms and strive to ensure structural correction of wrongdoing and a move away from the greed culture. The hard facts of the matter are that the vast majority of root causes for rule breaches can be traced back to the Firm: these include but are not limited to poor advisor recruitment and training, advice - skewing incentives/inducements for advisors, sales quotas/ commission grids, deficient KYC /risk profiling tools, weak supervision, ineffective administrative controls, poor compliance processes all in a culture of sales production and financial incentives. In some cases, Branch managers and supervision are compensated for

branch sales putting their supervisory roles in a conflict-of interest. The result is that the person at the bottom of the pyramid takes the fall, the individual advisor.

If a self-regulation model is to continue, there must be a dramatic improvement in regulatory compliance oversight, enforcement intensity, balance and effectiveness.

The current CSA oversight of SRO's is clearly inadequate. OSC/CSA oversight needs to be expanded and Recognition Order Terms and Conditions need to be more specific on governance and incorporate performance metrics including stakeholder satisfaction measurements.

Kenmar is of the firm conviction that governance shortcomings are materially responsible for weaknesses in the SROs' compliance/enforcement programs and the degree to which senior management of the SROs is willing to act independently of its Members and in the Public interest.

APPENDIX II CONCERNS RELATED TO A SRO CONSOLIDATION

The CSA is a disjointed entity that can be political, bureaucratic and slow moving. Given the number of jurisdictions involved in securities regulation in Canada, the fact that SROs can operate on a national basis is potentially an advantage for all stakeholders.

On the other hand, any SRO that depends on its Members as its primary funding source faces a heightened susceptibility to industry capture. The disclosure of information about enforcement proceedings is under the control of the SRO and may be less extensive than that provided by the statutory regulator. Self-regulation also runs the risk of introducing delays in policy actions or rule approvals as extensive dialogue may have to take place between the SRO and the CSA. Unlike a statutory regulator, an SRO is not accountable directly to the Government. A super SRO encompassing all dealers would be a powerful monopoly and would have to be regulated as such. Accountability is a key issue for SRO's.

Here is a list of our main concerns:

Tradeoffs and concessions There is investor concern that the new SRO framework would make so many accommodations and concessions that it would make things worse for investors (e.g. questionable principles- based regulation migration to the MFDA; the migration of controversial directed commissions to IIROC Reps).

Access to advice We are concerned that a consolidation of the MFDA and IIROC could lead to an increase in minimum account size (or minimum annual fees) that would deny access to clients of modest income to personalized investment advice.

Transition to new SRO Bringing IIROC and MFDA registrants into a new single SRO requires leadership, a solid plan and particular sensitivity to HR issues. People are the heart and soul of a regulator so that it is critical the integration is effected without a breakdown in organizational morale or increase in staff stress. Our

concern is that if the transition is not done properly, regulation may suffer with adverse consequences for investors.

Disharmony among participants A single SRO has the potential to reduce regulatory complexity and further harmonize and modernize regulation across Canada. However, it is vitally important that all participants involved in a transition process are fully committed to positive results without any counterproductive turf protection and NIH. The CSA must provide the necessary leadership if a new SRO is established.

Impact on economy: A reduction in smaller dealers could have an adverse impact on entrepreneurial capital formation as dual-platform Firms gain more power and market access. Less smaller dealers could also impair small investor access to advice (such as it is).

Impact on Main Street There is a general concern about how accounts would be transferred if a new SRO were established. This is a high concern given how inefficient firms are on simple one -off account transfers between firms. There is also the question of different terms and conditions and service levels between dealers. Another concern relates to the drop in investor protection fund amounts if a person had split investments between a mutual fund dealer and an investment dealer. This will have to be thought through, resolved and well explained to retail investors.

Delay in CFR implementation Any delay in implementing CFR caused by a diversion of attention to the SRO framework project would be regarded as anti-investor. Nearly a decade of work has been put into the CFR initiative, so we would not take kindly to a further delay caused by SRO framework changes driven by industry self-interests.

Domination by the banks as concentration in the wealth management industry increases, the risks of concentrated power and influence increase as the number of Members decreases and the SRO becomes more dependent on fewer and larger members for its funding. Concrete steps would have to be taken by the CSA to prevent the domination of the SRO by large bank and insurance company owned dealers. [The new SRO Board mandate would need to be designed so that the larger Firms could not dominate Board policy and decisions.]

Complaint handling rules Unless the new SRO introduced 21st century client complaint handling rules, investors would continue to be exploited. SRO rules should require Member Firms to publicly disclose their loss calculation methodology which must be congruent with that of OBSI.

Splitting of investment portfolios will remain unresolved When ordinary Canadians buy securities and mutual funds, they often receive advice from an advisor who is licensed by two regulators – one dealing with investments and the other dealing with life insurance. When more than one regulator is involved, there is even more room for confusion. It is unfair to complainants to have to split their complaints into

two pieces when using financial ombudsman services. Kenmar recommend that OBSI be given the mandate to adjudicate investment portfolios that include segregated funds and/or other insurance-related investment products.

Directed commissions The directed commission issue is important for retail investor protection. In 2015, IIROC proposed to allow its Members to take advantage of "directed commissions" which are widely used in the mutual fund industry. (A directed commission refers to the ability of a dealing representative to request that his sponsoring dealer pay commissions earned by him or her to a personal corporation). In a 2016 comment letter to IIROC (https://www.osc.gov.on.ca/documents/en/Investors/20160404_iiroc-white-paper.pdf), the OSC IAP stated "*The Panel is critical of sales commissions being directed to personal corporations, a practice IIROC currently prohibits. The entry of MFDA registrants could undermine this prohibition. Such a corporation could break the chain of accountability and give rise to creditor proofing, making it even harder to collect fines imposed on individuals*.". Other investor advocates have expressed concern that directed commissions actually make commission-based sales more attractive (due to tax advantages) thereby incenting increased sales activity and could make it harder for complainants to succeed in compensation claims of salesperson wrongdoing. Kenmar would not view such a development as a positive step forward in bringing professionalism to the wealth management industry and a feature of a modern SRO.

Advisors acting as executors/trustees We would want to see the MFDA ban on representatives acting as trustees and executors retained in the new, modern SRO.

Loss of momentum on CRM3 The MFDA has shown industry leadership in proposing enhanced fee transparency, known as CRM3. This initiative is highly valued by investors. It would be unconscionable if this important project was sidelined as a result of a MFDA- IIROC combination into a new SRO.

No change in shelf space range at banks The issues raised in the Consultation paper relate to access to more products but do not fully address the issue of restrained product shelf space. The CSA CFR initiative seeks to address the issues respecting limited product shelves through relationship disclosure information (RDI) – a dealer will be required to clearly set out what it sells so the client understands what is available. As such, a dealer (such as bank-owned dealers operating in branch's) may have only proprietary products on the shelf, and the CSA RDI requirements are designed to ensure clients understand that, through that dealer, they are only getting access to proprietary products. The CSA apparently believes this puts the retail investor in the position of clearly understanding that non-proprietary products are not available through that dealer, and making an "informed choice" to proceed with a relationship with that dealer or pursue a relationship with another dealer offering an expanded or different product shelf. In other words, "You can have any type of mutual fund as long as it's one of ours". Having to open an account with another dealer is exactly the opposite of "one stop shopping".

Use Guidance to assist SRO enforcement The new SRO (or existing SRO's) should make it clear that Guidance is intended to provide more detail on how rules are interpreted by the regulators .Guidance is a lot more than assisting Firms in implementing their compliance program. This will greatly help Firms in evaluating their compliance program and provide greater certainty that their compliance policies and procedures will be judged by the rules and the documented interpretations of the rules. It will also help prevent problems. Such a practice will be particularly effective where rules and sanctions guidelines are principles -based. At some point, we expect frequently referenced guidance to be incorporated into the rules.

Loss of historical information IT Systems may need to be merged in order to provide continued meaningful information to the public .These include, but are not limited to, registration check, unpaid fines report and enforcement records. Lessons should be learned from the time the IDA disaggregated into IIROC and IIAC (and when RS was folded into IIROC). The CSA will need to ensure that valuable history is not lost and that required IT system changes are properly financed by the SRO.

Sanctioning guidelines Both SRO's have 100% principles-based sanction guidelines. We are concerned that this would continue under the new SRO. Principles –based sanctions coupled with principles-based regulation in a non-fiduciary advising environment is a prescription for weak enforcement.

Guaranteed funding for basic investor initiatives Depending on how enforcement actions are split as between the SRO and the CSA, there could arise a decline in fine revenue for statutory regulator Restricted/ Designated funds. These funds help support investor education, whistleblowing payouts, investor research, grants to consumer groups like FAIR and even investor compensation. Our concern is that if the SRO dominate fine collection, the cash available for these investor-friendly activities would be significantly reduced unless supplemented by other sources from operating budgets.

