Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA Position Paper 25-404 - *New Self-Regulatory Organization Framework*

August 3, 2021

1. Introduction

In December 2019, a Canadian Securities Administrators (**CSA**) working group (the **Working Group**[1]) was formed to conduct an in-depth review of the current framework for the two Self-Regulatory Organizations (**SRO**s) – the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**).[2] Since then, as part of this SRO Framework Review Project (the **SRO Project**), the Working Group has completed extensive stakeholder consultations, collected data and conducted research relevant to the assessment of the current regulatory framework, and developed and executed a methodology to identify, evaluate and rank the options for addressing the issues identified within the current SRO framework. To date, all of the Working Group's activities have been completed in accordance with its project timeline, including the publication of this CSA Position Paper (the **Position Paper**).

Below, is a detailed breakdown of key steps in the SRO Project to date:

- On December 12, 2019, the CSA issued a news release announcing its comprehensive review of the regulatory framework for IIROC and the MFDA.

- In late 2019 and early 2020, the Working Group completed informal consultations with a wide variety of stakeholder groups to solicit views regarding the current SRO regulatory framework.

- On June 25, 2020, the CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework* (the **Consultation Paper**) was published for a 120-day public comment period. The Consultation Paper sought public input on seven key issues identified.

[1] The Working Group consists of staff of the following CSA regulators: the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission of New Brunswick, the Manitoba Securities Commission, the Nova Scotia Securities Commission and the Ontario Securities Commission.
[2] The work also included the SRO's respective protection funds - the Canadian Investor Protection Fund (**CIPF**) and the MFDA Investor Protection Corporation (**MFDA IPC**).

- A total of 67 letters were submitted from a broad range of respondents which included diverse comments on the specific issues raised in the Consultation Paper. These comments were reviewed and are summarized in Appendix A of this Position Paper.

- In addition to the public consultations, the Working Group compiled substantial additional information and conducted research to inform its work, which is described further in section 2 of this Position Paper.

- On February 22, 2021, the CSA published a news release to update the public on the progress of the SRO Project and to confirm the intention to publish the Position Paper in the summer of 2021.

Guiding Principles were developed to inform the Working Group's research and analysis, and to ensure that the solutions to address the issues identified in the Consultation Paper were consistent with the CSA targeted outcomes from the Consultation Paper. Each Guiding Principle was adopted with the objective to support the development of a regulatory framework that has a clear public interest mandate and fosters capital markets that are fair and efficient. As a result, the regulatory framework will be structured to focus on investor protection to promote public confidence and to accommodate innovation and change.

Accordingly, the Working Group focused on identifying solutions that:

1. enhance governance and accountability to all stakeholders to (i) reflect a clear public interest mandate and (ii) foster public confidence in the regulatory framework, while preventing regulatory capture;

2. promote the development, interpretation and application of consistent regulatory requirements;

3. include formal investor advocacy mechanisms to ensure that investor perspectives are factored into the development and implementation of regulatory policies;

4. contain mechanisms to improve the robustness of enforcement and compliance processes and the provision of public information about meaningful, timely, coordinated and responsive enforcement and compliance actions;

5. ensure regulatory alignment with the CSA through appropriate oversight mechanisms;

6. increase regulatory efficiencies, accommodate innovation, and deliver effective and efficient regulation by minimizing redundancies and complexities, and ensuring flexibility and responsiveness to the future needs of the evolving capital markets;

7. do not impose barriers to registrants providing access to advice and products for investors of different demographics, including less affluent or rural investors;

8. develop, interpret and apply securities regulation in cooperation with the CSA;

9. provide risk-based regulation that is proportionate to different types and sizes of registrants and business models, as well as facilitating holistic and "one-stop-shop" business models for the benefit of investors;

10. are easily understood by public and industry stakeholders, and responsive to their concerns;

11. facilitate meaningful consultation and input from all types of registrants, including smaller and independent firms, without undue barriers to entry;

12. recognize and incorporate regional considerations and interests from across Canada;

13. foster efficient, effective cooperation and coordination with statutory regulators, for example, timely access to market data with processes in place to promote collaboration to ensure that the statutory regulators collectively obtain appropriate outcomes; and

14. are able to provide an effective market surveillance function.

As outlined below, the CSA's position is that the objective will be best addressed by establishing a new single enhanced SRO (**New SRO**)[3]**,** and separately, consolidating the two current investor protection funds (**IPFs**)[4] into a single protection fund which will be independent from the New SRO. This structure represents the best solution to address the issues that have been identified and to provide a framework for efficient and effective regulation in the public interest at this point in time and, as the capital markets continue to evolve, into the foreseeable future. This New SRO is described further in section 3 of this Position Paper.

At the same time, the CSA recognizes the critical importance of existing SRO and IPF staff expertise and the continuation of their work during the transition to a new framework. The CSA will oversee that the existing SROs and IPFs remain committed to maintaining the functional resources and personnel necessary to achieve a successful transition.

The remainder of this Position Paper follows the below structure:

- Section 2 – Methodology
- Section 3 – New SRO Framework
- Section 4 – Specific Solutions to Support the New SRO
- Section 5 – Consideration of Written Representations and Next Steps
- Addendum – Recognition of the New SRO in Québec
- Appendix A – Summary of Public Comments
- Appendix B – Other Options Considered

[3] Specific considerations regarding the framework currently applicable in Québec are further addressed in the Addendum.

[4] Currently, CIPF is providing protection on a discretionary basis within prescribed limits to eligible customers suffering losses as a result of an insolvency of an IIROC dealer member. The MFDA IPC provides analogous protection to eligible customers of MFDA members.

- Appendix C – Enabling Changes
- Appendix D – Table of References

2. Methodology

The Working Group adopted a systematic approach in order to determine the most appropriate option for enhancing the current SRO framework in Canada. As such, a comprehensive methodology was developed in order to:

1. assess, validate and rank the seven issues (and sub-issues) identified in the Consultation Paper;

2. identify and consider numerous potential solutions to address those issues and related sub-issues; and

3. select the most appropriate solutions to best address the identified issues and sub-issues. As noted above, guiding principles were developed to ensure that the selected solutions were consistent with the targeted outcomes as described in the Consultation Paper.

The following is a detailed description of the Working Group's methodology:

Review and analysis of public comments and additional work undertaken

In response to the Consultation Paper, 67 public comment letters were submitted, reviewed, and summarized. In addition, the Working Group carried out supplementary independent research and analysis to evaluate the issues and sub-issues, as well as to identify additional areas that needed to be accounted for to inform the Working Group's assessment regarding potential solutions. The additional work included a review of:

- relevant additional information and data from IIROC and the MFDA;
- enrolment data from the Canadian Securities Institute;
- survey data from CIPF regarding investor awareness of the protection fund;
- more than 25 relevant publications, including academic research;
- various public and internal reports;
- research on corporate governance matters;
- consultations with relevant internal CSA stakeholders;
- relevant comment letters from the Ontario Capital Markets Modernization Taskforce consultation; and
- existing legislation and other research by a sub-group established to determine if a harmonized regulatory approach related to directed commissions could be achieved across Canada.

Issue validation

The Working Group used the aforementioned research and analysis to validate the vast majority of the issues and the respective sub-issues identified in the Consultation Paper. In cases where there was no substantial evidence to validate certain issues and sub-issues, the Working Group made recommendations to strengthen existing control mechanisms and identify opportunities for enhanced information sharing and other procedural changes.

Consideration of multiple options for the enhanced SRO framework

Concurrent with the issue and sub-issue validation process, the Working Group identified and defined six possible options (the **Options**) to restructure the SRO framework in the context of the SRO Project for further consideration and detailed analysis.

The Working Group developed and applied a comprehensive decision-making methodology to evaluate all the Options. In particular, the Working Group identified, for each Option, specific solutions pertaining to each issue and sub-issue and evaluated how well each Option would address or resolve the identified issues and sub-issues to achieve the CSA targeted outcomes of the SRO Project.

The Working Group then constructed and applied quantitative analysis to derive comparative numerical total scores and rankings for each of the Options. These rankings were based on how identified solutions for particular issues and sub-issues were scored within each Option. Various additional factors were also assessed, scored and factored into the overall evaluation to determine the best Option for the enhanced regulatory framework in Canada. These factors included timing, resourcing, investor concerns and regulatory burden considerations.

3. New SRO Framework

As described in section 2, the Working Group applied a fact and data-based approach to the assessment of the Options, and after careful consideration and analysis, the CSA has decided to move forward to implement the New SRO, which includes consolidation of the IPFs into a single legal entity that is independent from the New SRO (**New IPF**). Other Options evaluated are described in Appendix B.

The New SRO will have an enhanced governance structure, relative to the current governance structure of IIROC and the MFDA, and will initially include investment dealer and mutual fund dealer registration categories as well as marketplace members. The potential to incorporate other registration categories currently overseen directly by members of the CSA will be considered as part of a separate phase. The proposed framework includes specific solutions to best achieve the CSA targeted outcomes identified in the Consultation Paper by:

- eliminating duplicative costs and minimizing regulatory inefficiencies;
- promoting access to advice for all investors;
- reducing investor confusion;
- enhancing structural flexibility;
- acknowledging proportionate regulation;
- establishing a graduated proficiency model;
- streamlining the complaint process;
- increasing controls and improving transparency of enforcement mechanisms; and
- enhancing market surveillance.

The CSA has determined that the New SRO and the specific solutions (including the New IPF), as detailed in section 4 below, is the best option to address the issues identified by stakeholders in an equitable and balanced way, and to achieve the CSA targeted outcomes. The new framework will allow the CSA to make timely, meaningful and impactful change that is in the public interest. Additionally, it will continue to provide the industry with the inherent benefits of self-regulation by maintaining a self-regulatory model. Furthermore, the New SRO provides for a harmonized CSA position that will ultimately be of benefit to all Canadians.

New SRO Implementation Process

The process to establish and operationalize the New SRO will have two phases. Phase 1 will focus on the design of the New SRO and the New IPF, the integration of the existing SROs and IPFs under the new framework and the adoption of the issue-specific solutions detailed in section 4 of this Position Paper. Phase 2 will consider whether it is appropriate to incorporate into the New SRO other registration categories, including Portfolio Managers (**PMs**), Exempt Market Dealers (**EMDs**), and Scholarship Plan Dealers (**SPDs**), which are currently overseen by the statutory regulators. Possible modifications to the New IPF (e.g., extending coverage to other registration categories) will also be considered.

All issue-specific solutions outlined in section 4 of this Position Paper will be addressed through these two phases.

Phase 1

An Integrated Working Committee (**IWC**) will be established under a separate CSA approved mandate to determine the appropriate corporate structure for the New SRO and define and oversee the execution of the implementation strategy to integrate the existing SROs and consolidate the two IPFs into the New IPF. Under Phase 1, the IWC will also facilitate the adoption by the New SRO of enhanced governance mechanisms outlined in section 4 of this Position Paper. Upon finalizing the appropriate corporate structure, a public communiqué will be made to include an implementation timeline.

The IWC will be led by CSA staff, and will be responsible to coordinate and work with external advisors and different subject matter experts from within the CSA. The IWC will engage and consult with existing SRO and IPF staff, as well as other stakeholders (including industry and advocacy representatives), as required. Each stakeholder group's active participation and cooperation will be important for a successful implementation. Decisions within the IWC with respect to the implementation of the New SRO will reside with the CSA.

The work of the IWC in Phase 1 will focus on:

- **Integration**: The IWC will identify the appropriate corporate structure for the New SRO and implement a CSA plan to integrate the existing organizations into the New SRO, including required member approvals, and consolidate the IPFs into the New IPF. This will be accomplished through appropriate legal and corporate transaction management in order to optimize outcomes, minimize impact and manage execution risk.

- **Harmonization**: The IWC will oversee and coordinate harmonization of SRO rules, policies, compliance and enforcement processes, and fee models. In developing the New SRO rule book, a policy initiative will focus on the review of current IIROC and MFDA rules in order to identify differences and, if appropriate, propose changes to harmonize rules, policies and related processes.[5]

- **Governance**: Many of the governance enhancements for the New SRO will be incorporated into the new Recognition Orders (**ROs**) to be approved by each statutory regulator. In regard to CSA oversight, necessary approvals will also be coordinated to implement a new Memorandum of Understanding (**MOU**) among the recognizing regulators setting out a strengthened CSA oversight framework for the New SRO reflecting effective oversight by all recognizing regulators. Similarly, the New IPF will require new approval orders and a new MOU among the statutory regulators.

As part of this process, the appropriate oversight relationship management structure between CSA members and the New SRO will be carefully considered and agreed upon amongst all the

[5] The work will include coordination with the appropriate CSA committees (e.g., Registration Steering Committee) regarding applicable changes to securities regulation (e.g., National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*).

recognizing regulators, given that the New SRO will conduct activities requiring CSA member coordination currently fulfilled by two principal regulators (British Columbia Securities Commission for the MFDA, Ontario Securities Commission for IIROC). This consideration is necessary in order to ensure effective, meaningful and coordinated oversight of the New SRO by all recognizing regulators on significant matters and to enhance administrative efficiencies.

Lastly, the IWC will oversee the review and approval of the by-laws for the New SRO to ensure that the new governance structure, pursuant to the terms and conditions of recognition, is properly reflected.

As work in Phase 1 progresses, some initiatives may be implemented by sub-groups of the IWC or by other committees formed by the CSA.

Phase 2

Following Phase 1, a formal consultation with extensive stakeholder engagement will be initiated by the CSA through the formation of a distinct **CSA SRO Working Group,** which will coordinate with the CSA Registration Steering Committee to consider incorporating other registration categories (e.g., PMs, EMDs, SPDs) into the New SRO, including a review to assess the merits of proficiency-based registration categories and a consideration to extend IPF coverage to these other registration categories.

The continuation of harmonization efforts with relevant insurance regulatory bodies, building on current projects such as the joint CSA / Canadian Council of Insurance Regulators project on Total Cost Reporting, will be contemplated in this phase as well.

Appendix C describes other areas where steps will have to be taken in order to facilitate implementation of the solutions outlined in the Position Paper.