Advice as a profession One possible scenario of the consultation is the combination of the MFDA and IIROC into a new SRO responsible for the registration of over 100,000 salespersons. Such a structure does not provide for professional financial advice or fee-only advice. It is clearly not in the SRO Member Firm's best interests to disconnect product sales and transactions from "advice". We are concerned that the new SRO structure would not support a registration category that offered only holistic financial planning or fee-only financial advice to a fiduciary standard. The CSA must ensure that unbiased holistic financial advice is available to Canadians in fulfillment of its Public interest mandate. We recommend that the CSA create such a registration category and consider direct regulation.

Advising seniors We have been finding a disturbing lack of proficiency /competency in the advice being provided to seniors. The gaps that we see are in the rationale used to determine withdrawal rates, superficial knowledge of tax issues, and understanding of the impact of income on social benefits, estate planning etc. This may not have anything to do with the quality of CSI courses but rather the fact that

SRO's have not made such education a priority. Some positive actions are being initiated by a few Firms .Kenmar are deeply concerned that the creation of a new SRO would negatively impact the momentum of this important socially responsible initiative.

Continuation of the Trusted Contact person / Temp hold initiative Kenmar first raised the seniors / vulnerable investor issue in 2007. Why?- because we saw it in complaints, DSC mis-selling, " Free lunch seminars" , misleading marketing materials , low- ball settlements, KYC document adulteration , off- book transactions .... and of course from our colleagues in the US, Australia, the UK and NZ. This important initiative could be stalled if a new SRO is formed unless the CSA takes pro-active steps to ensure it proceeds expeditiously.

An "enhanced" mandate for the OSC It would be very worrisome if the Ontario Taskforce recommendation to enhance the OSC's mandate to include capital formation was implemented. In fact, if that happens, we would lose all confidence in regulators to oversee SRO's and protect Main Street.

Client-advisor interaction The pandemic has obviously impacted investors from a personal, health, financial and stress perspective .In addition, their advisor is operating in a work at home protocol. We fully expect that's a great number of privacy, compliance and supervision issues will emerge. Work-at-home will add to supervisory and compliance challenges. Kenmar are concerned that regulators have done little to counter these concerns or to inform the public on what it is plans to do to protect investors during these troubled times. We would expect that a new SRO would be more empathetic, communicative and pro-active in its engagement with the public.

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Former advisors suing Investors Group for more than $10M | Investment Executive
Retail investors normally assume that their "advisor" is an employee of the firm not an independent contractor working their own private "practice". It would be a good idea for regulators to release some educational material clarifying the various relationships "advisors" have with their Firms.
https://www.investmentexecutive.com/news/industry-news/former-advisors-suing-investors-group-for-more-than-10m/

ASC finds Kenton Roy Ursula liable for breaches of Alberta securities laws-even EMD's need to comply with KYC
https://www.newswire.ca/news-releases/asc-finds-kenton-roy-rustulka-liable-for-breaches-of-alberta-securities-laws-845268400.html

Note to CSA: Signature forgery impacts retail investors and wealth management industry
http://www.canadianfundwatch.com/search?q=Document+adulteration

OSC IAP Risk profiling Roundtable report
It is interesting to note that virtually none of the recommendations contained in this

2016 summary report have been implemented by the wealth management industry or the OSC/CSA.
https://www.osc.gov.on.ca/documents/en/Investors/iap_20170123_risk-profiling-report.pdf

Case Studies - OBSI: Senior with early signs of dementia gets into more than $68,000 of debt
https://www.obsi.ca/Modules/News/blogcomments.aspx?BlogId=f977c4ca-2103-492b-9cb6-b10f454c2904

Open for business? Sure. DSC monkey business? No, thanks: IE
https://www.investmentexecutive.com/news/from-the-regulators/open-for-business-sure-dsc-monkey-business-no-thanks/?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-All-afternoon

FINRA: Who's watching the watchdog?
https://www.investmentnews.com/finra-whos-watching-the-watchdog-72102

Ontario DSC Rules Promote Wealth Inequality | Morningstar
https://www.morningstar.ca/ca/news/203482/ontario-dsc-rules-promote-wealth-inequality.aspx

Transparency in Securities Regulation | Fraser Institute
https://www.fraserinstitute.org/article/transparency-securities-regulation

"People work in the system that management created": Dr. W. Edwards Deming
The root cause of most problems ultimately is the way the work is designed within the production system.
http://blog.leansystems.org/2013/09/dr-w-edwards-deming-people-work-in.html

Breaking up is hard to do: the future of UK financial regulation? Professor Julia Black, London School of Economics Martyn Hopper, partner, Herbert Smith LLP January 2011
Interesting paper on change management regarding UK securities regulation.
http://www.lse.ac.uk/law/people/academic-staff/julia-black/Documents/black14.pdf

Canada Steps Up-The Task Force to Modernize Securities Legislation in Canada
https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=https://www.google.ca/&httpsredir=1&article=2166&context=scholarly_works

Guide to setting up a Financial Services Ombudsman Scheme: INFO Network 2018
http://www.networkfso.org/assets/guide-to-setting-up-a-financial-services-ombudsman-scheme_info-network_march2018.pdf

INCLUDES COMMENT LETTERS RECEIVED

De : Viet Buu <VBuu@cticap.com>
Envoyé : 22 octobre 2020 10:09
À : Consultation-en-cours <Consultation-en-cours@lautorite.qc.ca>
Cc : [redacted]; [redacted]
Objet : CSA consultation proposal / Consultation des ACVM

Bonjour Me Lebel,

Pour votre information, veuillez trouver ci-joint notre opinion favorable pour la fusion proposée des deux organismes que j'ai envoyée à Mme [redacted].
Merci de votre attention.
Cordialement votre,

Viet Buu, *CFA, MBA*
President, CEO
CTI Capital Group Inc
1 Place Ville-Marie, Suite 1050
Montréal, Québec H3B 4S6
t. (514) 861-3500
e. vbuu@cticap.com

De : Viet Buu <VBuu@cticap.com>
Envoyé : 19 octobre 2020 09:24
À : [redacted] <[redacted]>
Cc : [redacted]; [redacted]
Objet : RE: CSA consultation proposal deadline approaching / La période de consultation des ACVM se termine bientôt

Bonjour Mme [redacted],

Nous chez CTI a bien lu tous les documents envoyés et surtout la consultation des ACVM sur le cadre réglementaire des organismes d'autoréglemention, et nous sommes venus à la conclusion d'appuyer sans condition la proposition de fusion des deux organismes !
Cette proposition souligne les avantages d'une fusion de l'OCRCVM et de l'Association canadienne des courtiers de fonds mutuels (ACFM),
qui deviendraient les divisions d'un seul organisme d'autoréglementation (OAR) et que nous croyons bénéfique pour l'industrie des valeurs mobilières, aussi bien que pour les investisseurs !

Encore une fois, on souligne notre appui à votre démarche et sommes prêts à vous aider en tout temps,
Cordialement votre,

Viet Buu, *CFA, MBA*
President, CEO
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October 19, 2020

SUBMITTED VIA EMAIL

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary
and Executive Director, Legal Affairs
Autorité des marches financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework (*the "Consultation Paper")

Independent Trading Group ("ITG") welcomes the opportunity to provide comments on the Canadian Securities Administrators' (the "CSA") Consultation Paper, and appreciates the CSA considering our input.

ITG was established in 1992 by a group of TSX floor traders with the intent of developing a business where market makers could conduct business in a professional manner without conflict or compromise. As a proprietary and institutional trading and market making firm, ITG provides services such as price discovery, market making and liquidity provision for traders, marketplaces, institutional clients and issuers.

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Canadian securities regulation has been managed through laws and agencies established by Canada's 13 provincial and territorial governments since 1912. The provincial bodies also delegate some powers to two Self-Regulatory Organizations ("SROs") – the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association (MFDA). We feel that the existence of multiple regulators has had a negative impact on the exercise of powers to sanction bad actors. Consider that many financial firms that do business across the country and have diversified product lines are under the purview of several provincial securities commissions, as well as IIROC and the MFDA. In addition to enforcement and regulatory costs, there are also costs to the public in terms of investor protection.