4. Specific Solutions to Support the New SRO

Introduction

This section details specific solutions to support the New SRO and to address each of the seven issues and their respective sub-issues identified in the Consultation Paper. As many of the solutions applied to multiple issues and sub-issues, for improved readability, the solutions are characterized into the categories below.

a) Improving Governance
b) Strengthening Proficiency
c) Enhancing Investor Education
d) Increasing Access to Advice
e) Reducing Industry Costs
f) Fostering Harmonization / Efficiencies
g) Harmonizing Directed Commissions
h) Maintaining Strong Market Surveillance
i) Leveraging Ongoing Related Projects

a) Improving Governance

Introduction

In response to the issues identified in the Consultation Paper regarding a possible lack of public confidence in the current SRO regulatory framework, many stakeholders expressed concern that the current SRO corporate governance structure does not adequately support or promote the SROs' public interest mandate. In particular, comments were made that the current SRO corporate governance structure is too closely aligned to the interests of industry participants at the expense of the interests of other stakeholders, including investors. Commenters raised concerns that the composition of the SROs' boards of directors is weighted in favour of current and former industry participants. To address these concerns, commenters suggested several possible solutions, including requiring a majority of independent directors on an SRO's board, appropriate cooling-off periods for independent directors, and formal mechanisms within the SRO to facilitate investor consultation. These requirements would better align an SRO's corporate governance structure with its public interest mandate and mitigate the risk of regulatory capture.

Through its review of these issues and related research pertaining to governance models and best practices, the Working Group validated that the SROs' current corporate governance structure could be improved to optimally support and promote the SROs' public interest mandate. The CSA identified a number of opportunities for improvement to the corporate governance structure for the New SRO, including clear communication of the New SRO's public interest mandate, greater diversity in the composition of the New SRO's board of directors, objective criteria to determine the independence of directors, formalized mechanisms for the consideration of investor feedback, and enhancements to the CSA's involvement in and oversight of matters relating to the SRO's activities and corporate governance structure. The CSA further identified opportunities to improve the corporate governance structure to address issues of investor confusion regarding the current

regulatory structure which would address perceptions that governance shortcomings could be responsible for perceived weaknesses in SRO enforcement mechanisms.

Solutions

Clear communication of public interest mandate

The New SRO will clearly convey how the public interest informs the New SRO's regulatory actions and responsibilities, specifically by:

- Emphasizing the public interest mandate in the ROs, by-laws, and other applicable constating documents of the New SRO.
- Requiring the New SRO to inform stakeholders of its public interest mandate and corporate governance structure, rulemaking processes and enforcement processes.
- Requiring training to directors, board committee members, senior management, and staff in interpreting its public interest mandate, to ensure alignment of the public interest between the New SRO, statutory regulators, and governments.
- Requiring the New SRO to describe the public interest impact of rule proposals, guidance and policies published for comment.
- Requiring the compensation structure for New SRO executives to be linked to the delivery of the New SRO's public interest mandate.

New SRO board composition

The CSA's solutions in respect of the composition of the New SRO's board of directors are intended to address the perception that the current SRO corporate governance structure underrepresents the concerns of investors and other stakeholders to the benefit of industry, and therefore, the majority of directors will be independent and the CSA will have a role in the consideration of independent directors.

Specifically, solutions include:

- Requiring a majority of the New SRO's directors to be independent.
- Requiring that the Chair of the New SRO board be an independent director and that the roles of Chief Executive Officer (**CEO**) and Chair be occupied by separate persons.
- Requiring that the Governance / Nominating committee of the board be composed entirely of independent directors and requiring that the Chairs of other committees such as Audit, Human Resources, etc. be independent.

- Requiring that a reasonable proportion of New SRO directors have relevant experience regarding investor protection issues (as has already been implemented by IIROC).

- Providing a CSA non-objection process grounded in principles-based considerations for all independent directors, including:

    - a mechanism for the New SRO to undertake due diligence and other governance best-practices such as the use of evergreen lists and development of board skills matrices that would take into account the attributes or backgrounds needed for a balanced board, including considering board diversity in terms of (i) director-type and (ii) geographic board representation, which will ensure an equitable balance of interests;

    - a mechanism for the CSA to review the initial matrices and any subsequent changes to them, including a reporting requirement in the RO for material change to the matrices; and

    - considering whether board composition requirements should form part of the by-laws or part of the RO.

- Requiring that appropriate cooling-off periods commensurate with governance best-practices for CSA regulators be considered for any independent director positions.

- Maintaining a workable board size for the New SRO of not more than 15 directors (including the CEO), subject to change with CSA approval.

- Maintaining appropriate term limits[6] for the New SRO board members and extending these term limits to the CEO.

- Requiring the New SRO to develop diversity and inclusion policies aimed at increasing underrepresented groups on the board.

Independence criteria for independent directors

The CSA's solutions respecting the criteria to determine the independence of directors are intended to strengthen the definition of independence and address the perception that even independent directors could be too closely tied to industry. Specifically, solutions focus on:

- Requiring the New SRO to create, in consultation with the CSA, criteria to assess the independence of directors annually (e.g., affiliations with industry associations).

- Ensuring that independence requirements for New SRO directors are at least comparable to those for directors of public companies (as provided for in National Instrument 52-110 *Audit Committees* (**NI 52-110**), with necessary adaptations), including appropriate cooling-off periods. It is recognized that the

[6] The current director term limits are set out within the IIROC and MFDA by-laws.

context of NI 52-110 is different from the SRO context and that other prerequisites will be considered in determining the appropriate independence requirements for the directors of the New SRO.

- Exploring a definition of 'independent director' that excludes those associated with a New SRO member affiliate.

Formal investor advocacy mechanisms

The CSA's solutions in respect of formal investor advocacy mechanisms are intended to facilitate and formalize the New SRO's consideration of investor concerns in support of the New SRO's effective fulfillment of its public interest mandate. Specifically, solutions include:

- Requiring the New SRO to establish an investor advisory panel to provide independent research or input to regulatory and/or public interest matters (potentially financed through a restricted fund[7]). The Working Group acknowledges that IIROC has made public statements of their intention to establish a similar expert investor issues panel.

- Requiring the New SRO to create a mechanism to formally engage directly with investor groups (on an advisory basis) to obtain broader input on the design and implementation of applicable policy proposals and rulemaking.

- Requiring regulatory policy advisory committees to include a reasonable proportion of investor / independent / public representatives.

CSA involvement in New SRO corporate governance

The CSA's solutions in respect of the CSA's involvement in the New SRO's corporate governance are intended to bolster the New SRO's accountability to the CSA. Specifically, solutions focus on:

- Requiring the New SRO to engage with the CSA regarding the appropriateness of the nominees for independent directors and providing for a CSA non-objection to such nominees, selected through a fit and proper assessment process.

- Providing for a CSA non-objection process for the appointment of the CEO, including a requirement for the New SRO to develop a sub-matrix of appropriate criteria to inform the non-objection process.

- Clarifying existing authority in an appropriate governing document, as applicable for each CSA jurisdiction, to direct the New SRO to enact, amend, or repeal, either in whole or in

[7] A fund comprised of fines collected by SROs and payments made under settlement agreements with SROs. The use of this fund is limited by the ROs to: expenditures necessary to address emerging regulatory issues related to protecting investors or the integrity of capital markets; education and research relevant to the investment industry and benefiting the public or capital markets; contributions to non-profit organizations dedicated to investor protection; and other purposes as approved by the statutory regulators.

part, any by-law, rule, regulation, policy, prescribed form, procedure, interpretation or practice.

- Enabling a specific by-law provision for the New SRO requiring that a director of the board be terminated from that position if the director no longer meets the relevant fit and proper criteria (e.g., Code of Ethics) as established by the New SRO and approved by the recognizing regulators.

During implementation of the New SRO, the CSA will need to amend the existing form of the ROs and the MOU (including the Joint Rule Review Protocol (**JRRP**)). The agreements between members and the New SRO will also need to be amended in order to ensure that the recognizing regulators can efficiently exercise the oversight powers described above.

CSA oversight

The following solutions are intended to promote the New SRO's accountability to the CSA, alignment of the New SRO's business planning processes with CSA priorities and transparency to the public by enhancing certain aspects of the CSA's program of ongoing SRO oversight. Specifically, solutions include:

- Enabling CSA review / non-objection process for member exemptions brought to the board of the New SRO.

- CSA publication of an annual activities report on the CSA's oversight of the New SRO and New IPF.

- Consideration of annual meetings between the CSA Chairs and the Chair of the New SRO as well as the Chairs of the New SRO's board committees.

- Ensuring that the New SRO's RO includes appropriate general requirements regarding the adequacy and location of New SRO staff / executives / board directors.

- A specific reporting requirement in the RO to refer escalated complaints about the New SRO by members or others under its jurisdiction to the CSA.

- Codifying within the new RO a requirement that the New SRO solicits CSA comments and input on annual priorities, strategic plans and business plans (including budget); and that the CSA maintains a non-objection mechanism, including over significant future publications and communications.

Other solutions

The CSA will implement the following additional solutions for the New SRO's corporate governance structure to adequately support and promote the New SRO's public interest mandate and to manage the risk of regulatory capture, as well as to address member concerns regarding access to the board. Specifically, solutions include:

- Transferring all current IIROC District Council regulatory decision-making functions to the board and staff of the New SRO. IIROC District Councils and MFDA Regional Councils will retain their advisory role with respect to regional issues, as well as the provision of regional perspective on national issues. This would involve ensuring an escalation mechanism within the New SRO as applicable.

- Requiring that all directors of the New SRO receive mandatory annual training on industry, governance, and investor protection issues, including training on their specific role and responsibilities within the corporate governance structure in support of the public interest mandate and the management of conflicts of interest.

- Requiring independent directors of the New SRO to have a separate "in camera" session at board meetings.

- Requiring the board of the New SRO to meet with the proposed investor advisory panel at least annually in addition to meeting with executives.

- Consideration of a mechanism giving members better access to the New SRO's board of directors (e.g., require the Chair and a majority of the Chairs of board committees to attend the Annual General Meeting to hear and discuss member concerns, possibly by way of a separate session).

b) Strengthening Proficiency

Introduction

Commenters expressed overall support for enhanced and harmonized proficiency standards for investment and mutual fund dealers, as differing registration categories currently result in uneven regulatory standards by virtue of differing individual proficiency requirements. As an example, IIROC has a well-established Continuing Education framework, and the MFDA is moving forward with developing such a framework for mutual fund dealers.

Furthermore, certain commenters confirmed that some investment dealers feel limited in their ability to grow their business by attracting mutual fund dealer representatives due to the IIROC proficiency upgrade requirement, which requires mutual fund dealer representatives transitioning to the IIROC platform to qualify as IIROC representatives within 270 days of approval. Generally, the industry views the 270-day requirement as an arbitrary and burdensome barrier which acts as a disincentive to transitioning to the IIROC platform, thus encumbering clients of mutual fund dealer representatives from more easily accessing certain products and services.

Through independent research, the Working Group identified that the current IIROC proficiency upgrade requirement is likely no longer fulfilling the initial policy objectives. However, once the New SRO is established, the immediate need to amend or repeal the requirement is likely lessened as the New SRO will enable separate mutual fund and investment dealer businesses within one member entity and thus investors will no longer encounter the aforementioned barriers to seeking

a broader product offering. Therefore, the following solutions aim to balance practical industry needs and investor preferences while keeping the public interest as a guiding principle.

Solutions

- Consider proposing more nuanced proficiency-based registration categories to ensure consistent quality of standards for clients.

- Leverage ongoing and future work on proficiency standards, titles and designations that is part of the broader CSA Client Focused Reforms project.

- The New SRO to continue to promote the merits of additional credentials for individual registrants (e.g., so that they are better equipped to provide more holistic advice to their clients on financial concepts, planning for financial goals, budgeting or debt management, tax and estate planning).

- Implement a streamlined Continuing Education program for all dealer members that is fair, consistent and proportionate. As noted above, the MFDA will be establishing a Continuing Education framework for mutual fund dealers, and IIROC is currently assessing possible changes to its existing Continuing Education program for investment dealers. The New SRO will leverage these programs and initiatives as a starting point for the New SRO's Continuing Education program.

c) Enhancing Investor Education

Introduction

Investor education is a central pillar to achieving investor protection. Many stakeholder comments emphasized the importance of improving investor education. Relatedly, the Working Group's research validated that expanding outreach and other communication tools should improve investor protection by reducing investor confusion about (i) how the regulatory system works, (ii) the availability and coverage of the IPFs, and (iii) how to access the system and submit a complaint or seek redress.

Solutions

- The establishment of a separate investor office within the New SRO that is prominently positioned and supports policy development and is easily identifiable and accessible to investors.

- Funding the aforementioned investor education or outreach activities through a new requirement in the New SRO budget or a specific part of the restricted fund.

- Adding specific terms and conditions to the RO to require, to the extent possible, public transparency in enforcement notices in respect of processes for assessing firm supervision and reasons for disciplinary decisions.

- Reviewing the New SRO sanction guidelines / policies on the public disclosure of credit for cooperation, specifically for the inclusion and consideration of compensation to clients harmed by misconduct as a mitigating factor (or an aggravating factor if inadequate compensation was provided[8]) in assessing appropriate sanctions.

Once the new investor office has been established, the New SRO will implement the following:

- Raising public awareness on how the regulatory framework operates, including information regarding multiple registration categories, the role of the New SRO, New IPF and its coverage policy, the CSA and the Ombudsman for Banking Services and Investments (**OBSI**).

- Providing investor education and outreach on complaint filing options and how to file a complaint including what information or documents need to be submitted.

- Enhancing public understanding of processes member firms may use in relation to remediation of client complaints.

- Supporting member firms or individual registrants on how best to assist clients encountering issues in accessing and completing a member firm's complaint resolution process.

- Improving the awareness of SRO sanction guidelines / policies.

- Coordinating with CSA Investor Education / Communication groups on joint efforts to expand the reach and impact of investor education in promoting investor protection.

d) Increasing Access to Advice

Introduction

Many new investors start as clients of mutual fund dealers. The Working Group validated that investors are largely unaware of which products advisors are licensed to recommend or sell and, specifically, that mutual fund dealers are limited primarily to the sale of mutual funds. Often, as investors' net worth and investment knowledge grows, many investors want to progress to investing in exchange traded funds (**ETFs**) and other products, and it is confusing and dissatisfying for these clients to be advised that they are unable to easily purchase such other products from their mutual fund advisor. If the investor is a client of a dual platform dealer, it is even more difficult to understand why moving an account from a mutual fund dealer to the related investment dealer, often at the same location, involves the tedium of repapering and essentially opening a brand new account.

[8] If applicable, inadequate compensation could also justify proceeding with a separate enforcement case.

More broadly, when a client wants to change firms, the transfer of an account between unaffiliated firms will also result in transition and repapering costs, acting as a deterrent to move to gain better access to products that an investor may need. Additionally, in facilitating a transfer, many delivering dealers do not automatically provide the transactional history of a client account to the new receiving firm, resulting in the loss of information to support the adjusted cost base and historical data.

The Working Group also confirmed that many advisors in smaller geographic centres and rural communities offer or facilitate other financial services (e.g., preparing tax returns, insurance and mortgages) and thus, many of those individuals act as advisors only on a part-time basis through their SRO regulated firm. By contrast, investment dealer advisors are often required by their firms to operate in this capacity on a full-time basis and are thus more prevalent in large urban areas where there is greater demand for their services. The data has shown that mutual fund advisors are generally more prevalent in rural or smaller geographic communities operating in many different capacities and as a result, investors in these communities are less likely to have access to a broad range of investment-specific products and services (e.g., publicly listed equities, options and margin accounts). As such investors may be underserved relative to urban centres which raises a regulatory concern.

Facilitating easier and more cost-effective access to a broader range of permissible investment products, including ETFs[9] which mutual fund dealers are currently allowed to distribute, may now be considered an essential part of any investment portfolio.

Solutions

Based on the foregoing, the CSA specifies the following solutions in relation to access, which are to be considered in part with the need for enhanced proficiency requirements as detailed in sub-section 4 e) *Reducing Industry Costs* of this Position Paper:

- Allowing introducing / carrying broker arrangements[10] between mutual fund dealers and investment dealers. Under such arrangements, which are currently not permitted, a mutual fund dealer contracts out elements of its operations to an investment dealer in order to access the back-office and clearing systems at the investment dealer. This type of introducing / carrying broker arrangement will:

    - Provide mutual fund advisors with flexibility through different business models to access a broader range of currently permissible products, such as ETFs and permissible bonds;

    - Enable mutual fund advisors, through an alternate access model, the ability to offer a broader permissible product shelf than what is currently

[9] In order to ensure adequate proficiency of mutual fund dealers selling ETFs, the MFDA implemented Policy No. 8 – Proficiency Standard for Approved Persons Selling Exchange Traded Funds ("ETFs"), setting out additional proficiency and training requirements currently in effect.

[10] Under the current respective IIROC and MFDA rules, members of each respective SRO may enter into arrangements with other members of the same SRO pursuant to which the accounts of one member (the "introducing broker / dealer") are carried by the other member (the "carrying broker / dealer") provided that prescribed terms and conditions are satisfied.

available to potentially facilitate their transition to an advisor at a full-service investment dealer; and

- Provide clients with a broader range of permissible products through their existing mutual fund dealer to retain their relationship with a trusted advisor.

- Enable a dual platform dealer to include its mutual fund dealer and investment dealer businesses within one legal entity and integrate similar back-office functionalities. The client can then access more investment products and services through a single dealer, rather than dealing with multiple firms. Relatedly, if dual platform dealers choose to maintain their mutual fund dealers and investment dealers as separate legal entities, require affiliated firms to cross guarantee each other's liabilities and obligations.

- Taking into account privacy and security considerations, perform an assessment and propose a rule enabling dealers to centrally gather standard client information (such as name, address, social insurance number, driver's license) and consistent know your client information in digital format to use across multiple accounts to minimize transition and repapering costs. If advisors or clients are transferring between unaffiliated firms, member firms will be required to share information, upon request, on a bulk basis to streamline the process.

- Perform an assessment and propose a rule to require the transfer of historical data, upon request by the receiving dealer, for client securities and accounts transferred within a dual platform dealer or between unaffiliated firms, to allow investors to move more seamlessly between firms.

- Consider a rule or provide explicit guidance that would enable more part-time advisors in all dealer platforms, provided that all applicable regulatory approvals are obtained, the firm consents and enters into an agreement with the advisor to continue proper supervision and compliance, and all obligations to the client are retained.

- Consider including a requirement in the New SRO's RO that promotes the servicing of clients in different geographic zones (i.e., urban and rural).

e) Reducing Industry Costs

Introduction

A key point in the previous discussion on the ability to fairly access products and services is that, increasingly, clients of mutual fund dealers want access to a broader range of products, such as ETFs and permissible bonds. The Working Group validated that though progress is being made, many mutual fund dealers cannot easily distribute ETFs directly to their clients because of the cost and complexity to integrate back-office systems between dealers and, accordingly, have been forced to 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 alternatives, however, result in higher costs for mutual fund dealers which, in many cases, are ultimately passed on to their clients.

Other significant costs to the industry are specific to dual platform dealers that pay duplicate fees to the two existing SROs and two related protection funds and maintain separate compliance functions and information technology (**IT**) systems to handle two sets of distinct rule books. Although the issue of duplicate costs borne by dual platform dealers was initially identified in the Consultation Paper, it was determined that anticipated cost savings may be less than expected if dual platform dealers choose not to consolidate their administrative functions immediately. Consolidation of these functions is more likely once the existing rule books are consolidated. Lastly, the Working Group notes that certain industry stakeholders also assert that high operating costs borne by dealers are tied to regulations that impede them from enhancing innovation in the delivery of products and services.

Solutions

- Allow introducing / carrying broker arrangements between mutual fund dealers and investment dealers to avoid the workarounds currently required for many mutual fund dealers to access certain products, such as ETFs.

- The New SRO to permit Chief Financial Officers (CFOs), Chief Compliance Officers (CCOs) and other compliance staff to serve multiple firms simultaneously when appropriate risk controls are in place, subject to applicable regulatory approvals. Currently, IIROC rules permit part-time CFOs for both affiliated and non-affiliate firms,[11] and similar guidance relating to shared CCOs for all registrant categories (including those at IIROC and MFDA dealers) has been published by the CSA.[12] This could reduce industry costs and better enable dealers to determine appropriate staffing levels and structure based on operational needs and demands.

- Review the current SRO fee models used to set fees paid by members, and take the steps below respecting New SRO fees:

    - Ensure that fees in the New SRO are proportionate to registrants' activities and do not carry over any duplications currently experienced by dual platform dealers;

    - Until any proposed changes to fee models are approved, enable a moratorium on an increase in fees, particularly for non-dual platform dealers without CSA authorization. The CSA will monitor the collection of member fees against SRO benchmarks; and

    - More broadly, consider the impact of the New SRO on the profitability of smaller and independent dealers, both from the perspective of whether the new rules could have a detrimental impact on revenue earned and fees paid.

[11] IIROC DMR 38.6 https://www.iiroc.ca/rules-and-enforcement/dealer-member-rules
[12] https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2020/07/5817162-_-CSA-Staff-Notice-31-358.ashx

- Add terms and conditions in the New SRO RO that enable a transparent and accessible means by which members can develop and employ the use of technological advancements to achieve greater efficiencies and productivity, while considering the risks and benefits to the public interest. A related reporting obligation would keep the statutory regulators apprised of such work.

- Specific to mutual fund dealers, allow those dealers to continue using their existing front / mid / back office systems, as appropriate. This should primarily benefit smaller dealers whose existing business models would not warrant the cost outlay for new systems.

- Specific to dual platform dealers:

    - Enable a dual platform dealer to include its mutual fund dealer and investment dealer businesses within one legal entity, and integrate similar functions relating to compliance, back-office and administration (e.g., legal services and human resources), to realize economies of scale. Relatedly, if dual platform firms choose to maintain their mutual fund dealers and investment dealers as separate legal entities, require affiliated firms to cross guarantee each other's liabilities and obligations; and

    - Harmonize applicable policies and rules into a consolidated rule book to eliminate the need for separate compliance departments or IT systems, thereby reducing operating costs.

f) Fostering Harmonization / Efficiencies

Introduction

In response to the issues noted in the Consultation Paper, many stakeholders communicated the need to address existing differences in rules between each SRO, and between the SROs and the CSA, including differences in the interpretation and application of rules, respecting regulation of similar products and services across registration categories. Some stakeholders also pointed out that the regulation of similar products distributed within the securities and insurance industries (e.g., segregated funds) is not harmonized.

Furthermore, the Working Group validated that investors are generally confused: (i) by the overlap of the current regulatory structure, (ii) about accessing and understanding multiple complaint resolution processes (as well as being frustrated over the effectiveness of the processes), and (iii) about the availability, scope and coverage of investor protection funds.

Solutions

- As outlined in section 3 of this Position Paper, the IWC will oversee a policy review of the existing IIROC and MFDA rule books / guidance to increase harmonization of similar rules, as well as their interpretation and application. The focus will be to identify differences in the rules / guidance, arbitrage opportunities and overlaps, and

propose either (i) to maintain necessary differences, or (ii) seek appropriate amendments to harmonize or eliminate regulatory gaps.

As part of this policy initiative, the IWC will consider the following:

- harmonized interpretation of rules with securities legislation (e.g., Client Focused Reforms);
- guidance that clearly articulates the intended outcomes for rules;
- rules that are scalable or proportionate to the different types and sizes of member firms and their respective business models;
- assessment of the economic impact of proposed rule changes to affected stakeholders;
- harmonization of rules that individually may require unnecessary technological systems or processes; and
- identifying improvements to internal processes (e.g., for SRO examination reports, as applicable, to reference guidance to assist firms in improving outcomes).

- To foster harmonization between the New SRO and the CSA, require the New SRO to solicit CSA comment and input on annual priorities and business plan (including budget); and furthermore, the CSA to maintain a non-objection mechanism, including over significant future publications and communications.
- To assist investors in effectively navigating the complaint resolution processes, review existing regulatory processes across channels with the intent to:
  - centralize the complaint reporting process and explore the merits of creating a single complaint filing portal for the New SRO through which investors could use a standard complaint form to file all types of complaints which the portal would then consolidate, filter and route to the appropriate organization (e.g., the registered firm, internally within the New SRO, appropriate CSA member, OBSI);
  - apply a consistent complaint handling process to review and investigate all types of complaints;
  - develop and apply service standards for complaint resolution; and
  - consider the merits or feasibility of allowing client / victim impact statements for consideration by a hearing panel during the sanction proceedings.

In the longer term, consideration will be given to expanding the process to include a single complaint filing portal for all registration categories, integrating current CSA processes.

- Given the similarities in coverage for the IPFs, to alleviate investor confusion and to facilitate an improved understanding of the role of investor protection funds, consolidate CIPF and the MFDA IPC into a single protection fund that is independent from the New SRO. An appropriate governance structure for this New IPF will be considered as well.

  The New IPF will review and propose changes to its policies related to disclosure, coverage and claims, focusing on improving plain language disclosure. Furthermore, until any proposed changes are approved, the New IPF would be required to maintain separate coverage pools for investment and mutual fund dealers. Initially maintaining separate coverage pools will enable the consolidated protection fund to conduct a proper assessment of insolvency risks for the different types of dealers. Until the assessment is complete, a moratorium on any change to the methodology, applied to fees or assessments that would result in a material increase in applicable IPF fees without CSA authorization, will apply.

  In the second phase, when consideration is given to assessing the feasibility of incorporating other registration categories within the one SRO framework, consideration will also be given to the possibility of providing coverage to clients of the other registration categories and harmonizing the consolidated protection fund with the *Fonds d'indemnisation des services financiers* in Québec.

g) Harmonizing Directed Commissions

Introduction

A directed commission arrangement generally refers to an arrangement whereby a dealing representative or other registered individual requests their sponsoring firm to pay part or all of the commissions or fees earned by the individual to a personal corporation owned by the individual and / or the individual's family members. This is different from an incorporated salesperson model, which is the ability of an individual to carry on registrable activities through a corporation that itself is registered under securities legislation.

As noted in the Consultation Paper, the MFDA and IIROC currently take different approaches to directed commissions arrangements. In short, the MFDA rules permit these arrangements except in Alberta. IIROC rules do not permit these arrangements. Directed commission arrangements are generally not permitted for other registrant categories, such as exempt market dealers, except in Manitoba and Saskatchewan. However, CSA staff continue to see directed commission arrangements being used by other registrant categories in the context of compliance reviews. Registered individuals generally seek to adopt directed commission arrangements to enable a more tax-efficient structure to manage business flow and disbursements.

MFDA Rule 2.4.1 currently allows individuals to direct commissions to personal corporations provided specific conditions are met. These conditions include the personal corporation being incorporated under the laws of Canada or a province or territory of Canada. Furthermore, the sponsoring firm, registered individual and the personal corporation must have entered into an agreement, in a form prescribed by the MFDA, the terms of which provide that the sponsoring firm and the registered individual remain liable to third parties, including clients, and payment to an unregistered corporation does not in any way limit or affect the duties, obligations or liability of the firm or individual. The terms also require supervision of the arrangement by the sponsoring firm and appropriate access to books and records of the registered individual and personal corporation.

In practice, there is some uncertainty as to when and in what circumstances activities being conducted through a personal corporation require registration, and some jurisdictions appear to take the view that the payment of fees or commissions is registerable activity. Accordingly, several jurisdictions[13] in Canada have adopted local registration exemptions (the **local registration exemptions)** to allow registered dealing representatives of mutual fund dealers (and in Manitoba, any type of dealer) to make use of directed commission arrangements.

The tax status of individual registrants who use a directed commission arrangement is unclear. A corporation that does not carry on the business for which commissions are paid, and merely acts as a conduit to receive commissions, may not be able to achieve the desired outcome for tax purposes.

An incorporated salesperson model allows a registered individual to carry on registrable activities through a corporation that itself is registered under securities legislation. As a registrant, the corporation would be subject to registration requirements. Because the corporation itself would be registered and, therefore, able to engage in the registerable activities that would *earn* the commissions, this model would not seem problematic from a tax perspective. This model has been adopted and utilized by other professionals, such as physicians, lawyers and accountants. Although this model would likely alleviate the issue of tax uncertainty, it would require legislative amendments, which would take considerable time to implement. Legislative amendments that would allow for incorporated salespersons have been made to the securities legislation of Alberta and Saskatchewan, but they have not been proclaimed.

Solutions

The topic of directed commission arrangements is a complex matter with many considerations. Further work will need to be completed, including consultations with other CSA stakeholders, to reach definitive conclusions on the appropriate treatment under the New SRO model. This additional work should be completed as part of the rulemaking process for the New SRO.

Therefore, a CSA working group comprising appropriate CSA stakeholders will be formed (the **Directed Commissions WG**) to continue working on this analysis. In the interim, the Working Group has compiled some preliminary views based on its analysis that could provide assistance

[13] British Columbia, Manitoba, New Brunswick and Newfoundland and Labrador.

and help inform the additional work required during the next steps of the SRO implementation process:

1. The Directed Commissions WG should consider the tax status of registered individuals and whether there are any regulatory concerns with permitting directed commission arrangements, at least as an interim step while other options, such as adopting a true incorporated salesperson regime are studied.