Recently, IIROC and the MFDA have each proposed their own plan to merge and harmonize regulation. Both IIROC and the MFDA are responsible for setting and enforcing rules regarding the proficiency, business and financial conduct of their dealer member firms and their registered employees. While IIROC, through its predecessor, dates back to 1912, the MFDA was established in 1998 on the recommendation of the CSA to have an SRO directly responsible for the oversight of mutual funds. This may have made sense at the time when mutual fund sales were enjoying strong growth, with investors migrating en masse from GICs during a decade-long bull market in equities. Today, with mutual funds on the wane in the face of a multitude of competing products, the existence of the MFDA no longer makes sense. A merger of IIROC and the MFDA would enhance investor protection by allowing one SRO to oversee various forms of investments often included in one client portfolio.

General Consultation Questions:

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Firms that are members of both SROs would be able to streamline and reduce duplicative compliance costs and resources. Currently, clients that have been with a limited-license mutual fund dealer that would like to expand their investments into other securities, have to open a new account with a new investment firm and likely a new advisor. ITG believes that reduced operating costs along with access to more products under the proposed consolidation, would be a net benefit to Canadian investors. Consolidated reporting for dealers would help in reducing unnecessary costs as well.

Issue 2: Product-Based Regulation

Under the proposed merger, investment dealers would be allowed to introduce a mutual fund-only offering within their existing legal entity without having to establish a separate dealer on the

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MFDA platform. The restriction for current MFDA clients to access the most cost-efficient investment products such as ETFs and PTFs is another reason in support of having more products at lower costs available to investors without the additional "paperwork burden".

Issue 3: Regulatory Inefficiencies

ITG agrees that within our current regulatory framework, potential redundancies associated with two SROs that oversee similar dealer activity would continue to add duplicative costs related to non-regulatory functions such as HR, IT, and administration.

Investors would benefit by having a "one-stop-shop" that would allow those who begin with mutual funds (regulated by the MFDA) to add individual securities (regulated by IIROC) without switching firms or being transferred from one division to another within the same firm. This would indeed increase investor protection *and* reduce regulatory arbitrage.

Issue 4: Structural Inflexibility

In particular regard to advisor proficiency, ITG believes that having a consolidated SRO would streamline educational requirements to better prepare registrants to grow in their current role while at the same time prepare them to expand their business. We would like to bring attention to this matter in how FINRA administers proficiency examinations. The SRO should set minimum standards for all levels of registration and allow firms and their registrants to chose how they prepare for these exams by having a choice of providers. The Canadian Securities Institute has had a "lock" on the administration of examination proficiency for decades and this has significantly raised costs for dealers and their registrants due to the lack of competition. Although this may be a separate matter for debate, we feel strongly that a consolidated SRO set the minimum standards, administer examinations and evaluations, and let the stakeholders chose how they wish to prepare through an educational institution of their preference.

Issue 5: Investor Confusion

As we mentioned in the above questions, allowing investors access to a "one-stop-shop" would not only be beneficial by allowing them to grow without changing firms, there would be less confusion as there would not be different SROs based on products with different insurance and complaint processes and most of all it would foster investor confidence in a known regulator.

Issue 6: Public Confidence in the Regulatory Framework

<u>SRO compliance and enforcement concerns:</u>

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The existence of multiple regulators (provincial or self-regulatory organizations) have had a negative impact on the exercise of powers to sanction in the public interest. The public enforcement of a regulated entity and its registrants that are under the purview of not only more than one provincial securities commission but also IIROC and the MFDA, has proven to be burdensome and costly.

One particular firm that was sanctioned by no less than three regulators in the span of a few years is but one case that illustrates the failure of our fragmented regulatory system to protect the public interest. The CEO of the two related firms, a portfolio manager and distributor, was sanctioned by the OSC for self-dealing. The OSC issued orders sanctioning the individual. The letter and the spirit of many of the sanctions was blatantly violated within the subsequent three-year period. One or more of the firms subject to the OSC disciplinary actions were also sanctioned by IIROC and the MFDA ***several times*** over more than eight years for failing to maintain an adequate level of capital. What is the lesson to be drawn? Quite simply: our fragmented regulatory system fails to deter malfeasance.

If we consider disciplinary cases that involve repeat contraventions, it is quite clear that the current state of Canada's multiple provincial securities regulators and two distinct SROs does not serve the public interest. Although not all regulatory cases involve repeat offences, the number is not insignificant and poses a substantial risk to the public due to the broad reach of bad players. To make deterrence more robust and increase efficiency, Canada needs a unified self-regulatory organization. It would better protect the integrity of our capital markets, investors and the general public, not to mention the elimination of duplicative investigative and enforcement resources.

Issue 7: The Separation of Market Surveillance from Statutory Regulators (CSA)

ITG has serious concerns with the MFDA proposal to have CSA's assume control of our national market surveillance functions. We feel strongly that IIROC remains uniquely qualified under the current regulatory framework to continue oversight of market surveillance. Having statutory regulators takeover this function would be detrimental to the integrity of our markets and would add significant costs in "rebuilding" a system that currently protects investors and stakeholders well.

Conclusion

In consideration of separate proposals released by each SRO rather than one developed in collaboration, ITG feels that IIROC's proposal promises to be more effective and can be implemented in a timely fashion. The two proposals are consequently very different. IIROC suggests merging with the MFDA and having the two SROs as divisions within one. On the

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other hand, the MFDA has recommended a new SRO be developed that encompasses all registrant categories, including those currently under the CSA, and to move the capital market surveillance function from IIROC to the CSA. The MFDA proposal would require consultation on how all aspects of the new SRO would function. We simply do not have time for such a needlessly protected approach.

Thank you for the opportunity to comment on these important matters. We would be pleased to address any questions from the CSA in response to this submission.

Respectfully,

"Nick Savona"

Nick Savona, LL.M.
Chief Compliance Officer
Independent Trading Group (ITG), Inc.
(416) 941-0046
nick@itg84.com

cc: Sean Debotte, CEO, Independent Trading Group (ITG), Inc.
Dave Houlding, COO, Independent Trading Group (ITG), Inc.

October 19, 2020

http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20200625_25-402_consultation-self-regulatory-organization-framework.htm

Dear Osc
Regarding CSA location of comments regarding the SROs

Such as iiroc
There are a couple of quick observations
1 regarding overlap. The actual focus between entities may be quite different even though it may appear that there is an overlap

For example regarding outsourcing protocol
The osfi oversees federally regulated entities including banks and their dealer broker arms
But the osfi is not a hands enforcement body nor is the Csa specifically regarding errant registered firms or dealer members. It leaves this to the chain of oversight including iiroc.

So while duplication is to be avoided it is too simplistic to just assume all the bodies have the same specific functions.

There are some key misalignment with iiroc and for example Osc concerns. For example. Material disclosure for listed issuers and firms. This is ground zero for decision making for all capital market participants. Including the retail investor for example using the discount brokerage services

But no one including iiroc is taking the lax third party oversight seriously when it comes to theretail investor and distortions of listed issuers material disclosures

The issuer will have filed correctly, but the third party data stream feed engaged by for example Td direct (tdwaterhouse) has relayed distortions of material disclosure. And the terms of service retail investors sign to open accounts to participate in the capital markets. Have the retail investor consent to errors omissions and other deficiencies on the relay of material disclosure by Thompson Reuters or its affiliates...Td for example is quite aware that the data feed may be subpar..And a distortion of what the original issuers have filed. And seeks the retail investors consent to this....a condition none of the other capital market participants have to operate under or consent to.

In fact Td wears many different hats. One as a service provider in its discount brokerage role. And a different one as a registered firm with its proprietary trading behalf of the bank

Thus you have a conflict of interest that iiroc and osc have not addressed. Because Td bank trades in the same capital markets wearing one of its many hats but is not blindfolded by the terms and conditions its Tdw arm lays out for its retail discount brokerage clients. That the retail investor must agree to if they wish to use TDS platform and services to access the capital markets....(errors omissions interruption of service)

But TD banks own proprietary arm is not hampered by the conditions its discount brokerage side insists on for the retail investor client

Nor are any of the other large capital market participants

And yet iiroc has still failed to address this in any meaningful way.

So Td for example is taking advantage of its own retail discount brokerage clients setting up conditions in the terms of service the retail client must agree to if they wish to access the capital markets using TD direct as an intermediairy

Which is very convenient for TD bank and it's own trading desks. Including for options as it is not inhibited by these conditions even though both it and the retail client are both participating in the same capital markets.

The osc states its purpose is to oversee a fair and efficient capital market for all participants...so why the lopsided less diligent care or concern for the retail discount brokerage client having to agree to such questionable terms.....how is this fair or an equal opportunity?

IIrocs staff are given considerable discretion as to the weight they give compliant depending on internal priorities. Even if they are in fact a violation of iiroc and osc and osfi compliance expectations and similarly for Csa directives

So once again why this lopsided approach?