2. Following further consideration of the tax issue and appropriate consultation with stakeholders in conjunction with the IWC's efforts to harmonize rules, the Directed Commissions WG should complete the necessary work to consider, and if applicable, propose a rule and prescribed form of agreement that provide the appropriate protections. This rule would permit directed commission arrangements for registered individuals sponsored by any type of dealer member of the New SRO.

3. The Directed Commissions WG should consider whether a consequential amendment to Part 8 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* modelled on the existing local registration exemptions is the appropriate approach under the New SRO model. This registration exemption could be available to registered individuals sponsored by any type of registrant firm (both dealers and advisers) on appropriate terms and conditions.

4. Depending on the outcome of the additional analysis, the Directed Commissions WG could consider whether any other options, such as adopting a true incorporated salesperson regime as a long-term solution, is warranted.

h) Maintaining Strong Market Surveillance

Introduction

In addition to member regulation functions, IIROC currently regulates marketplace members and conducts real-time surveillance of the trading activity on Canadian equity marketplaces as well as timely surveillance of all fixed-income trading conducted by its dealer members, together with the supervision of member compliance with the Universal Market Integrity Rules. IIROC also provides trading-related information to securities regulators in support of the CSA's oversight of marketplaces carrying on business in Canada, including enforcement activities regarding possible market misconduct. IIROC also promotes transparency in Canada's fixed-income markets as the Information Processor for Canadian corporate and government debt securities.

Specific stakeholders expressed general concerns about the potential for inefficiencies and information gaps as a result of the separation of market surveillance from statutory regulators, including possible impacts on CSA enforcement processes as well as the CSA's ability to monitor for systemic risk in Canada's capital markets. After extensive research and analysis, the Working Group concluded that the specific issues raised in the Consultation Paper were not validated and that the surveillance of Canadian equity and debt marketplaces should remain with the New SRO. However, as a result of internal discussions, the Working Group has concluded that there may be

opportunities for improvement in the sharing of relevant information across regulators arising from the market surveillance function.

Consequently, the CSA will review current processes with the view to enhancing the processes for the sharing of trading-related data between the New SRO and the CSA. The goal of this review will be to identify any gaps or inefficiencies in current processes that may impact the CSA's enforcement function, its policy functions, or its ability to effectively monitor for systemic risk. To the extent that gaps or inefficiencies are identified, solutions will be implemented to establish appropriate practices for the sharing of trading-related information between the CSA and the New SRO with the New SRO's continued responsibility for carrying out market surveillance.

Solutions

- To improve collaboration and the sharing of information between the CSA and the New SRO, a new CSA working group (**CSA Market Information Coordinating Working Group**) will be established to review differences in jurisdictional enforcement processes and engage with the New SRO regarding the supervision of market related data and sharing like information in order to:
    - adopt optimal practices and procedures for a collaborative approach to market surveillance; and
    - identify and resolve gaps or inefficiencies in information sharing that may impact, as noted, the CSA's enforcement processes, its policy functions or the CSA's ability to effectively monitor systemic risk in the Canadian capital markets.
- The composition of the CSA Market Information Coordinating Working Group will be determined at a later stage, but will be composed of CSA staff with experience in the market surveillance function, including staff involved in Enforcement, Market Regulation, SRO Oversight and Systemic Risk as appropriate. Staff of the New SRO will be expected to contribute to the CSA Market Information Coordinating Working Group's review and assist in optimizing information sharing processes.
- The CSA Market Information Coordinating Working Group will be expected to identify and recommend opportunities for improvement to existing processes within a timeline to be established once the working group is constituted.

i) Leveraging Ongoing Related Projects

Introduction

The CSA recognizes that existing CSA or SRO related projects will assist or lead to the resolution of certain sub-issues identified in the Consultation Paper. Specific targeted suggestions are being made for consideration by the respective working groups involved in these ongoing projects. Examples of these ongoing projects and working groups are:

Complaint resolution

- The CSA OBSI Working Group's continuing efforts to make OBSI decisions binding and to assess the need for an appeal or review mechanism.

- The role of the CSA OBSI Joint Regulator Committee (**JRC**). As part of its oversight role for OBSI, the CSA encourages the JRC to review:

    - the merits of (i) restricting the scope of matters the member firm's internal ombudsperson can address, as well as (ii) educating investors on their ability to access OBSI's services without using an internal member firm ombudsperson; and

    - OBSI complaint data to assess if the New SRO should include "complaint handling" as a separate category in the New SRO's complaint reporting system to better identify when clients are dissatisfied with a member firm's complaint handling process.

- An ongoing project on complaint resolutions in Québec, which is expected to be published in the form of a local instrument in Fall 2021.

- IIROC's ongoing assessment of its current arbitration program with the intent to enhance its usefulness as a means of recourse for investors.

- CSA staff's review of complaints and other enforcement data, and information provided as required by the existing ROs to determine if complaints reported to the SROs are appropriately assessed and investigated.

- The CSA Committee on Vulnerable Investors ongoing assessment of securities legislation to enhance protection of older and vulnerable adults.

Consolidation of databases and harmonization with insurance regulators

- The CSA SEDAR+ project which will improve the CSA's national consolidated database and enhance public disclosure of registered firms and individuals in one portal, including historical disciplinary information of active or former registrants. Regulatory staff involved in the project should consider the merits of including public disclosure and easy access to information pertaining to registrants similar to that contained in the SEC's Form ADV, or the current IIROC Advisor Report.

- The CSA initiative with the Canadian Council of Insurance Regulators on full cost disclosure and performance reports.

SRO enforcement practices

- IIROC's ongoing efforts to obtain enhanced legislative enforcement powers directly from jurisdictional governments (i.e., statutory immunity, ability to collect fines, compel witnesses, collect and present evidence).

- IIROC's ongoing project to conduct an assessment regarding enabling the disgorgement of profits and direct compensation back to victims for losses in cases decided by hearing panels and cases resolved by a settlement agreement.

Registration

- The CSA proposed targeted changes to enable a more efficient registration and oversight process by providing registered firms and individuals with greater clarity on what information is required as part of the registration process, while also improving the quality of information received by regulators.

5. Consideration of Written Representations and Next Steps

The Working Group will consider written representations submitted in hard copy or electronic form received within 60 days of publication of the Position Paper. At the same time, the CSA will be moving forward to establish and lead the IWC to begin the work to implement the New SRO. Please submit your written representations in writing on or before **October 4, 2021**. If you are not sending your written representations by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Address your submission to all of the CSA as follows:

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca
#5972716

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
Fax : 514- 864-638
Email: consultation-en-cours@lautorite.qc.ca

Certain CSA jurisdictions require publication of the written representations received during the comment period. All written representations 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 written representations 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.

Doug MacKay
Co-Chair - CSA Working Group
Special Advisor, Capital Markets Regulation
British Columbia Securities Commission
604-899-6609
dmackay@bcsc.bc.ca

Joseph Della Manna
Co-Chair - CSA Working Group
Manager, Market Regulation
Ontario Securities Commission
416-204-8984
jdellamanna@osc.gov.on.ca

Katrina Prokopy
Manager, Market Oversight
Alberta Securities Commission
403-297-7239
katrina.prokopy@asc.ca

Jean-Simon Lemieux
Analyste expert
Autorité des marchés financiers
514-395-0337, ext. 4366
jean-simon.lemieux@lautorite.qc.ca

Liz Kutarna
Director, Capital Markets
Financial and Consumer Affairs Authority of Saskatchewan
306-787-5871
liz.kutarna@gov.sk.ca

David Shore
Legal Counsel, Securities
Financial and Consumer Services Commission (New Brunswick)
506-658-3038
david.shore@fcnb.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
204-945-5195
paula.white@gov.mb.ca

Chris Pottie
Deputy Director, Registration & Compliance
Nova Scotia Securities Commission
902-424-5393
chris.pottie@novascotia.ca

Addendum – Recognition of the New SRO in Québec

Background

Mutual Fund dealers

Firms pursuing activities as mutual fund dealers in Québec are required to register with the AMF. Firms also pursuing such activities in other Canadian provinces or territories are required to be members of the MFDA under the regulations applicable outside Québec.

Natural persons registered with the AMF in the category of mutual fund dealer representative are required to be members of the CSF, a self-regulatory organization established by the *Act respecting the distribution of financial products and services*, whose mission is to ensure the protection of the public by maintaining discipline among and supervising the compulsory professional development and ethics of its members. This obligation also applies to mutual fund dealer representatives registered in other provinces or territories when they pursue activities in Québec.

As at May 31, 2021, 71 firms were registered as mutual fund dealers with the AMF, and 22,076 natural persons were registered in the category of mutual fund dealer representative. Of those 71 firms, 20 were operating in Québec only, and 748 representatives were acting on their behalf. The remaining 51 firms were MFDA members and accounted for 21,329 representatives. The AMF is the principal regulator for 31 of these 71 firms.

Investment dealers

In Québec, as in all other Canadian provinces and territories, firms registered as investment dealers are required to be members of IIROC.

As at May 31, 2021, 145 firms were registered as investment dealers with the AMF and were members of IIROC, and 12,409 natural persons were registered in the category of investment dealer representative. Of these 145 firms, 140 were registered in at least one other province or territory in Canada, and 12,398 representatives were acting on their behalf. In addition, five investment dealers were registered as such in Québec only, and 11 representatives were acting on their behalf. The AMF is the principal regulator for 22 of these 145 firms.

The AMF's position

The AMF agrees with the CSA that a new, single SRO, consolidating the activities of IIROC and the MFDA and with an enhanced governance structure, is in the best interests of investors and the financial industry. In addition to the many benefits associated with the CSA's position, greater harmonization of the SRO framework applicable in Québec with

that of other Canadian jurisdictions will reduce complexity and confusion for investors, who will then benefit from comparable protections, regardless of their place of residence.

Also, for financial groups including a firm registered as a mutual funds dealer and a firm registered as an investment dealer and operating in Québec and elsewhere in Canada, a simplified framework will reduce their compliance burden, which will translate in particular into lower costs.

Accordingly, the AMF will recognize the New SRO in the same way as the other CSA members to ensure harmonized oversight of firms registered as investment dealers and mutual fund dealers as well as natural persons registered in the categories of investment dealer representative and mutual fund dealer representative acting on their behalf.[1] This recognition of the New SRO will not affect the mandate, functions and powers of the CSF.

The New SRO will ensure compliance with its operating rules, which will be harmonized with securities regulations, including *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (in other CSA jurisdictions, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*). Through its power to approve the rules of the New SRO, the AMF will be able to ensure that those rules do not have duplicative effects where equivalent provisions apply to representatives of mutual fund dealers under Québec regulations.

Upon its recognition, and in accordance with any such transitional provisions as may be adopted by the AMF, investment dealers and their representatives will be required to become members of the New SRO and comply with its rules. This requirement will also apply to mutual fund dealers and their representatives registered in Québec.

Stakeholder representations

Stakeholders in the Québec financial sector are invited to make representations, in accordance with the instructions in Section 5 of this document, regarding the AMF's desire to recognize the New SRO, whose mandate will include overseeing investment dealers and mutual fund dealers in Québec.

[1] If necessary, the AMF could, on the conditions that it determines, delegate to the New SRO the exercise of some of its functions, subject to the approval of the Government as set out in section 61 of the *Act respecting the regulation of the financial sector*.

Appendix A -- Summary of Public Comments

Background

As noted in the Introduction section to this Position Paper, in late 2019 and early 2020, the Working Group completed informal consultations with key stakeholder groups regarding the current SRO regulatory framework.

On June 25, 2020, the CSA published the Consultation Paper for a 120-day public comment period. The Consultation Paper sought public input on the following seven key issues identified as a result of the informal consultations:

1. Duplicative operating costs for dual platform dealers
2. Product-based regulation
3. Regulatory inefficiencies
4. Structural inflexibility
5. Investor confusion
6. Public confidence in the regulatory framework
7. Separation of market surveillance from statutory regulators

The comment period ended on October 23, 2020. In response to the Consultation Paper, 67 public comment letters were submitted. This Appendix summarizes the written public comments, and includes the section - *Other issues related to Québec* - for comments received that address the specific regulatory framework in Québec.

Commenters are listed below along with statistical information relating to the number of stakeholders in each category commenting on specific issues. We thank everyone who took the time to prepare and submit comment letters.

Summary of comments received in response to the Consultation Paper

Issue 1 – Duplicative operating costs for dual platform dealers

A large proportion of commenters, including industry associations along with IIROC dealers, MFDA dealers and dual-platform dealers confirmed that the current structure results in duplicative costs. Key comments are noted below:

- There seems to be no economic basis to continue having two SROs for Canada's investment industry, particularly 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 and MFDA). This leaves only 65 firms that deal exclusively in mutual funds.
- Commenters pointed to the need to maintain separate compliance and supervisory functions in respect of each SRO, leading to increased costs in legal, regulatory, tax, operations, compliance and technology matters. These costs ultimately affect service to investors as they hamper economies of scale and innovation in the delivery of products.

- Commenters pointed to IIROC's cost analysis to assert that a single regulatory structure will lead to cost savings.
- Other commenters noted that 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.
- The savings as a result of consolidation could be reinvested in some innovation field and client service.
- Consolidation, through merger or another approach, may provide efficiencies, at a minimum through the elimination of duplication of overhead.
- The revised SRO model in Canada should bring increased efficiencies, increased consistency, increased transparency, reduced costs and an enhanced member experience, and should be able to address the specific needs of smaller dealers, while maintaining or enhancing integrity, oversight and investor protection.

Investor advocates, mutual fund only dealers and other commenters also noted the following key elements regarding this issue**:**

- An investor advocate warned that this consultation should not be an industry-driven initiative to reduce the "burden" of regulation; the new framework should be designed to improve outcomes for both industry and investors.
- Potential operational cost savings should not be a major factor in the development and implementation of a new SRO framework and should not prejudice investor protection or effective compliance or enforcement.
- The client lens is far more important in measuring the potential benefits of changes to the regulatory framework than the impact of lessening regulatory fragmentation on firm costs and profits.
- The Deloitte cost-saving estimates presents limits, since only the largest dealers would benefit from the bulk of estimated savings and the savings are not substantial.
- There might 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.
- There should be a level playing field between mutual fund dealers and investment dealers to the extent that existing mutual fund firms would not be pushed out of the investment industry due to an increase in cost or regulatory burden. Changes should not create additional regulatory burden or require unnecessary operational and infrastructure costs for MFDA-only firms.
- There is a need to ensure that a new consolidated SRO encourages new entrants, stimulates innovation and is fair to all members.
- Those who choose to operate under multiple platforms / registration categories should embrace the relevant costs and constraints. Small adjustments to the current framework (e.g., IT gateway, passport system, mutual recognition, exemptions, better alignment of requirements among SROs) rather than a major structural overhaul should be favored.
- More significant savings would be achieved if advice-based trailing commissions are rebated or banned outright.