Further retail investors participate in the capital markets to build financial assets to serve as cushions later on including in retirement.
I note age is not defined as starting at age 65. But under human rights law can occur at any time in a person's life. Although two provinces have the chronological clock start at age 18 or 19. The rest leave it open and the likelihood the elderly person has assets that are ripe to be plucked. And can't easily mitigate the financial loss

But investing starts long before retirement...so really the osc needs to widen its focus if it wishes to prevent age discrimination...to non compliant practices with securities law iiroc rules and Csa directives to encompass all age groups here...

As should iiroc

What I keep observing is a skew that defers to industry agendas and downplays the injury suffered by the retail investor on myriad of compliance violations. That aside from possibly fees are ignored completely

None of the industry seems to be practicing what they have laid out for compliance when it comes to the electronic discount brokerage service model. And I would like to understand why?

As again this is a skew to industry agendas at cost to the retail investor capital market participant.

And I have yet to see any comprehension on the part of Csa regarding this.

Retail are not treated as equal participants in the capital markets nor are they provided with equal protection before the law compared to the other market participants. And again I find this disturbing.

https://www.ft.com/content/ed619409-dab9-49fb-bef4-2b582407353d. This link demonstrates why it is critical to insist the chain of regulatory oversight do more than just talk about investor protection. And actually evenly enforce the industries codes of conduct to ensure an even playing field in the capital markets for all participants. Including the retail investor. Especially those using the discount brokerage access services.

Further while it is important accommodation be made for disabilities including cognitive especially when there is more likely to be a higher based on statistical risk with some seniors. Not all serious are cognitive impaired, any more than younger investors. But they are given the years of accumulation ripe to be targeted, and very little time to mitigate the financial harm.

However the investment industry is rife with discriminatory practices. Including the terms of service retail investors of all ages must agree to to open accounts to invest. That are also violation as iiroc has noted of layers of financial industry compliance expectations. (Iiroc 19-0177)the

And more critically this impacts all retail investors who agree to such terms regardless of their chronological age. And the harm compounds overtime as a result of these deceptively worded liability disclaimers. In way compound interest grows. Except it is in the negative.

Yours truly
Bev Kennedy
Fredericton NB

September 28th 2020
Via email

The Secretary Ontario Securities Commission
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c: 416-593-2318
E-mail: comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs Autorité des marchés financiers
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CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*
https://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20200625_25-402_consultation-self-regulatory-organization-framework.pdf

Most of the issues raised in the consultation paper relate to industry. The real issues with the SROs is not the framework, it is the foundation. I will provide comments on the consultation but first I would like to give a brief overview my personal experience in dealing with an SRO - a lot of lessons can be learned from this experience.

In order to be concise and hopefully helpful to the OSC, I will narrow down my comments that are objective revelations of the facts of experience when trying to get the SRO IIROC to likewise respond to the facts when their adjudicating decisions were questioned.

This following commentary relates to IIROC being asked to review allegations of wrong-doings by a Bank-controlled Investment Dealer Financial Advisor. This is when the said Advisor provided investing "advice" to 70-year old senior citizens man and wife who were required by the CRA regulation to convert many years of accumulated RRSPs savings into RRIFs.

It is not the extent of the allegations of the said Financial Advisor's wrong-doing conduct that is the subject of my submission but rather the way that the SRO IIROC chose to initially interpret the complaint information and then the unreasoning way they responded when their decisions explanations were questioned. This is in spite of the IIROC rejection letter riddled with some false and quite a few deceptive inferences to justify their decision.

In essence, when the original IIROC decision sent to the Complainant rejecting the case by IIROC claiming no securities regulations had been violated by the Bank-controlled Investment Dealer employee, the IIROC explanations raised legitimate questions about their lack of depth of investigation that had been applied to the complaint that the Complainant had submitted to IIROC.

Very important: On account of the IIROC decision to use non-factual claims and inferences in their original rejection of the Complainant's case, the Complainant then found it necessary to determinedly spend many hundreds of hours researching CSA, OSC and IIROC Regulations, Rules and Guidelines. A Complainant should not have to go to this extent when there is supposed to be an SRO doing that job of protecting investors.

As a result of the Complainant's research, when questions were asked of IIROC the unsatisfactory responses, or for the most part should I say negative excuses for IIROC inaction, then came progressively from five escalating IIROC management levels. The last response from the IIROC Vice-President earned a 26-page rebuttal response from the Complainant. **[Substantiating information supporting these allegations is available upon request.]**

>>>>>>>>>>>>>>>>>>>> 0 <<<<<<<<<<<<<<<<<<<<

The financial services industry is characterized by a culture of greed, misconduct and investor exploitation. The idea of this industry regulating itself in light of all of the available evidence is wholly inappropriate.

According to a recent MFDA national investor poll *What Canadian investors want in a modern SRO*:

- 88% of Canadian investors believe that Canadian regulators should provide more oversight of the investment industry;
- 91% of Canadian investors believe that financial products and services that are alike should be regulated in the same way; and
- more than two-thirds (69%) of Canadians investors think that designing a new SRO through a comprehensive review that emphasizes accountability, government oversight and investor protection is preferable to a simple status quo SRO merger.

Source: https://mfda.ca/news-release/invsro/ These results show that Canadians want real regulatory change.
Given the inherent tension between operating in the Public interest and operating in the interest of a regulated industry, self-regulation creates a reasonable apprehension of bias. The status quo is therefore unacceptable if investor protection is to be enhanced.

The existing SROs however, do have one big advantage, they are national in scope while the statutory regulators are not. The best solution appears to be one where statutory regulators and industry come together under a new "SRO", one with investor focus, transparency and accountability. The Ontario Taskforce on securities modernization provided some excellent ideas on how this might be accomplished and I recommend that they be examined. I believe if they were followed, the end result would be a fresh, modern, forward-looking SRO. And one that would be trusted by the public.

In this day and age, a regulator based solely on product, mutual funds, doesn't seem to make much sense. A combination of the two existing self-regulating organizations

makes sense but only if it leads to a different kind of SRO. The existing SRO's exhibit issues with regard to industry - favoured rulemaking, poor investor outreach, weak compliance monitoring , wrist-slap enforcement and of course , abusive complaint handling. I'd like to see 1+1 = 3 for investors resulting from a combination.

Beyond that, I'm not sure about melding in portfolio managers. PM's work to a fiduciary standard which is much higher than the standard utilized by IIROC and MFDA sales persons. If they were combined with the new SRO, I worry that their standards would end up being watered down by coming into contact with lower standard advisors. According to OBSI statistics, there does not appear to be many complaints against PM's. On the surface at least, the direct regulation of PMs by statutory regulators appears to be effective. I can provide no comments on the exempt market dealers except to note that their reputation tends to be a little shady. They have the image of being promoters- not a good fit with MFDA/IIROC.

No discussion on an SRO framework would be complete without inclusion of the Ombudsman for banking services and investments OBSI. 0BSI is a critical component of investor protection .They provides feedback to investment dealers directly on how the regulatory control systems are working. Client Complaints are an indicator of client satisfaction with the "system". The feedback provided to participating firms is invaluable towards improving client service, product design, disclosure practises and of course complaint handling. However, without a binding decision mandate many of these potential benefits cannot be achieved. Perhaps most importantly, complainants that are short- changed (lowballed) create the perfect storm for creating distrust in the financial services industry and its regulation. I therefore urge the CSA to provide OBSI with a binding decision mandate including a mandate to investigate systemic issues. At the same time, the Joint Regulators Committee (JRC) should be more transparent and proactive in its oversight of the financial ombudsman service. I also recommend that the SROs be replaced on the JRC by a consumer representative. The reasons for this are(a) the primary person stakeholder of OBSI is the consumer and (b) The SROs are in a conflict- of-interest in the sense that OBSI is monitoring one of their deliverables - effective complaint handling.

I base my commentary on the assumption that the CSA (a) is unwilling to regulate directly the financial advice dealers and (b) there is a preference for joint regulation. As a sidebar, most jurisdictions in the rest of the world appear to be disavowing self-regulation by the investment industry.

Core considerations in the SRO decision process

The new SRO framework (if chosen as the way forward) must address certain concerns. Rather than just integrating the IIROC and MFDA as they currently exist and papering over any differences, I believe that a new and different SRO based on updated principles, enhanced Recognition Orders and increased oversight by the CSA. The review should ensure that SRO's are empowered to regulate advice as a

service which may very well include matters of financial planning , taxation and estate planning in addition to securities trading and portfolio construction.

The need for CSA leadership

Before any significant changes are implemented to the SRO framework, it is essential that the CSA have a vision for securities regulation as it relates to investor protection. Where does the CSA leadership want to see regulation in three years, five years and 10 years from now? Without a vision there can be no coherent strategy and without a strategy it is difficult to make informed decisions on the optimum SRO framework.

The lack of a CSA articulated vision for securities regulation in Canada limits the planning for a more modern, adaptable SRO framework. In particular, there must be a vision for the future of financial advice as the driving forces for change are powerful and growing.

The CSA should define basic policies and design principles so that the construction of the SRO can be effectively operationalized. The role of OBSI should be included in the CSA SRO framework formulation since fair complaint handling is a core element of investor protection.

The CSA itself is at the center of many issues, so any reform of the SRO framework must involve the CSA looking in the mirror. For example, investor advocates are dumbfounded as to why the CSA allowed the sale of DSC funds after the issuance of the classic Stromberg reports in the mid-nineties (even now ,the OSC is seeking to retain the DSC option). Poor SRO regulation of DSC mutual fund sales has also harmed small investors, especially seniors, for two decades. Early redemption penalty fees associated with DSC sold mutual funds have cost investors untold millions of dollars over the last two decades. These fees have impaired the retirement income security of Canadians. Why did the CSA allow this to happen?

In 2017, the CSA issued a *Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin 0736-M - Complying with requirements regarding the Ombudsman for Banking Services and Investments* highlighting the tricks dealers were using in complaint handling. It was a real eye opener. This Notice also addressed concerns that the CSA identified regarding the manner in which some firms are using an internal "ombudsman" as part of their complaint handling system. In some cases, it appears that clients are not being given the clear option of using OBSI's services in the timeframes contemplated by NI 31-103 and applicable SRO rules with the effect that they are being diverted to an internal “ombudsman” while the time limits for submitting the complaint to OBSI or commencing a civil action continue to run. There is no question in my mind that the use of internal “ombudsman” is intended to wear client’s down while running down the statute of limitations time clock. Re http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20171207_31-351_ombudsman-banking-services-investments.htm As of the time of writing of this letter, I see little improvement and no action by the CSA.

CSA Responsiveness, low sense of urgency, sluggishness

I'd like to see the CSA more decisive, time sensitive and responsive when it comes to protecting investors. Providing SRO's with weak laws/regulations and oversight makes the job of SRO's harder. It just takes far too long to make important reforms.

SRO Oversight needs enhancement

I believe the Ontario Taskforce recommendations should be considered in revising CSA oversight of the MFDA and IIROC.

SRO Governance must be designed to counter self-interests

Proponents of self-regulation claim that it offers significant advantages over government regulation. They contend that self-regulation is more flexible, more nimble and more efficient. Critics of self-regulation are justly concerned that it is self-serving, self-interested and too lenient. In addition to the inherent conflict-of-interest, the opponents of self-regulation point to its inefficiencies, including widespread collective action problems, lack of effective enforcement, inability to gain or maintain legitimacy, and, ultimately, the failure of accountability. I urge the CSA to take steps that will include investor representation on the Board of Directors.

OSC IAP research report suggests little financial advice is actually provided

A July 2019 Report by the OSC's Investor Advisory Panel *A Measure of Advice: How much of it do investors with small and medium portfolios receive?* https://www.osc.gov.on.ca/documents/en/Investors/iap_20190729_survey-findings-on-how-much-advice-investors-receive.pdf points to some serious issues. This survey of 3,000 Canadians shed light on the nature, scope and extent of investment advice that small and mass-market investors currently receive from their investment advisors. The survey results indicate that, in many cases, basic financial planning concepts are not addressed in the advice provided. For example, nearly a third (31%) of those surveyed were unable to say their advisor ever talked to them about concepts such as planning for retirement, for education, or for buying a home. 49% of mass-market investors said their advisor spent less than an hour, in total, communicating with them during the past year or didn't communicate at all. For small investors, the figure is 68% (less than an hour p.a. or no contact at all).In other words, much of the industry hype about the value of advice is hype. This is a socio-economic issue the CSA and SRO's have to address when designing the SRO framework.

Investor Outreach needs work

For the vast majority of Canadians, the SRO's are invisible. I recommend that the SRO's increase publicity and profile, improve investor educational materials (using plain language), engage investors pro-actively and listen better to the public.

Improved compliance monitoring can improve investor outcomes

In September 2019 Morningstar published Global Investor Experience: Fees and Expenses Report https://www.morningstar.com/lp/global-fund-investor-experience that grades the mutual fund investor experience in 26 countries. Canada ranks "Below average" in terms of fees and expenses in the report, although this represents an improvement from past years. Canada's fund industry has crawled out

of the basement in Morningstar Inc.'s global rankings of fund investor costs, but remains "Below average" due to the impact of high ongoing fees.

Exhibit 1: Fees and Expenses Scorecard

Top	Above Average	Average	Below Average	Bottom
= Australia	↓ New Zealand	↑ China	↑ Belgium	↓ Italy
= Netherlands	↓ Sweden	= Denmark	↑ Canada	= Taiwan
= United States	↑ Switzerland	↑ Finland	= France	
	= Thailand	↑ India	= Germany	
	= United Kingdom	= Japan	= Hong Kong	
		= Korea	* Mexico	
		= Norway	= Singapore	
		↓ South Africa	= Spain	

Source: Morningstar, Inc. Grade change indicators: ↑ Improved since last study ↓ Declined since last study = No change since last study *New to study

I am of the firm conviction that stronger compliance/ enforcement and better investor education programs by the SRO's could have significantly reduced the fee scalping of Canadians. This feature should be addressed when formulating the new SRO.

Enforcement efficacy needs to be improved

A very small percentage of complaints are investigated and reach enforcement. The CSA should try to understand why this is the case. Associate Professor Mark Lokanan (Associate Professor, Accounting Faculty of Management) Royal Roads University has submitted a Comment letter to the Ontario Taskforce. Some of his findings have implications for designing a new SRO. These include:

- In regulating securities trading, regulatory agencies must take into account the professional and organizational culture of the firms and their compliance policies
- Since there is a greater chance of delays or defaults on assessed fines as the fine collection rate from the individual offenders (25%) is far less than Firms that are at 100%, according to the IIROC's 2018-19 annual report. Therefore, if the individual fines are tied to the Firms, there are better chances for SROs to recover fines. Doing so will certainly impel the dealer firms to revisit their policies and train their agents to ensure they always comply with the rules.
- The trust and confidence of investors in capital markets can be strengthened when fraud or other non-compliances are detected early in their initial stages and avoid huge losses to investors. Implementing machine learning algorithms in the securities markets to detect non-compliance trading activities could improve detection
- There is a clear need to better understand the efficacy of SROs vis-à-vis enforcement.
- Consistency in applying both mitigating and aggravating factors in penalty
- hearings will bring a unified SRO a step closer to regaining public trust

- Enhanced investor protection can be achieved by focussing effort on seniors (>65), retiree, females, limited investment knowledge, and net worth since they are at greater risk of being victimized from investment fraud
- A more detailed review of the IIROC's legal, mandate, governance, limitations, and accountability frameworks as the oversight institution for certain aspects of securities market operations based on self-regulation, and how these conditions may affect decisions on the imposition of penalties (with and without 'capture' by members) should be carried out.
- The Hearing panels need to follow a standardized format of reporting the 'Decision and Reasons' in each case so cases can be analyzed to assist future decision-making and policy.
- Remove Quasi-criminal offences from the jurisdiction of the SROs because the internal resolution of such cases provides an opportunity for the offenders to get away with relatively benign penalties.

Source:
https://viurrspace.ca/bitstream/handle/10613/23361/Comment_Letter_Taskforce.pdf?sequence=1&isAllowed=y

I also recommend that disgorgement cash from Settlements should be returned to victims, not retained by the SRO. Indeed, I'd support a greater emphasis on investor restitution in general. If a trade-off had to be made between fines and investor restitution, I'd support making people whole.

SRO Dealer Complaint handling unfair

Per OBSI's 2019 Annual Report, there were 200 investment complaint cases opened for IIROC dealers and 138 for MFDA dealers. Of closed cases, 45 % were in favour of IIROC clients and 51% were in favour of MFDA clients. So, about half of the cases reviewed by OBSI result in client compensation, an indication of weaknesses in dealer complaint handling. I personally view robust complaint handling as a cornerstone of effective investor protection. The MFDA has sanctioned a number of dealers for deficient complaint handling (See the recent Keybase case https://mfda.ca/settlement-agreement/sa2017100/).I could find no evidence of an IIROC Member Firm being sanctioned for deficient client complaint handling.

It has been said that you can learn a lot about the integrity of an industry by the way it treats those who file complaints. That is where the rubber hits the road. Based on my experience with MFDA and IIROC dealers, I conclude that dealer client complaint handling is abusive and unfair to complainants. In its 2016 report, the OBSI Independent reviewer stated that 18% of cases were low-balled. If this is what happens when OBSI is involved, one can only imagine the state of affairs when OBSI is not involved.