Issue 2 – Product-based regulation

A vast majority of commenters, including industry associations, investor advocates, and industry stakeholders agree that the current framework and the structure around products need to be redesigned and that similar products and services should be regulated in a consistent manner, preferably under a single SRO. Key comments were:

- Product-based regulation is becoming anachronistic in an industry that is slowly shifting away from a transactional, "selling" model to one that favors advice that is appropriately targeted to the needs of clients.
- The framework should regulate across the continuum of products and type of advice rather than be structured and separated based on the product. Expectations on key principles such as know your client, suitability, etc. should be the same across products.
- Having a single SRO is likely the only way to avoid inconsistent approaches to the distribution of similar products. Examples of different treatment between registrant categories when accessing similar products include how a security is registered (nominee v. client name), availability of fee-based or commission-based accounts, and investor protection fund services available.
- There should be as much harmonization as possible in terms of product and distribution standards across various types of registered firms.
- If there is some type of merger, investment dealers should be allowed to provide a mutual fund-only offering in their legal entity without requiring a separate dealer on the MFDA platform.

Several commenters, including industry associations, investor advocates, and industry stakeholders agreed that regulatory arbitrage exists and can be an issue. The common theme that emerged is that a single national regulator is a means by which to minimize regulatory arbitrage opportunities. Key comments provided were:

- A single national SRO regulator will create a regulatory framework that minimizes opportunities for regulatory arbitrage, including the consistent development and application of rules.
- Consolidating registration categories under a single SRO will facilitate a consumer-focused approach that would reduce regulatory arbitrage, limit investor confusion and better reflect how Canadians seek financial advice and make product-purchasing decisions.
- Regulatory standards should be applied uniformly across the CSA and the SROs, both to firms and individual registrants to address arbitrage opportunities. Standards should be harmonized to the extent possible.
- The differences in registration between IIROC and the MFDA, with the applicable provincial regulator overseeing MFDA registration can lead to "regulator shopping". A consolidated SRO should be responsible for registering individual representatives.

Both investor advocates and industry stakeholders commented on converging registration categories:

- The new regulatory framework should provide flexibility in registration categories to allow innovation and variety in business models to better meet the current and future needs of customers. Mutual fund-only registered individuals should be allowed to work for an investment dealer and indefinitely provide mutual fund-only account services to their clients.

- The new regulatory framework should provide flexibility in registration categories to allow innovation and various business models to better meet the current and future needs of customers.
- Currently, registrants in different registration categories are permitted to provide advice on identical products, which is sufficient to raise questions about product-based regulation.
- It is appropriate to require additional proficiencies for registrants related to variations in complexities of products. However, differing registration categories based on proficiency should still be within a single registrant category to ensure consistent treatment of clients.
- 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.
- Minimum requirements should be focused on skills, competency, and professionalism, with less regard to the specific scope of products sold by a given registrant.

A few commenters expressed concern about regulatory arbitrage between the securities industry and the insurance and banking industries, with products such as segregated funds, GICs and term deposits. Key comments were:

- Regulation governing the distribution of segregated funds differs significantly from investment funds and enhances the possibility of regulatory arbitrage.
- Since the formation of the MFDA in the 1990s, there has been a slow consistent migration from mutual funds to segregated funds, with many advisors giving up their mutual fund registration.
- Products such as mutual funds, exchange traded funds and segregated funds are very similar; it is crucial to have consistent regulatory oversight of all such products to minimize opportunities for regulatory arbitrage.
- Potential regulatory arbitrage may arise between investment dealers and the insurance industry with the CSA's Client Focused Reforms and deferred sales commission prohibition / restrictions on mutual funds.

Several investor advocates and industry stakeholders expressed concerns about the current regulatory framework's impact on consumers access to financial advice and products, the services rendered, and investor protection. Key comments provided were:

- A single, consolidated SRO, with a single set of rules and guidance would provide clarity and consistency to firms and SRO staff and would ultimately benefit consumers.
- Regulatory projects should start from the client's point of view and offer a holistic and inclusive approach guaranteeing the same degree of protection and oversight, regardless of the product or the registration category.
- Existing regulation focuses on products, at the expense of proper regulatory oversight of the critical relationship between financial advisors and clients.
- Investors should have confidence that their needs are being served with consistent regulatory expectations, regardless of the product or service that is recommended or sold.
- A new SRO should focus on governance and regulation of personalized financial advice rather than sales transactions related to certain investment products.
- The level of protection and regulatory standards should be similar for registrants in different registration categories but engaged in similar conduct and offering similar products / services. The regulatory framework should be designed and implemented to ensure such protections and standards

are applied consistently, minimize the gaps in protections and efficiency, and meet the desired regulatory objective.

Issue 3 – Regulatory inefficiencies

A majority of commenters, including investor advocates, industry associations, and IIROC and MFDA dealers expressed their concerns that the current framework results in limitations on product access by investors. The following key comments were articulated by stakeholders:

- Concern that mutual fund dealers are not able to access ETFs efficiently due to operational issues and costs involved. Change is needed to allow mutual fund dealers to use investment dealers back-office systems for ETF transactions via IIROC / MFDA introduction arrangements.
- IIROC / MFDA introducing arrangements would also require the harmonization of IIROC / MFDA proficiency and continuing education requirements.
- Barriers to distributing ETFs are business barriers, not regulatory barriers.
- The new framework should aim to address uneven regulatory requirements for similar products / services depending on which regulatory platform the products / services are offered. Similar regulatory standards should apply to similar products.
- Investors should have efficient access to a wide range of products / services, provided investor protection is not compromised.
- Investors want holistic advice. A modern SRO should concentrate on transaction-based regulation and the regulation of financial advice as a service, rather than product-based regulation.

Several commenters, mostly from the industry, noted that the current framework leads to inefficiencies that do not provide regulatory value:

- For dealers, two SROs lead to duplicative costs to: interpret and apply un-harmonized rules, maintain different accounting and compliance systems that cater to each set of rules, and maintain two sets of policies and procedures.
- Different approaches taken by IIROC and MFDA with regard to, amongst other things, ETFs, managing product risk, enforcing sales practice rules, differing approaches to audits and compliance matters results in increased cost for dealers, regulatory arbitrage, and an uneven playing field between industry participants.
- Having multiple SROs results in higher CSA oversight costs; duplicative costs relating to overhead / non-regulatory functions (e.g., accounting, HR, office services and IT) and higher costs in terms of rule development and interpretation among multiple regulators.

Finally, some commenters expressed the following other key elements:

- MFDA members feel that the ability to incorporate professional corporations for the purpose of directing commissions is an important tool for business needs / corporate structure.
- A single SRO would help unify the 13 provincial / territorial regulators.
- There are also obstacles faced by investors in navigating a confusing and unnecessarily difficult complaints process, with limited access to receiving compensation for losses caused by industry misconduct.

- When a mutual fund dealing representative wants to transfer to an investment dealer, course providers charge the full price for a course already taken by a mutual fund dealing representative.

Issue 4 – Structural inflexibility

The vast majority of industry stakeholders expressed concerns that the current dual SRO structure is inflexible. Investor advocates were also generally supportive of changes to the existing structure. The common theme that emerged is that the current regulatory framework inhibits the efficient evolution of business, limits dealers' ability to leverage technological advancements and from an investor standpoint results in a negative impact on investors, particularly retail investors who would prefer a simpler system where most products and investment services are available through a single source. Key comments provided were:

- There is a need for simplification to enable dealers to avoid having to become dual platforms.
- Registrants are currently disincentivized from switching back and forth between platforms due to associated costs with this practice (e.g., cost of renewing proficiency courses) and the differing approaches in what is allowable compensation and tax planning structures.
- Any move to a single SRO entity must preserve flexibility in recognition of the various business models such as small independent mutual fund dealers and investment dealer registrants.
- Dual platforms result in in a cumbersome and confusing client experience, as a result of being forced to switch back and forth between platforms. A single SRO entity would also result in less administrative complexity, and reduced time and cost burden for both investors and registrants.
- There are structural limitations in a dual platform environment when accessing products. SRO consolidation will eliminate duplication and will encourage development of back-end office solutions and client-facing tools for advisors.
- There should be equal treatment going forward to provide SRO members the same options (e.g., directed commissions).
- A consolidated SRO can better facilitate innovation and encourage the development of back-end office solutions and client-facing tools for advisors. More specifically, FinTech entities would benefit from a consolidated structure that allows for timely and cost-effective innovation, as the reduced costs would encourage re-investment and advancement in this area.
- Access to advice for rural and underserved investors needs to be preserved with any change to the existing SRO structure.
- The IIROC upgrade rule (270-day requirement) curtails the desire to grow investment dealer firms, which limits the ability of all investment dealers of all sizes to efficiently service their clients.

Issue 5 – Investor confusion

Both industry stakeholders and public commenters agree that the current regulatory framework leads to investor confusion. Key comments provided were:

- The current regulatory framework is fragmented and complex, which leads to client confusion.
- Investors are confused and dissatisfied about the different products that are available and that are subject to different regulatory regimes.
- Investors are confused by the multiple registration categories and plethora of titles in use in the industry.

- Investors are generally confused by the complaint handling process within the current SRO structure and the role that each SRO plays with respect to complaint resolution and enforcement. The current complaint resolution process is difficult to navigate.
- Several commenters support a single point of contact for all consumer complaints regarding financial advisors, regardless of product sector.
- The role and scope of protection offered by the existing investor protection funds is not well understood by the investing public. Most commenters supported changes to the current investor protection fund coverage model. Investor advocates don't feel that this is an area of confusion; however, expressed support for a consolidation on terms that provide a uniform level playing field to investors.

Issue 6 – Public confidence in the regulatory framework

Several investor advocates and some industry stakeholders expressed concern that the current SRO corporate governance structure does not adequately support or promote the SROs' public interest mandate and is too closely aligned with the interests of industry participants at the expense of the interests of other stakeholders. Key comments provided were:

- Public interest mandate is paramount to maintaining consumer confidence in the SRO model.
- An MFDA research report suggests that the public lacks confidence in the current regulatory framework as less than half trust the investment industry to make decisions that are in the public interest; 76% of people think conflicts of interest among SRO board members happen frequently and are not declared or eliminated before making important decisions, and 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.
- A single SRO may better enhance public confidence in the regulation of investment dealers and mutual fund dealers.
- Existence of multiple regulators (provincial or SROs) has had a negative impact on the exercise of powers to sanction in the public interest.
- Formal investor advocacy mechanisms and more robust CSA oversight of the SROs is needed to improve adherence to public interest mandates and increase public confidence.
- The CSA should consider defining what "public interest" means in the context of an SRO and identifying key factors of the public interest to be met by the SRO. The CSA needs to ensure that any new SRO framework responds 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.

There is a perception amongst the public that the SROs executives and Board do not adequately consider the concerns of investors and other stakeholders, in favor of industry concerns. Many commenters, including both investor advocates and industry stakeholders proposed addressing this by requiring that the majority of directors of the new SRO be independent, and that the CSA have a role (and be seen to have a role) in choosing the independent directors. Key comments provided were:

- IIROC has made significant strides in governance recently – e.g., revising its Director qualifications to include consumer protection experience and announcing the creation of an investor advisory panel.

- 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.
- The SRO needs a governance structure which contemplates a majority of independent directors, members with experience with investor protection issues and better public reporting requirements.
- The SROs' governance and accountability frameworks should be significantly enhanced to address the lack of transparency and the potential for conflicts of interest. The independent directors should not be from industry, even after a cooling-off period. Both independent directors and industry directors should be provided with mandatory industry and governance education.
- 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).
- SROs' Nominations Committees should be comprised of, and chaired by, an independent director.
- SRO committees and district / regional councils should be required to have independent members.
- A recommendation is made that at least one Board position be reserved for a "retail investor" and that all SRO Board policy committees be chaired by an independent director.
- The SRO should have an investor advisory panel, which should be financed by the SRO and should include a budget for seeking independent research as required.
- The formation of a committee focused on investor issues should be considered, and the inclusion of independent board members with demonstrated expertise and knowledge in investor advocacy and protection should be encouraged.
- All SRO regulatory policy advisory committees should include independent representatives.
- The CSA's current risk-based oversight methodology is too narrow / technical and needs to be broadened, with a 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 both enforcement and investor engagement.
- The CSA should obtain veto power over "significant" SRO publications (e.g., guidance and rule interpretations).
- An oversight program should be created for assessing overall performance of the SRO based on its mandate and responsibilities. It should include onsite and offsite review processes.
- There should be firm term limits for directors (e.g., 8-year term limit).
- Conflicts of interest and codes of conduct should be independently audited.
- A single SRO should have one set of rules and one approach which will benefit investors, as it will be simpler to administer, be more cost effective and easier to oversee from a compliance perspective.

Issue 7 – Separation of market surveillance from statutory regulators (CSA)

Most commenters supported the inclusion of market surveillance within the new SRO's mandate, a few suggested patriating this function to the CSA. Key comments provided were:

- There is no evidence of any concerns with the current surveillance framework. IIROC has responsibly and effectively discharged their surveillance responsibilities to date, as evidenced by their performance during recent market volatility.
- IIROC remains uniquely positioned in the current Canadian regulatory framework to continue to discharge its market regulation and surveillance mandate on a national basis. As an entity recognized across Canada, IIROC speaks with one voice internationally, enabling it to focus on continual improvements to surveillance systems.

- IIROC has state of the art surveillance systems and completed the implementation of a new, leading-edge surveillance IT platform that significantly improved its ability to supervise markets.
- Permitting IIROC, or a consolidated SRO, to continue to perform market surveillance does not compromise regulators in managing systemic risk. IIROC is complementary to statutory regulators, and shares information and data efficiently with regulators.
- One SRO stakeholder suggested that market regulation has systemic risk implications and such risk is more properly the responsibility of government agencies, including the CSA. The Australian model is an example whereby the statutory regulatory authority is responsible for direct conduct of market regulation for elimination of conflict of interest and management of overall systemic risks.
- One investor advocate stakeholder noted that there might be a merit in the CSA taking over the market surveillance function, either directly or through a new single purpose market surveillance entity, in order to eliminate concerns about information gaps and transparency.
- However, several industry stakeholders expressed serious concerns with transferring the market surveillance function to the CSA due to the current fragmentation of the statutory regulators, the potential disruptions to the industry, and the CSA's limited role in managing systemic risk and the costs associated with such transition.