We don't have to imagine. I can report from direct experience that Firms:

- Are dismissive , blame the investor
- Ignore key facts , fail to address the actual complaint filed
- Knowingly use flawed KYC as the basis for denying compensation

- Blame the market for losses despite a portfolio filled with risky investments

- Use a loss compensation model (book loss) that does not make the complainant whole
- Use signed investor documents as a shield for denying compensation
- Falsely claim the complainant is an experienced investor and knew the risks involved with the recommendations
- Make low-ball settlement offers to close the case, knowing that investors have little recourse

In a nutshell, the complaint handling system is broken –the Consultation is providing an opportunity to fix it .I recommend an overhaul of SRO rules regarding Dealer complaint handling and enhanced compliance monitoring. More emphasis has to be put on securing investor restitution.

SRO's should have an investor advisory Panel

In order to bring the voice of the investor to the Board, the modern SRO should have an Investor Advisory Panel .This should be financed by the SRO and should include cash for contracting for independent research as required.

As a retired senior I now mange my own investments after learning the hard lessons of dealing with untrustworthy conflicted advice from SRO Firms. It is very important that the CSA not permit SRO's to stifle innovation among discount brokers or limit access in order to protect the interests of full service brokers. See APPENDIX I. I also do not recommend that robo-advisors be regulated by SRO's until they are totally transformed into a "new" SRO.

I hope these comments are useful to you.

Please feel free to publicly post this Comment letter.

Peter Whithouse

APPENDIX I Regulatory Overreach- IIROC Guidance on Discount brokers

SRO's may overreach in their zeal for control .For example, we have asked the CSA to recall IIROC Guidance on OEO 11-0076 http://www.iiroc.ca/Documents/2018/54df3aa0-06d8-48fd-8e93-ce469be1c650_en.pdf [It has not done so as of the date of this report]

A Kenmar Associate's comment letter took IIROC to task for the attempt to curtail access to the excellent tools offered by discount brokers. https://www.iiroc.ca/Documents/2016/9557bad7-f6f4-4d75-8a37-4dbed68fd788_en.pdf Respected blogger and CFA holder Andrew Teasdale critiqued the guidance in his blog *Comments on IIROC's proposed guidance on Order Execution Only guidance* http://blog.moneymanagedproperly.com/?p=5835 So did industry participants.

I quote from the IIAC Comment letter (https://www.iiroc.ca/Documents/2017/abd57f24-6c2f-4213-a87e-0534fc11d57a_en.pdf) on the IIROC proposed Guidance: "Industry's Key Concerns: The *industry has many major concerns with the proposed Guidance. The key concern of our member firms is that clients may use online "educational" tools, products and information containing inaccurate data and information from unreliable sources in order to make investment decisions if the Guidance is implemented. Investors request tools and information from OEO firms in order to make educated investment decisions. Providing a wide range of documentation and products is to the benefit of the client and this Guidance, if implemented, will not protect the investor and is therefore not in the best interest of the client."*

Questrade had this to say" OEO firms must be permitted to push information to clients so that clients can make informed investment decisions. To prohibit OEO dealers from providing this important information could be harmful to the investor." https://www.iiroc.ca/Documents/2017/d823c1d1-cf1b-4e8a-88fa-858b72136fb2_en.pdf

I also believe that there are two other major concerns with the introduction of the Guidance:
1) An overly broad definition of "recommendation" and its ensuing applicability to both OEO and Advice dealers; and
2) The introduction of an "appropriateness" test. "

Another industry participant, RBC Direct Investing, asked IIROC to withdraw the Guidance Re http://www.iiroc.ca/Documents/2017/b8e3e93c-f7b6-4aaa-8576-74b0a10b9e3d_en.pdf So, basically industry participants did not support the proposed Guidance and expressed concerns. Investor advocates including SIPA, FAIR, Kenmar, individual DIY investors and the OSC's own IAP vigorously opposed the guidance. Yet here we are today stuck with Guidance that could harm retail investors and is clearly not in the Public interest. Discount brokers provide a safe, low-cost method of investing and through various tools, simulators and calculators assist in developing financial capability. Implementing the guidance could limit innovation, unduly constrain access and add to client costs.

It is very clear - there is no serious problem, DIY investors are not being harmed, all investor commenters said "Hands Off", and satisfaction with Discount brokers was very high. In order to justify their inappropriate action, IIROC had to redefine recommendation and advice to fit their approach to constrain discount brokers. We very much doubt if statutory Securities regulators ever conceived of these convoluted definitions. The consultation process itself was flawed – the submission timeline had to be extended twice, underlying research was not disclosed and claims of extensive consultation with advocates were rebutted. Despite IIROC's unsubstantiated assertions, discount brokers do not provide personalized investment advice.

What is galling is that despite the lack of support from stakeholders, industry and investors, IIROC issued the Guidance anyways with minimal change.

An SRO should not have the power to redefine recommendation and advice for the entire financial services industry especially via Guidance that bypasses formal regulatory approval. Such power should be left to statutory regulators and then only after adequate research and consultation. In this case, the IIROC Board were passive observers during the proposition phase, consultation phase and on the comments received phase. This consultation should never have happened in my opinion. The Board of a modern SRO should be composed of individuals who will act when such overreaches of power and anti-investor initiatives appear.

July 30th, 2020

Reference: Canadian Securities Administrators (CSA) Consultation Paper 25-402

To whom it may concern at:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

I would like to submit my response to the Canadian Securities Administrators (CSA) Consultation Paper 25-402 - the review of the regulatory framework of self-regulatory organizations (SRO) that is comprised of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). The Consultation Paper is designed to elicit responses from industry representatives, investor advocates and the general public. It is this last category, the general public, that I represent- I have neither worked with any of the investment firms (I use this term broadly to refer to any organization involved with wealth management or money management) nor worked for a regulatory body.

My interest this matter stems from my observations of prevalent misconduct in the wealth management industry. This has resulted in significant financial losses to investors that was not prevented, or detected in a timely manner, by a number of parties charges with oversight of these entities. In my view no other industry is responsible for so much deliberate, or unintentional, losses incurred by the average member of the Canadian public.

I would like to preface my comments by acknowledging the complexity of the wealth management industry. From the inception of an investment to the release of capital are many participants, with varying objectives, overseen by a patchwork of different parties. Whenever the owner of an asset is distinct from the manager, or custodian, of such assets there will always be a conflict of interest between the manager in discharging their fiduciary duties and the owners who seek capital preservation and a return on their investment. For example, an asset-backed security that starts with the homebuyer who purchases a house requires a portion to be funded by debt. The debt is borrowed from a lender (e.g., a bank) who, in turn, pools or collateralizes similar loans in to a marketable security. The illiquid asset, the loan to the homebuyer, has now been transformed into a tradable asset with underlying features and risks based on maturity date, interest rate, inflation assumptions and default or delinquency rates. Such securities are purchased by the investment industry who in turn retains brokers to promote these products to institutional investors, such as hedge funds, and eventually the general public, referred to as retail investors. Overseeing the efficacy of this flow of services and information are credit agencies, regulatory bodies and auditors, both internal and external. By the time the product is available to the retail investor it is incomprehensible, for any party, to understand from inception to completion.

When there are problems and monies are lost it is inevitably the retail investor, the final link in the process, who suffers the greatest harm. The primary reason for these losses is that the system is not designed to protect the retail investors' interests. A broker who is paid above average commissions to promote a product will, on balance, be biased toward this incentive above the best interests of the investor. An investment firm will, on balance, invest in riskier products in order to advertise higher returns regardless of what they've committed to in the prospectus. Likewise the originating funder, the bank in my example above, generally has various incentives that reward employees, and the shareholder, for extracting short-term income from an illiquid, long term asset. All of these opportunities encourages behaviour that deviates from what has been promised or implied by the manager of the assets. The average retail investor is bewildered by the options in the marketplace and is not equipped to discern his or her best interests. The notion of *caveat emptor* is usually offered as justification for such losses. In other words the retail investor is at fault for not performing sufficient due diligence.

The regulator, broadly referring to all oversight bodies, is the most important component of the governance process. The investors' interests must be the regulator's only objective. If the investors' interests are not protected then, over time, all market participants will lose their credibility. Once this happens there will no longer be an investment industry. The sole purpose of the regulator has to be to protect the investor. Any other objective, such as reducing "duplicative" costs between SROs, is a distant objective. Furthermore, duplicative costs indicates that there are problems with the oversight of participants. This is as a result of, and not the cause of, regulatory inefficiencies. Costs will be borne by money managers if they can demonstrate to the investor that their best interests are maintained. I am not sure if it was by design or by accident but I found it curious that public confidence in the regulatory framework was the 6th of 7 questions contained in the Consultation Paper. All other matters mentioned in the Consultation Paper are of limited, or perhaps academic, interest to the regulator. The only adjunct to investor protection is to mitigate investor confusion when trying to resolve complaints.

I have provided below a small sample of damages inflicted upon the retail investor. Based on the number of cases within the last few years it appears that this system has been manipulated by unscrupulous individuals to quietly, or blatantly, obtain the most amount of money from an unsuspecting public. Minimal repercussions to the individuals involved exacerbates this behaviour with repeat offenders often plying their trade under a different guise.

To wit:

<u>Fortress Real Developments Inc.</u>

From 2008 to 2017 Fortress raised $920 million from 14,000 retail investors to become Canada's largest syndicated mortgage company. Fortress promised investors the opportunity to invest in syndicated mortgages that offered an 8% return. The loans were to be secured by a mortgage against the property in order to register a claim on the land. In fact Fortress was investing in developers in the early stages of financing (design and engineering costs) which contain significant risks given that zoning approval may not be in place. Traditional lenders avoid this asset class due to the risks involved. Fortress encouraged investors to use RRSP funds if they were not able to raise the minimum $30,000 requirement. Fortress pursued Chinese and Portuguese immigrants who were not familiar with the language or the nature of these products. Investors were encouraged to speak to certain lawyers who were employed by Fortress which is a conflict of interest. Furthermore Fortress offered a commission of 15% to brokers, investment advisors and insurance agents versus the typical range of 2% to 4%. Brokers were also invited to Leaf and Raptor games and introduced to retired athletes at private events. In some of the syndicated deals with the developers part of the investment was set aside to pay interest to the lenders rather than from the developer's cash reserves. In other words the lenders were being reimbursed with their own money. The RCMP is now involved and have raided the head office of Fortress. **The retail investor was not protected.**

As background, in 2005 the MFDA imposed a life-time trading ban on the founder of Fortress. In 2007 this individual encouraged his clients to invest in penny stocks of a BC-based company. By 2009 this scheme had unravelled and the promoter was fined $10 million by the BC Securities Commission. In 2011 the Ontario Securities Commission (OSC) reached a voluntary settlement with this individual and he disgorged $2.7 million, paid a fine of $250,000 and admitted no wrong-doing. He then went on to form Fortress. **The retail investor was not protected.**

Cannabis Sector in Canada

Approximately 80% of shareholders in the cannabis sector today are retail investors. These investors have lost millions of dollars while a number of Bay Street stock promoters, hedge fund managers and investment bankers earned hundreds of millions of dollars before exiting at the peak market value. Most institutional investors exited their positions at the time of the initial public offerings. For example, a number of hedge funds profited by "shorting" the stock, knowing that the shares would be discounted when issued to the market. The hedge funds purchased a large portion of the financing which in turn was sold to retail investors who essentially funded these gains. I understand that this practice is being investigated by the OSC. **The retail investor was not protected.**

Robinhood Markets, Inc. & WealthSimple

Although this example is from the US there are components that are relevant for Canada. Robinhood Markets, Inc. (Robinhood) offers no trading fees or account minimums for its investors. However Robinhood is coming under scrutiny for targeting young, unsophisticated investors. According to research firm Alphacution Research Conservatory, Robinhood trades riskier products at a faster pace than any other retail broker. For example, in the first three months of 2020 Robinhood customers traded 40 times as many shares as Charles Schwab Corporation (Charles Schwab) customers and bought and sold 88 times more risky option contracts. The average age of a Robinhood customer is 31 and half of its customers are first-time investors. Although Robinhood is not being paid by its customers it is receiving money from "payment for order flow". When a Robinhood customer commences a trade there are Wall Street firms purchasing and selling these shares. These firms determine the price that the customer receives/ pays. These firms are engaging in financial arbitrage; they set the price to the customer, earn money on the margin and pay Robinhood a commission. Apparently most (all?) investment managers are involved in this practice. However, using dollars per average customer account, Robinhood earned $18,995 from the trading firms while Charles Schwab earned $195. **The retail investor was not protected.**

Wealthsimple, a Canadian money manager, is proposing a crypto-trading platform that will not charge a commission on trades but will earn money on the spread by working with liquidity providers that buy and sell from their own book of business. This appears to be a conflict of interest and room for abuse - **how will this be fair to the retail investor?**

Pace Securities Corporation

Pace Securities Corporation (Pace Securities), a subsidiary of Pace Savings & Credit Union, has been charged with conflict of interest and selling unsuitable financial products to its clients. IIROC is seeking to discipline two former senior executives at Pace Securities. As of April 2020 the shares of Pace Securities have lost 92% of their value. Pace Financial Limited (Pace Financial) and Pace Securities share the same Chief Executive Officer (CEO). This CEO approved $2.4 million in management fees paid from Pace Financial to Pace Securities. Pace Securities in turn sold high risk investments to clients who had indicated a medium to low risk tolerance. Several of these clients are at or near retirement age, acknowledged that they were unsophisticated in financial matters and expressed concern that the investment advisors at Pace Securities did not explain the risks involved with these products. The CEO has commented that these investors must have revised their investment preferences. How is this fair to the retail investor? Incidentally, Pace Credit Union (Pace Credit) with 39,000 employees was under the control of the Financial Services Regulatory Authority (FSRA) of Ontario. In September of 2018 the Deposit Insurance Company of Ontario seized control of Pace Credit due to a fraud being committed by the President and his son. The FSRA then launched an investigation of its own staff to see if they ignored warning signs since the fraud was so prevalent. **The retail investor was not protected.**

Stableview Asset Management

Stableview Asset Management (Stableview) managed $30 million on behalf of 135 clients with the primary objective of “capital preservation”. The OSC found that Stableview invested in a thinly traded real estate valuation technology company which put Stableview in breach of its commitments to diversify its investment portfolio - it went from 45% to 83% concentration - and maintain liquid investments. Additionally Stableview was paid $105,000 from this company which was withdrawn by the owner of Stableview for his own use. This was not disclosed to the investors which is a conflict of interest. Stableview is now in receivership and it is unlikely that the investors will receive their principal. **The retail investor was not protected.**

Paramount Equity Financial (Paramount)

From 2014 to 2016, 500 investors contributed $78 million to two funds that were supposed to be financing pooled mortgage products. The marketing material of Paramount promised that investor funds would be invested in securitizing mortgages for second mortgages on single-family homes. In fact the funds were invested in land to be developed for multi-residential apartment buildings. These developments have subsequently failed. Investors were promised that the loan-to-value ratio would not exceed 85%; however of six deals reviewed four deals uncovered a ratio of over 150% and two deals could not be reviewed since there was no appraisal of the properties. Furthermore the CEO of Paramount also had ownership interest in many of the development companies which is a conflict of interest. An expert witness has highlighted an absence of policy, documentation and credit risk processes. The OSC is pursuing this matter. **The retail investor was not protected.**

Investment Advisor

A retired Ontario Provincial Police (OPP) officer is currently being investigated by the OSC and the OPP. He has been accused of implementing a "Ponzi scheme" and has several current and retired OPP officers as clients. He was promising returns of 21 to 26% on his investments. **The retail investor was not protected.**

FS Group

FS Group has been ordered by the BC regulators to pay fines of $37 million for harming over 400 investors. Its founders have been banned from the BC investment markets forever. Investors were not told that FS Group was unprofitable and that short-falls were being covered by raising more money from investors. No prospectus was filed by this organization. Investors were promised returns of 10 to 12%. FG Groups's 100 agents were supposed to be selling insurance and not investing in unsecured loans. The regulator has stated that it is unlikely that FS Group can repay its investors. **The retail investor was not protected.**

TD Waterhouse

The IRROC has fined TD Waterhouse $4 million because of disclosure errors in 175,000 client accounts. There were problems with the book costs of investments used to reflect the purchase price and transaction charges. IIROC claimed "systemic weaknesses in TD Waterhouse processes" and did not accept their explanation that they forgot. **The retail investor was not protected.**

Fortune Financial Management

In the mid 1990's Fortune Financial Management was one of Canada's largest financial planning companies with over 550 employees and $7 billion in assets under management. A Chief Financial Officer for one of the funds accused the company as operating as a Ponzi scheme and approached the OSC with his concerns. The CEO is being pursued by the OSC who in turn took this case to the Ontario Court of Justice. **The retail investor was not protected.**