Other issues related to Québec

One SRO expressed concern that the unique nature of the securities regulatory framework in Québec needs to be considered in determining a new SRO regulatory framework. Since the MFDA has never been formally recognized as an SRO by the AMF, in the event of SRO consolidation, mutual fund firms registered by the AMF with activities outside of Québec will still be regulated by multiple authorities.

An industry stakeholder submitted that the Québec framework is also distinct by the presence of the Chambre de la sécurité financière (CSF), which poses major challenges and prevents meeting the stated objectives of regulatory simplification and harmonization of the supervision of the mutual fund sector. However, the consolidation of SROs remains desirable for Québec firms doing business across Canada and it was recommended that:

- A consolidated SRO should include a strong office in Québec that can guarantee expertise in the French language, combined with significant representation on its board of directors and in its decision-making process. This would make it possible to maintain the proximity necessary for healthy competition and innovation for both the Québec and Canadian markets, in a regulatory environment that meets the needs of investors and the industry.

Other commenters from the industry also support the need for a proximity regulator with a wide scope ensuring investor protection by encompassing all firms and professionals who work in Québec's financial sector and a single window for investor complaints.

While aware of the limitations and weaknesses of the current model in Québec, other industry stakeholders, including small dealers and Québec-based advisors, suggested that the current regulatory framework should not be dismissed completely. Key comments provided are:

- The existence of the CSF in Québec is an interesting model, and the possibility of extending its responsibilities to brokers should be considered.

- The CSF is relevant for a single organization to exercise supervisory and sanctioning powers over individuals, regardless of their registration category.
- The current Québec model empowers the professional advisor who must primarily serve the interest of the client as customers must be able to trust their advisor due to the complexity of the field and the impacts on their financial health.

Industry stakeholders from Québec, mainly registered mutual fund representatives and Québec only registered mutual fund dealers, pointed out that the creation of a single SRO with authority throughout Canada would negate the specificities of Québec and its expertise and decision-making power in matters of securities regulation. Some commenters strongly believe that on the regulatory front, Québec would suffer from a substantial loss of influence. They submitted that Québec must ensure that its provincial jurisdiction in matters of securities is respected and must oppose any threat to the skills and professional autonomy of the securities industry participants.

Statistical information about stakeholders who provided written comments

i) Number of stakeholders by category

Stakeholders by Category	**#**
Other Industry Participants[1]	14
Industry Associations	13
Other IIROC Dealers	9
Dual Platform Dealers	8
Investor Advocates	7
SRO-related[2]	5
Other MFDA Dealers	5
Individuals / Other	5
Investor Protection Fund	1
Total Comment Letters	**67**

ii) Detailed list of stakeholders

Industry Associations

- Advocis
- Alternative Investment Management Association Canada
- Association professionnelle des conseillers en services financiers

[1] Québec-based advisors, TMX Group, Horizons ETFs, etc.
[2] MFDA, IIROC and 3 IIROC district councils / advisory committees.

- Canadian ETF Association
- CFA Societies Canada
- Federation of Mutual Fund Dealers
- FP Canada
- Independent Financial Brokers of Canada
- Investment Funds Institute of Canada
- Investment Industry Association of Canada
- Portfolio Management Association of Canada
- Private Capital Markets Association
- Registered Deposit Brokers Association

SROs and Investor Protection Funds

- Canadian Investor Protection Fund
- Investment Industry Regulatory Organization of Canada
- Mutual Fund Dealers Association of Canada
- National Advisory Committee - IIROC
- Ontario District Council - IIROC
- Quebec District Council - IIROC

Industry Stakeholders (individual and corporate)

- Angiletta, Michael
- ATB Securities Inc.
- Aviso Wealth
- Ayotte, Réjean
- Bergeron, Stephane
- Charest, Réal
- CI Assante Wealth Management
- Citadel Securities Canada
- CTI Capital Group
- D.W. Investment Co. Ltd.
- Fidelity
- Fugère, Michel
- GF Securities (Canada) Company Ltd.
- Groupe Cloutier Investissements
- Groupe Financier Multi Courtage Inc.
- Groupe Planifax Inc.
- Horizons ETFs Management (Canada) Inc.
- IA Financial Group
- Independent Trading Group
- Labbé, Jean-François G.

- Leede Jones Gable Inc.
- Madore, Michel
- Manulife Securities
- Merici Services Financiers
- Mouvement Desjardins
- Paquette, Serge
- Paradigm Capital
- PEAK Financial Group
- PFSL Investments Canada Ltd.
- Portfolio Strategies Corporation
- Spencer, Suzanne
- Sun Life Financial Investment Services (Canada) Inc.
- TD Bank Group
- TMX Group Ltd.
- Wellington West-Altus Private Wealth Inc.
- Worldsource Wealth Management Inc.

Investor Advocates

- FAIR Canada
- Groupe recherche en droit des services financiers, Université Laval
- Kenmar Associates
- OSC Investor Advisory Panel
- Osgoode Investor Protection Clinic
- Royal Roads University
- University of Toronto Investor Protection Clinic
- Whitehouse, Peter

Individual / Other Stakeholders

- Blanes, Alan
- Kennedy, Bev
- Learnedly
- Macguire, Philip

iii) Stakeholder Comments on specific issues

The below tables briefly describe the issues identified in the Consultation Paper and provide the number of stakeholders who commented on those issues.

Issue 1: Duplicative Operating Costs for Dual Platform Dealers

Issue Description	Stakeholder Category	# of Stakeholders Commented
Dual platform dealers face increased operating costs in having separate compliance functions, information technology systems, non-regulatory costs and multiple fees.	Industry Associations	9
	Dual Platform Dealers	6
	Other IIROC Dealers	6
	Investor Advocates	5
	SRO-related	3
	Other MFDA Dealers	2
	Other Industry Participants	3
	Individual / Other	1
	Total Comment Letters	**35**

Issue 2: Product-Based Regulation

Issue Description	Stakeholder Category	# of Stakeholders Commented
Registration categories are converging but different rules between each SRO, and between the SROs in general and the CSA with respect to similar products and services, might result in regulatory arbitrage.	Industry Associations	9
	Dual Platform Dealers	5
	Other IIROC Dealers	5
	Investor Advocates	5
	SRO-related	3
	Other MFDA Dealers	2
	Other Industry Participants	3
	Individual / Other	1
	Total Comment Letters	**33**

Issue 3: Regulatory Inefficiencies

Issue Description	Stakeholder Category	# of Stakeholders Commented
Inefficient access to certain products and services for certain registration categories; as well as inefficiencies and duplicative costs for the CSA in overseeing two SROs, and duplicative fixed costs and overhead for the SROs.	Industry Associations	9
	Other IIROC Dealers	4
	Investor Advocates	4
	SRO-related	3
	Other Industry Participants	3
	Dual Platform Dealers	2
	Individual / Other	2
	Other MFDA Dealer	1
	Investor Protection Fund	1
	Total Comment Letters	**29**

Issue 4: Structural Inflexibility

Issue Description	Stakeholder Category	# of Stakeholders Commented
Evolving business models are limited by the current regulatory framework; 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; and the current regulatory framework limits opportunities for registrant professional advancement.	Industry Associations	10
	Dual Platform Dealers	7
	Other Industry Participants	6
	Investor Advocates	6
	Other IIROC Dealers	5
	SRO-related	2
	Other MFDA Dealers	2
	Individual / Other	1
	Total Comment Letters	**39**

Issue 5: Investor Confusion

Issue Description	Stakeholder Category	# of Stakeholders Commented
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.	Industry Associations	8
	Investor Advocates	7
	Other IIROC Dealers	6
	Dual Platform Dealers	4
	SRO-related	3
	Other MFDA Dealers	2
	Other Industry Participants	2
	Investor Protection Fund	1
	Individual / Other	1
	Total Comment Letters	**34**

Issue 6: Public Confidence in the Regulatory Framework

Issue Description	Stakeholder Category	# of Stakeholders Commented
Possible lack of public confidence in the current SRO regulatory framework; 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; concerns 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 mandates.	Industry Associations	10
	Investor Advocates	7
	Other Industry Participants	7
	Individual / Other	3
	SRO-related	2
	Other IIROC Dealers	2
	Other MFDA Dealers	1
	Investor Protection Fund	1
	Total Comment Letters	**33**

Issue 7: Market Surveillance

Issue Description	Stakeholder Category	# of Stakeholders Commented
Possible information gaps and fragmented market visibility resulting from market surveillance functions being separated from the statutory regulators.	Industry Associations	6
	Other IIROC Dealers	3
	Investor Advocates	3
	Dual Platform Dealers	2
	Other Industry Participants	2
	SRO-related	2
	Other MFDA Dealers	1
	Individual / Other	1
	Total Comment Letters	**20**

Appendix B – Other Options Considered

As described in Section 2 of this Position Paper, the Working Group also identified and defined five other possible Options to restructure the current SRO framework (including the IPFs) for further consideration and detailed analysis. The other Options were:

- Straight merger between IIROC and the MFDA
- Two SROs / enhanced status quo
- No SRO / 13 individual statutory regulators
- CSA-led regulatory organization
- Multiple SROs

After considerable review and analysis[1], it was determined that the other Options outlined below would not address the specific issues and sub-issues or deliver on the CSA targeted outcomes identified in the Consultation Paper, as effectively as the New SRO and New IPF described in Section 3 - New SRO Framework.

Straight merger between IIROC and the MFDA

An immediate merger of IIROC and the MFDA would have occurred following CSA approval. In the short term, separate rule books would have been maintained, along with separate compliance structures, enforcement processes, and fee structures. The harmonization of these elements as well as possible governance related changes would not have been be prioritized.

In the longer term, the merged SRO would have harmonized the MFDA and IIROC rules, consolidated other aspects of their respective organizations, and would have considered whether other registration categories should have been consolidated under the new SRO; although, there would have been no set plans to do so.

Consolidation of the two IPFs into one independent entity could have occurred in either the short or longer term.

Implementing this Option would have been led by the SROs and IPFs, with the CSA overseeing the consolidation process, as opposed to the CSA leading the process.

Two SROs / enhanced status quo

Both SROs and IPFs would have continued to operate independently under existing rules, by-laws, and fee structures. However, enhancements to applicable SRO and IPFs structures, governance, rules and processes would have been adopted. The existing CSA Principal Regulator coordinated oversight model for each entity would have remained unchanged. There would have been no consolidation of any aspects of their respective organizations or of any other registration categories. Implementation of the enhancements would have been directed by the CSA.

[1] For details on the methodology used, refer to section 2 of the Position Paper.

No SRO / 13 individual statutory regulators

IIROC and the MFDA would have ceased to exist and their respective regulatory functions would have been transferred to the statutory regulators, which would have performed the primary oversight of all registrants, with the possibility of coordination of regulatory initiatives on a cross-Canada basis through the CSA. The role of the IPFs providing coverage to eligible investors would have been the responsibility of the statutory regulators. The inherent challenges associated with the multi-jurisdictional securities regulation in Canada would not have been resolved under this Option.

CSA-led regulatory organization

This Option would have involved the creation of a new regulatory organization controlled directly and exclusively by the CSA. Each of the CSA's recognizing regulators would have been a member of the regulatory organization with exclusive voting rights over the by-laws of the organization and the appointment of the organization's board of directors, among other things.

Under this Option, IIROC and MFDA would have been integrated within the new CSA regulatory organization and their members would have become non-voting members of the new regulatory organization. The rule books for IIROC and the MFDA would have been consolidated into a single rule book and overseen by the regulatory organization. The regulatory organization would have also overseen the consolidation of compliance and enforcement processes for investment dealers and mutual fund dealers. The CSA would have considered the merits of consolidating other registration categories under the new regulatory organization during a later phase. Lastly, CIPF and the MFDA IPC would have been integrated into a similar CSA independent investor protection fund created to provide coverage to eligible investors.

As this Option would not fit within the existing legislative framework of the statutory regulators, amendments to numerous securities legislations across the country would have been required, in addition to the resolution of numerous uncertainties as to how the Option could be effectively operationalized in practice. Significant changes to numerous existing securities legislation would have been required.

Multiple SROs

Other applicable registration categories currently overseen directly by the statutory regulators would have been incorporated into a multiple SRO framework. The design and scope of such a framework could have included:

- one SRO for Investment Dealers (**ID**s) and Mutual Fund Dealers (**MFD**s); and separate SROs for each of the other categories;
- one SRO for IDs, MFDs, EMDs and SPDs; and a separate SRO for PMs and/or IFMs; or
- a separate SRO for each registration category.

The number of IPFs and scope of coverage would have been driven by the design and scope of the multiple SRO framework. Any changes would have occurred after extensive consultation with key stakeholders to minimize duplicative costs. reduce fragmentation of product-based regulation, and limit other inefficiencies noted from the current structure.

Appendix C – Enabling Changes

This Appendix provides a description of various areas where steps will have to be taken in order to facilitate the implementation of the proposed solutions outlined in the Position Paper. These steps will involve some regulatory changes as well as the formation of various committees / working groups for the implementation strategy that will lead or assist with further consultations, transition and implementation of the specific solutions denoted in this section.

Regulatory Changes

Most of the regulatory changes necessary for implementation will be addressed through the ROs for the New SRO. Currently, both IIROC and the MFDA are subject to their respective ROs, which lay out various terms and conditions, the governance structure and reporting requirements. Similarly, the two current IPFs are subject to their respective Approval Orders (**AOs**). Both ROs and AOs are largely harmonized across all CSA jurisdictions as well as between IIROC and the MFDA and between the IPFs respectively, as a result of a recently completed CSA initiative.

CSA oversight staff will also need to draft a new single MOU, including the new JRRP, among the recognizing regulators setting out a strengthened CSA oversight framework over the New SRO. A new single MOU regarding the oversight of the new IPF will also be drafted. Similar to the ROs and AOs, the current SRO and IPF MOUs have been recently updated and harmonized.

The agreements between members and the New SRO will need to be amended.

Finally, the National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* will need to be adjusted to appropriately reference the New SRO.

While the above-noted documents are being developed / updated, it will be important to ensure that both the CSA oversight staff and the SROs continue to efficiently exercise their respective responsibilities.

Committees / Working Groups

The following is a list of committees and working groups that will need to be established or engaged as part of the implementation strategy to ensure the success of the New SRO and implement the various solutions.

As already described in Section 3 – New SRO Framework, after receiving necessary approvals including a CSA mandate, the IWC will be formed to oversee an agreed upon implementation strategy, and to act as a steering committee to provide direction and coordination. In addition, through specialized committees and working groups, the following areas will be considered:

- **Directed Commissions:** After appropriate stakeholder consultations, in conjunction with the IWC's efforts to harmonize the rules, a distinct **Directed Commissions WG** will complete the necessary work, such as: (i) considering any tax-related or other regulatory concerns with permitting directed commissions arrangements; (ii)

following the completion of consideration of tax-related or other regulatory concerns and in consultation with appropriate stakeholders if applicable, proposing a rule and a prescribed form of agreement that provides the appropriate protections; (iii) assessing a possible consequential amendment to Part 8 of NI 31-103 modelled on the existing CSA local registration exemptions; and (iv) considering whether a long-term solution, such as a true incorporated salesperson regime, is warranted.

- **OBSI:** There will be engagement with the **CSA OBSI Working Group** to consider assessing the need for an appeal or review mechanism regarding continuing efforts to make OBSI decisions binding; and the **Joint Regulator Committee** assessing (i) the scope of matters an SRO firm's internal ombudsperson can address, and (ii) OBSI complaint data for complaint handling trends.

- **Education:** There will be coordination with **CSA Communications / Education groups** on joint efforts to expand the reach and impact of investor education, as specified in the solutions.

- **SEDAR+ Project:** There will be engagement with **CSA regulatory staff** involved in the project to consider the merits of including public disclosure and easy access to information pertaining to member firms of the New SRO, including consideration of information disclosure similar to that contained in the SEC's Form ADV, and, in cases of individual registrants, the current IIROC Advisor Report.

- **Market Surveillance:** A new distinct **CSA Market Information Coordinating Working Group,** composed of staff with market surveillance knowledge or experience (Enforcement, Market Regulation, SRO Oversight, Systemic Risk), in collaboration with the relevant New SRO staff, will work to identify and recommend improvements to existing processes relating to the supervision of market data.

Following Phase 1, a distinct **CSA SRO Working Group**, in coordination with the CSA Registration Steering Committee, will assess and consult on the merits of consolidating, based on proficiency, some registration categories regulated directly by the CSA (e.g., PMs, EMDs, SPDs). Further, it will consider the merits of (i) integrating some or all of these registration categories into the New SRO, (ii) allocating registration functions as between CSA members and the New SRO and any necessary resulting changes to the governance structure, (iii) assessing adequacy of advocacy mechanisms considering the allocation of registration functions, and (iv) extending fit-for-purpose IPF coverage to the other registration categories.

Finally, work will be considered to harmonize certain securities regulation with that of the insurance regulators. This will be conducted through the **Joint Forum of Financial Market Regulators** and more specifically the joint CSA / Canadian Council of Insurance Regulators project on Total Cost Reporting.

Appendix D – Table of References

This Table of References provides a comprehensive list of materials the Working Group reviewed and considered in the development of the Position Paper. The documents were identified and sourced directly by the Working Group or highlighted by stakeholders. The degree to which any document listed below was reviewed and analyzed varied and depended on the relevance of its underlying content to the issues identified, and the solutions set out in the Position Paper. Inclusion of third-party publications in this Table of References does not connote the Working Group's endorsement or agreement with the opinions expressed, or the information contained therein. All below electronic links were confirmed to be functional as of July 12, 2021.

Research Publications

Accenture Consulting and Investment Industry Regulatory Organization of Canada. "Enabling the Evolution of Advice in Canada." (2019). https://www.iiroc.ca/news-and-publications/enabling-evolution-advice-canada

Austin, Janet. "Government to the rescue: ASIC takes the reins of the Stock Markets." Companies and Securities Law Journal, (2010). https://www.unb.ca/faculty-staff/directory/_resources/pdf/law/janet-austin.pdf

Australian Securities & Investments Commission Webpage. "Consumer Advisory Panel." https://asic.gov.au/about-asic/what-we-do/how-we-operate/external-panels/consumer-advisory-panel/

Autorité des marchés financiers Webpage. "Advisory Committees." https://lautorite.qc.ca/en/general-public/about-the-amf/advisory-committees/

Calabria, Mark A., Norbert J. Michel, and Hester Peirce. "Reforming the Financial Regulators." The Heritage Foundation, (2017). https://www.heritage.org/markets-and-Finance/report/reforming-the-financial-regulators

Canadian Foundation for Advancement of Investor Rights. "Letter to OBSI Joint Regulators Committee re Use of "Internal Ombudsman" by Registered Firms When Responding to Investment Complaints." (2017). https://faircanada.ca/submissions/letter-obsi-joint-regulators-committee-re-use-internal-ombudsman-registered-firms-responding-investment-complaints/

Capital Markets Modernization Taskforce. "Capital Markets Modernization Taskforce Final Report." (January 2021). https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021

Carson, John, W. "Conflicts of Interest in Self-Regulation: Can Demutualized Exchanges Successfully Manage Them." The World Bank: World Bank Policy Research Working Paper 3183, (December 2003). http://documents.worldbank.org/curated/en/106851468765283747/pdf/wps3183.pdf

Carson, John W. "Self-Regulation in Securities Markets." World Bank Policy Research Working Paper No. 5542, (January 2011). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1747445

CFA Institute Centre for Financial Market Integrity. "Self-Regulation in Today's Securities Markets: Outdated System or Work in Progress?" (2007). https://www.cfainstitute.org/-/media/documents/article/position-paper/self-regulation-in-todays-securities-markets-outdated-system-or-work-in-progress.ashx

CFA Institute. "Self-Regulation in the Securities Markets, Transitions and New Possibilities" https://www.cfainstitute.org/-/media/documents/article/position-paper/self-regulation-in-securities-markets-transitions-new-possibilities.ashx

De Laurentiis, Joanne. "Ripe for Reform: Modernizing the Regulation of Financial Advice." C.D. Howe Institute Commentary 556, (October 2019). https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary%20556.pdf

Dombalagian, Onnig, H. "Self and Self-Regulation: Resolving the SRO Identity Crisis." Brooklyn Journal of Corporate, Financial & Commercial Law Vol 1, (2007). https://brooklynworks.brooklaw.edu/bjcfcl/vol1/iss2/4/

Ford, Cristie. "Innovation and the State Finance, Regulation, and Justice." Cambridge University Press, (2017). https://www.cambridge.org/core/books/innovation-and-the-state/724C56A33EC7DB1F079003D7F2FC5C78

International Council of Securities Associations. "Self-Regulation in Financial Markets: An Exploratory Survey." (September 2006). https://icsa.global/sites/default/files/Self-RegulationFinancialMarkets.pdf

International Council of Securities Associations. "Best Practices for Self-Regulatory Organizations." (2006). https://icsa.global/sites/default/files/ICSABestPracticesSRO.pdf

Investor Advisory Panel. "A Measure of Advice: How much of it do investors with small and medium-sized portfolios receive?" (2019). https://www.osc.ca/sites/default/files/2020-10/iap_20190729_survey-findings-on-how-much-advice-investors-receive.pdf

Investment Industry Association of Canada. "IIAC Securities Industry Statistics." (2020). https://iiac.ca/wp-content/uploads/SIP-A-Stats-EN_2020.pdf

Investment Industry SRO Forum. "Investment Industry SRO Forum Submission" The Investment Funds Institute of Canada, the Investment Industry Association of Canada and the Federation of Mutual Fund Dealers, (March 2021). https://iiac.ca/wp-content/uploads/Investment-Industry-SRO-Forum-Submission-to-the-CSA.pdf

International Organization of Securities Commissions. "Model for Effective Regulation, Report of the SRO Consultative Committee of the International Organization of Securities Commissions." (2000). https://www.iosco.org/library/pubdocs/pdf/IOSCOPD110.pdf

Keir, Katie. "Firms face barriers to ETF Market." Investment Executive, (Jan 17, 2020). https://www.investmentexecutive.com/newspaper_/building-your-business-newspaper/firms-face-barriers-to-etf-market/

Leblanc, Richard. "The Handbook of Board Governance: A Comprehensive Guide for Public, Private, and Not-for-Profit Board Members." John Wiley & Sons, (2016)

Lokanan, Mark. "An update on self-regulation in the Canadian securities industry (2009-2016): Funnel in, funnel out and funnel away." Journal of Financial Regulation and Compliance, (2019). https://www.emerald.com/insight/content/doi/10.1108/JFRC-05-2018-0075/full/html?skipTracking=true

Lokanan, Mark. “Regulatory Capture of Regulators: The Case of the Investment Dealers Association of Canada.” International Journal of Public Administration, (2017). https://www.tandfonline.com/doi/abs/10.1080/01900692.2017.1385623

Lokanan, Mark. “Securities Regulation: Opportunities Exist for IIROC to Regulate Responsively.” Administration & Society, (2018).https://journals.sagepub.com/doi/abs/10.1177/0095399715584637

Ma, Chang. “Self-Regulation versus Government Regulation: An Externality View.” Fudan University, (2018). https://www.researchgate.net/publication/327856931_Self-Regulation_versus_Government_Regulation_An_Externality_View

Macey, Jonathan and Caroline Novogrod. "Enforcing Self-Regulatory Organization's Penalties and the Nature of Self-Regulation." Hofstra Law Review: Vol. 40, (2012). https://scholarlycommons.law.hofstra.edu/hlr/vol40/iss4/6/

McQuinn, Alan. “Supporting Financial Innovation Through Flexible Regulation.” Information Technology and Innovation Foundation, (2019). https://itif.org/publications/2019/11/04/supporting-financial-innovation-through-flexible-regulation

Mysicka, Robert. “Who Watches the Watchmen? The Role of the Self-Regulator.” C.D. Howe Institute, (2014). https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_416.pdf

Omarova, Saule, T. “Wall Street as a Community of Fate: Toward Financial Industry Self-Regulation.” University of Pennsylvania Law Review: Vol. 159, (2011). https://www.law.upenn.edu/journals/lawreview/articles/volume159/issue2/Omarova159U.Pa.L.Rev.411(2011).pdf

Ombudsman for Banking Services and Investments. “Consumer Surveys 2016 - 2019.” https://www.obsi.ca/en/for-consumers/past-feedback-and-input.aspx

Ontario Minister of Finance. "Capital Markets Stability Act — Draft for Consultation." (2016). http://ccmr-ocrmc.ca/statement-release-revised-consultation-draft-capital-markets-stability-act/

Ontario Securities Commission Webpage. "Investor Advisory Panel." https://www.osc.ca/en/investors/investor-advisory-panel

Organisation for Economic Co-operation and Development. "OECD Report – Promoting Fair and Transparent Regulation" (2000) www.oecd.org/gov/regulatory-policy/1901290.doc

Osgoode Hall Law School. "Investor Protection Clinic Living Lab Annual Report 2020." York University, (2020). https://www.osgoode.yorku.ca/wp-content/uploads/2020/08/IPC-AnnualReport_2020-FINAL.pdf

Osgoode Hall Law School. "Osgoode Investor Protection Clinic partners with pan-Canadian self-regulator, IIROC." York University, (2020). https://www.osgoode.yorku.ca/media_releases/osgoode-investor-protection-clinic-partners-with-pan-canadian-self-regulator-iiroc/

Rittenhouse, Linda. "Characteristics of Effective Self-Regulatory Organizations." CFA Institute, (2014). https://blogs.cfainstitute.org/marketintegrity/2014/06/12/top-10-characteristics-of-effective-self-regulatory-organizations/

Rittenhouse, Linda. "Self-Regulation in the Securities Markets - Transitions and New Possibilities." CFA Institute, (2013). https://www.cfainstitute.org/en/advocacy/policy-positions/self-regulation-in-the-securities-markets-transitions

Schoeff, Mark Jr. and Bruce Kelly. "Finra: Who's watching the watchdog?" Investment News, (2017). https://www.investmentnews.com/finra-whos-watching-the-watchdog-72102

Small Investor Protection Association. "Above the Law Checking an Advisor's Registration." (2016). http://sipa.ca/library/SIPAsubmissions/500_SIPA_REPORT_REGISTRATION-Above-the-Law_201611.pdf

Small Investor Protection Association. "Advisor Title Trickery – Your Financial Advisor is a Commission Person." (2016).

http://www.sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20-%20Advisor%20Title%20Trickery%20October%202016.pdf

Small Investor Protection Association. "Investor Protection and IIROC Governance." (2016). https://www.sipa.ca/library/SIPAsubmissions/500_SIPA_REPORT_InvestorProtection_IIROCGovernance_20161009.pdf

Stoltmann, Andrew and Benjamin P. Edwards. "FINRA Governance Review Report: Governors Should Protect the Public Interest", PIABA, (2017). https://piaba.org/piaba-newsroom/report-finra-governance-review-public-governors-should-protect-public-interest

Strategic Insight. "Canadian Investment Funds Industry: Recent Developments and Outlook." (2019). https://www.ific.ca/en/research-reports/

The Investment Funds Institute of Canada. "2019 Investment Funds Report." (2019). https://www.ific.ca/en/research-reports/

Tittsworth, David G. "H.R. 4624: The Pitfalls of a Self-Regulatory Organization for Investment Advisers and Why User Fees Would Better Accomplish the Goal of Investment Adviser Accountability." St. John's Law Review, (2013). https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=5552&context=lawreview

CSA Instruments and Publications

Canadian Securities Administrators. "IIROC Oversight Review (2019)." https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Industry/Marketplaces-SROs-and-Market-Infrastructure/SROs/IIROC/IIROC-Oversight-Review-Report-August-5-2020.pdf

Canadian Securities Administrators. "Oversight Review Report of the Mutual Fund Dealers Association of Canada (2018)." https://www.bcsc.bc.ca/-/media/PWS/Resources/Marketplaces/SRO/MFDA/MFDA-Oversight-Review-Report.pdf

Companion Policy 31-103 CP Registration Requirements, Exemptions and Ongoing Registrant *Obligations* (March 1, 2021). https://www.bcsc.bc.ca/-/media/PWS/New-

Resources/Securities-Law/Instruments-and-Policies/Policy-3/31103CP-CP-March-11-2021.pdf

CSA Notice 24-303 – CSA SRO Oversight Project – Review of Oversight of Self-Regulatory Organizations and Market Infrastructure Entities – Report of the CSA SRO Oversight Project Committee. December 2006. (NTD - Reformatted for consistent approach) https://www.osc.ca/sites/default/files/pdfs/irps/csa_20061208_24-303_oversightproject.pdf