The Quadriga Fund

The OSC has recently announced that The Quadriga Fund (Quadriga), formerly Canada's largest cryptocurrency/ bitcoin exchange trader, was a "Ponzi scheme". EY concluded, as a part of their review, that standard segregation of duties and internal controls did not exist at Quadriga. 76,000 customers, 40% of whom reside in Ontario, are owed over $215 million. EY has recovered $46 million leading to a $169 million shortfall. $115 million of this shortfall arose from fraudulent trading and another $28 million was lost by the principal while trading client money on other exchanges. And investors do not have access to federal deposit insurance since this coverage does not extend to crypto currencies. Once again the retail investor is suffering losses. **The retail investor was not protected.**

EY

EY reached an $8 million settlement with the OSC, while admitting no wrongdoing, regarding the Sino Forest audit. The OSC concluded that EY did not demonstrate professional scepticism by not questioning the ownership of standing timber reserves in China. Additionally EY had to settle for $117 million in class action lawsuits filed by investors who relied on the audited financial statements. **The retail investor was not protected.**

BDO Canada

In January 2020 BDO Canada settled with the OSC for $4 million for failing to comply with professional standards with respect to audits in 2014 and 2015 of two privately offered investment funds. The "directing mind" behind the funds admitted to fraud in 2018. BDO was deemed to be non-compliant with generally accepted auditing standards when valuing the 2 funds. **The retail investor was not protected.**

Westboro Mortgage Investment LP (Westboro)

Alternative mortgage lender Westboro has suspended redemptions to investors in May 2020. Westboro blossomed since 2008 as rising prices for real estate and stricter underwriting practices by the banks led to alternative providers who offered a higher rate of return albeit with higher risks. Unlike all of the above examples there is no suggestion of fraud or incompetence; however a number of investors were surprised at this announcement. **Has the risks of these types of investments been explained to the retail investor? How far does *caveat emptor* apply in the marketplace?**

Responses to the Consultation Paper

The examples above demonstrate issues with wealth managers, regulators and the auditors overseeing their financial statements and internal controls. This is not meant to be an exercise in demonizing the regulatory agencies - there are many examples where the OSC or the SRO's are pursuing the culprits. However, almost without exception, it is the retail investor who suffers the most harm. The efforts of the oversight bodies and penalties meted out, either civil or criminal, are not sufficient deterrents to bad or irresponsible behaviour.

There is no point in highlighting the foibles of the existing process without offering a solution. It is too much to expect that the custodian of funds will always act in the best interest of the providers of capital. It is too tempting, and too slippery a slope, to divert these funds for personal gain or to obviate previous losses. Because there are so many steps in the investment process, involving different oversight bodies, the current regime does not lend itself to a "cradle to grave" protection of the investor. The only solution is to monitor the wealth management parties by proactively tracking the commitments of the money manager to their investment strategy. I have provided my suggestion below and answered the seven questions contained in the Consultation Paper.

There are three general areas of concern that has been identified in the analysis above of offending parties. The biggest concern is that the wealth manager is not investing the funds appropriately. For example if the prospectus commits that investors funds will be invested in residential mortgages then the regulator has to be provided with independent/ third party evidence, at the time the funds are discharged, that this is the case. And the investment would have to be monitored to ensure that the funds were not diverted for another purpose; similar to an insurance company notifying interested parties if the insured cancels their insurance. By obtaining this confirmation early in the process the regulatory process has evolved from reacting to problems to monitoring the activities of market participants. Over the longer term the costs to the investor will be smaller than the losses incurred by losing their capital. There are many other aspects to consider when designing this process; the overriding mantra is compliance with the terms and conditions of what has been promised to the investor. This model would encompass all material assertions of the money manager. The compliance program would identify unusual key performance indicators (KPI) assertions. A second concern that I have is money managers promising outsized returns on their investment. For example, if the money manager is promoting investment returns above what would be reasonable for similar underlying investments then further explanations would have to be provided to justify these returns. And the third general concern I have is conflict of interest. This is the most difficult process to monitor. However, more can be done with this issue. For example, evidence of ownership of assets would indicate if the same party was privy to unusual transactions, either grossly above or below market rates, that would be flagged for follow-up by the regulatory body. This topic requires further analysis before a suitable model could be designed.

1.1 Duplicative Operating Costs for Dual Platform Dealers

This compliance program should be designed to measure all KPI. This may have to be as specific as product based regulation, particularly if a product deviates from the standard offerings. There will be on-going costs to monitor the indicators for evidence of non-compliance. This is a change in approach but not an onerous task. And it is most effective if managed by less, rather than more, parties. I advise that one regulatory body assumes responsibility for the complete process. And within this body the process should be confined to as few individuals as possible in order that Parkinson's Law - which states that people are hired to create more work, rather than as a result of more work - can be avoided. Similar requirements from different SRO's will be avoided and the costs for compliance to the wealth manager will be transparent. The solution focuses on investor protection while allowing the SRO's to provide the other services contained in their remit.

2.1 Product-Based Regulation

Another advantage of the above approach is that it aligns the various stakeholders with a common objective- to protect the investor. One body assigned responsibility for monitoring this program will result in less investor confusion when trying to resolve complaints.

3.1 Regulatory Inefficiencies

I have addressed this point in my responses to questions 4.1 and 5.1 below.

4.1 Structural Inflexibility

I have two points to offer. Firstly, one would hope that a regulator would be slow to respond to new products in order that they can perform sufficient due diligence. Advances in technology are not always beneficial to the investor- see my example of Robinhood above. Secondly, a new product that meets the requirements of appropriate monitoring, as I have outlined in my solution, should assuage concerns from the wealth managers that there are undue delays in issuing products to market. I agree that there are too many agencies involved in the process and I would like to see one administer of all of the steps involved - from creation to funding to investing in the products.

5.1 Investor Confusion

There is no question that this is a significant issue and follows closely my chief concern that investors are not being protected. There are so many categories and titles combined with regulatory overlap that it must be overwhelming for the average retail investor to resolve a complaint. And if the investor has lost all or a part of their investment then no resolution process will be satisfactory. My solution is to advocate for the interests of the investor and this should hopefully reduce both the severity of the financial harm and the volume of complaints.

6.1 Public Confidence in the Regulatory Framework

This is, as I have said in my introduction, the main issue. I have nothing further to say other than to warn that the public's patience with this industry surely will reach a breaking point unless demonstrable improvements to investor protection are implemented.

7.1 Separation of Market Surveillance from Statutory Regulations

I have already provided a solution in my response. Statutory regulation is the design of the program that has as its objective administering compliance with the prospectus or other promotional material: market surveillance monitors ongoing compliance with the performance of the money manager. And to be clear performance is not financial performance but compliance with the objectives of what the investor has been promised. I believe both roles should be under the auspices of one regulatory body, one department and ideally one individual.

I hope my thoughts, on how to design an effective regulatory framework for the wealth management industry in Canada in order to protect the average retail investor, are helpful.

Philip Maguire, C.P.A., C.A.

Bonjour,

Il existe présentement 2 structures pour gérer les courtiers de plein exercice et les courtiers en fonds mutuels. Les 2 gèrent des placements pour leurs clients, la réglementation devrait être la même. La simplification amènera sûrement une réduction des coûts. Je suis d'avis qu'il faut repartir à neuf, un nouvel organisme à jour pour les années 2020 et plus. Ne pas prendre les bases d'un organisme des années 1980.

Un point qui me touche en tant que planificateur financier est le profil d'investisseur et le CVC (Connaître Votre Client). Dans mes études menant au titre de CFA, j'ai appris à rédiger un énoncé de politique de placements et à gérer les placements selon les objectifs des clients. Un client dont l'objectif est la retraite avec un portefeuille 60% croissance/actions et 40% revenu/obligations pourrait avoir 100% de son REER en obligations et 100% de son CÉLI en actions et 80% de son compte non enregistré en actions/20% en obligations. L'important est qu'au global son portefeuille soit 60% croissance et 40% revenu. Donc on devrait faire 1 seul CVC qui regroupe plusieurs comptes. On ne devrait pas avoir à faire des objectifs par compte, ça mélange les clients et souvent la planification fiscale n'est pas optimisée. Le client sait que l'on vise 60% actions au global. Venir lui dire que le REER est 100% obligations, le CÉLI 100% actions et le non enregistré 80% actions et 20% obligations, ça vient le mêler. Et c'est beaucoup plus de paperasse. Si un client a un REÉÉ ou un compte pour acheter un bateau dans 1 an, alors on fait un CVC différent pour ces comptes-là. Mais pour 90% des clients, l'objectif sera la retraite, donc 1 CVC.

Ça ne touche probablement qu'un point parmi tant d'autres, mais c'est très important afin de réduire le fardeau de conformité qui pèse sur les conseillers et les courtiers. Et simplifier la compréhension pour les clients. C'est juste logique.

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Planificateur financier