CSA Staff Notice 31-358 *Guidance on Registration Requirements for Chief Compliance Officers and Request for Comments.* (July 2, 2020). https://www.osc.ca/sites/default/files/2020-11/csa_20200702_31-358_rfc-guidance-registration-requirements.pdf

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." (2017). https://www.osc.ca/en/securities-law/instruments-rules-policies/3/31-351/joint-csa-staff-notice-31-351-iiroc-notice-17

National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (March 1, 2021). https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-3/31103-NI-March-11-2021.pdf

Relevant SRO and Investor Protection Fund Publications

Canadian Investor Protection Fund. "The Independence of Compensation Funds." (March 2021). https://www.cipf.ca/docs/default-source/default-document-library/discussion-paper_en_march-31-2021.pdf?sfvrsn=f93854b9_6

Deloitte. "An Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation." Investment Industry Organization of Canada, (July 2020). https://www.iiroc.ca/news-and-publications/notices-and-guidance/consolidating-iiroc-and-mfda-would-save-half-billion

Investment Industry Organization of Canada. "Improving Self-Regulation for Canadians, Consolidating the Investment Industry Regulatory Organization of Canada (IIROC) and

the Mutual Fund Dealers Association of Canada (MFDA).” (June 2020). https://www.iiroc.ca/news-and-publications/improving-self-regulation-canadians

Investment Industry Regulatory Organization of Canada. “Corporate Governance Review Report.” (2014). https://iiroc.ca/media/8556/download

Investment Industry Regulatory Organization of Canada. “Enforcement Report 2019.” (2020). https://www.iiroc.ca/news-and-publications/enforcement-reports

Investment Industry Regulatory Organization of Canada. “IIROC Notice 15-0260 - IIROC White Paper. “The Public Policy Implications of Changes to Rules Regarding Proficiency Upgrade Requirements and Directed Commissions on the IIROC Platform.” (2015)

Investment Industry Regulatory Organization of Canada Webpage. “Annual Reports.” https://www.iiroc.ca/news-and-publications/annual-reports

Investment Industry Regulatory Organization of Canada Webpage. “Strategic Plans and Annual Priorities.” https://www.iiroc.ca/news-and-publications/strategic-plans-and-annual-priorities

Investment Industry Regulatory Organization of Canada Webpage. “How to Make a Complaint.” https://www.iiroc.ca/investors/how-make-complaint

Mutual Fund Dealers Association of Canada. “A Proposal for a Modern SRO Special Report on Securities Industry Self-Regulation.” (February 2020). https://mfda.ca/wp-content/uploads/MFDA_SpecialReport-3.pdf

Mutual Fund Dealers Association of Canada. “Annual Report 2019.” https://mfda.ca/mfda-2019-annual-report/

Mutual Fund Dealers Association of Canada. “Client Research Report 2020 A Continued Look into Members, Advisors and Clients.” (2020). https://mfda.ca/wp-content/uploads/2020_ClientResearchReport-1.pdf

Mutual Fund Dealers Association of Canada. “Design and Implementation of a New Modern SRO. Roadmap.” (March 2021). https://mfda.ca/wp-content/uploads/New_Modern_SRO_Roadmap.pdf

Mutual Fund Dealers Association of Canada. "MSN - 0073 MFDA Staff Notice Complaint Handling – MFDA Policy No. 3." https://mfda.ca/wp-content/uploads/MSN-0073-2.pdf

Mutual Fund Dealers Association of Canada. "Proposed Amendments to MFDA By-law No. 1 – Sections 3.3 (Election and Term), 3.6.1 (Governance Committee and 4.7 (Quorum)." (2019). https://mfda.ca/wp-content/uploads/PropAmendBy-lawNo1-Governance.pdf

Mutual Fund Dealers Association of Canada. "What Canadian investors want in a modern SRO." (2020). https://mfda.ca/wp-content/uploads/InvSRO_Report.pdf

Mutual Fund Dealers Association of Canada Webpage. "Annual Enforcement Report 2019." https://mfda.ca/wp-content/uploads/EnfAR2019.pdf

Mutual Fund Dealers Association of Canada Webpage. "Client Complaint Information Form." https://mfda.ca/wp-content/uploads/ClientComplaint_En.pdf

Mutual Fund Dealers Association of Canada Webpage. "Comment Letters. Proposed Amendments to MFDA By-law No. 1 – Sections 3.3 (Election and Term), 3.6.1 (Governance Committee and 4.7 (Quorum)." https://mfda.ca/policy-and-regulation/proposed-regulation-consultations/propamend-by-law-no-1/

Mutual Fund Dealers Association of Canada Webpage. "How to Make a Complaint." https://mfda.ca/investors/how-to-make-a-complaint/

The Strategic Counsel and Investment Industry Regulatory Organization of Canada. "Access to Advice." (2020) and "Investor Awareness Tracking Survey." (2020) https://www.iiroc.ca/news-and-publications/improving-self-regulation-canadians

SRO and Investor Protection Fund Constating Documents

Canadian Securities Administrators. "Recognition Orders." IIROC Recognition Order, Ontario Securities Commission. (April 2021). https://www.osc.ca/en/securities-law/orders-rulings-decisions/variation-and-restatement-iiroc-recognition-order-s-144-act-and-s-781-cfa-effective-april-1-2021

Canadian Securities Administrators. "Memorandum of Understanding Regarding Oversight of Investment Industry Organization of Canada." IIROC Memorandum of Understanding,

Ontario Securities Commission. (April 2021). https://www.osc.ca/en/industry/market-regulation/self-regulatory-organizations-sro/investment-industry-regulatory/iiroc-mou/notice-commission-approval-amended-memorandum

Canadian Securities Administrators. "Recognition Orders." MFDA Recognition Order, British Columbia Securities Commission. (April 2021). https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Industry/Marketplaces-SROs-and-Market-Infrastructure/SROs/MFDA/MFDA-Variation-Order-March-25-2021.pdf

Canadian Securities Administrators. "Memorandum of Understanding Regarding Oversight of the Mutual Fund Dealers Association of Canada." MFDA Memorandum of Understanding, British Columbia Securities Commission. (April 2021). https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Industry/Marketplaces-SROs-and-Market-Infrastructure/SROs/MFDA/MOU-Among-Recognizing-Regulators-of-the-MFDA-March-25-2021.pdf

Canadian Securities Administrators. "The Canadian Investor Protection Fund Approval Orders." CIPF Approval Order, Ontario Securities Commission. (January 2021). https://www.osc.ca/en/securities-law/orders-rulings-decisions/canadian-investor-protection-fund-s-144-csa-and-s-781-cfa-8218-0

Canadian Securities Administrators. "Memorandum of Understanding Regarding the Oversight of the Canadian Investor Protection Fund." CIPF Memorandum of Understanding, Ontario Securities Commission. (January 2021). https://www.osc.ca/en/industry/market-regulation/investor-protection-funds/canadian-investor-protection-fund-cipf/cipf-mous/notice-commission-approval-new-mou-regarding

Canadian Securities Administrators. "The MFDA Investor Protection Corporation Approval Orders." MFDA IPC Approval Order, Ontario Securities Commission. (January 2021). https://www.osc.ca/en/securities-law/orders-rulings-decisions/mutual-fund-dealers-association-canada-investor-protection-corporation-mfda-ipc-and-mutual-fund

Canadian Securities Administrators. "Memorandum of Understanding Regarding the Oversight of The MFDA Investor Protection Corporation." Investor Protection Funds, Ontario Securities Commission (January 2021). https://www.osc.ca/en/industry/market-

regulation/investor-protection-funds/mfda-investor-protection-corporation-mfda-ipc/mfda-ipc-mous/notice-commission-approval-new-mou

IIROC and MFDA Rules

Investment Industry Regulatory Organization of Canada. "IIROC Rules." (April 2021).

https://www.iiroc.ca/rules-and-enforcement/iiroc-rules

Mutual Fund Dealers Association of Canada. "Rules." (January 2021). https://mfda.ca/wp-content/uploads/Rules-Jan21.pdf

Mutual Fund Dealers Association of Canada. "Policies." (January 2021). https://mfda.ca/policy-and-regulation/policies/

Sources Used to Develop CSA Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework

Bank of England Webpage. "Prudential regulation." https://www.bankofengland.co.uk/prudential-regulation

Canadian Investor Protection Fund Webpage. "About CIPF Coverage." http://cipf.ca/Public/CIPFCoverage/WhatAretheCoverageLimits.aspx

Canadian Investor Protection Fund Webpage. "Financial Statements of Canadian Investor Protection Fund 2019." https://www.cipf.ca/docs/default-source/default-document-library/cipf-2019-fs-english-final-package11e92445bc1e49d08980554b0d29eda3.pdf?sfvrsn=b5c35e4d_3

CSA Staff Notice 31-347 *Guidance for Portfolio Managers for Service Arrangements with IIROC Dealer Members.* (November 17, 2016). https://www.osc.ca/en/securities-law/instruments-rules-policies/3/31-347/csa-staff-notice-31-347-guidance-portfolio

"Co-operative agreement between : L'Agence nationale d'encadrement du secteur financier, the ("Autorité") Chambre de la sécurité financière ("Chambre") and Association canadienne des courtiers de fonds mutuels ("ACCFM")." (December 2004). https://lautorite.qc.ca/en/professionals/regulations-and-obligations/distribution-of-financial-products-and-services/agreements

FAIR Canada. "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/

FAIR Canada and PIAC. "Use of "Internal Ombudsman" by Registered Firms When Responding to Investment Complaints." (2017). http://faircanada.ca/wp-content/uploads/2017/10/171011-Final-Joint-FAIR-Canada-and-PIAC-Letter-re-Use-of-Internal-Ombudsman-2.pdf

Financial Conduct Authority. "Corporate governance of the Financial Conduct Authority."(2020). https://www.fca.org.uk/publication/corporate/fca-corporate-governance.pdf

Financial Conduct Authority. "Our Mission 2017 How we regulate financial services." (2017). https://www.fca.org.uk/publication/corporate/our-mission-2017.pdf#page=7

Financial Conduct Authority Webpage. "Authorisation: what's involved." https://www.fca.org.uk/firms/authorisation/when-required

Financial Conduct Authority Webpage. "Enforcement." https://www.fca.org.uk/about/enforcement

Financial Conduct Authority Webpage. "Financial Services Consumer Panel." https://www.fs-cp.org.uk/consumer-panel/what-panel

Financial Conduct Authority Webpage. "How to claim compensation if a firm fails." https://www.fca.org.uk/consumers/claim-compensation-firm-fails

Financial Conduct Authority Webpage. "How to complain." https://www.fca.org.uk/consumers/how-complain

Financial Conduct Authority Webpage. "List of financial activities we regulate." https://www.fca.org.uk/firms/authorisation/how-to-apply/activities

Financial Conduct Authority Webpage. "Rights of Victims." https://www.fca.org.uk/consumers/rights-victims

Financial Conduct Authority Webpage. "Sector overview." https://www.fca.org.uk/about/sector-overview

Financial Conduct Authority Webpage. "Statutory panels." https://www.fca.org.uk/about/uk-regulators-government-other-bodies/statutory-panels

Financial Conduct Authority Webpage. "The FCA Board." https://www.fca.org.uk/about/fca-board

Financial Conduct Authority Webpage. "Training and competence." https://www.fca.org.uk/firms/training-competence

Financial Conduct Authority Webpage. "What we publish." https://www.fca.org.uk/what-we-publish

Financial Securities Act 2012, UK Public General Acts 2012, c.21. http://www.legislation.gov.uk/ukpga/2012/21/contents/enacted

FINRA Webpage. "Adjudications & Decisions." https://www.finra.org/rules-guidance/adjudication-decisions

FINRA Webpage. "Advisory Committees." https://www.finra.org/about/governance/advisory-committees#iic

FINRA Webpage. "File a Complaint." https://www.finra.org/investors/have-problem/file-complaint

FINRA Webpage. "FINRA Board of Governors." https://www.finra.org/about/governance/finra-board-governors

FINRA Webpage. "FINRA Rule Consolidation." https://www.finra.org/rules-guidance/rulebook-consolidation

FINRA Webpage. "FINRA Rulemaking Process." https://www.finra.org/rules-guidance/rulemaking-process

FINRA Webpage. "Legitimate Avenues for Recovery of Investment Losses." https://www.finra.org/investors/have-problem/legitimate-avenues-recovery-investment-losses

FINRA Webpage. "Ombudsman - Frequently Asked Questions." https://www.finra.org/about/office-ombudsman/ombudsman-frequently-asked-questions

FINRA Webpage. "Your Rights Under SIPC Protection." https://www.finra.org/investors/have-problem/your-rights-under-sipc-protection

Government of the United Kingdom Webpage. "Apply for Financial Conduct Authority (FCA) authorisation." https://www.gov.uk/registration-with-the-financial-conduct-authority

International Organization of Securities Commissions. "Credible Deterrence in the Enforcement of Securities Regulation." (2015) https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf

Investment Industry Regulatory Organization of Canada. "Guide to IIROC Categories." (2021). https://www.iiroc.ca/media/13101/download

Investment Industry Regulatory Organization of Canada. "IIROC Guidance Note 14-0073 Use of Business Titles and Financial Designations." (2014). https://www.iiroc.ca/news-and-publications/notices-and-guidance/use-business-titles-and-financial-designations

Investment Industry Regulatory Organization of Canada. "IIROC Notice 19-0222 Guidance on IIROC's Continuing Education Program." (2019). https://www.iiroc.ca/news-and-publications/notices-and-guidance/guidance-iirocs-continuing-education-program-1

Investment Industry Regulatory Organization of Canada Webpage. "Board of Directors." https://www.iiroc.ca/about-iiroc/who-we-are

Investment Industry Regulatory Organization of Canada Webpage. "Policy Priorities." https://www.iiroc.ca/rules-and-enforcement/policy-priorities

Kenmar Associates. "Comment Letter. Proposed Amendment to IIROC By-law No. 1 Regarding Director Term Limits." (2019). https://www.iiroc.ca/news-and-publications/notices-and-guidance/proposed-amendment-iiroc-law-no-1-regarding-director

MFDA Investor Protection Corporation Webpage. "2019 Annual Report". https://mfda.ca/wp-content/uploads/IPC_AR19.pdf

Mutual Fund Dealers Association of Canada Webpage. "Board of Directors." https://mfda.ca/about/board-of-directors/

Mutual Fund Dealers Association of Canada Webpage. "MFDA IPC Coverage." http://mfda.ca/mfda-investor-protection-corporation/mfda-ipc-coverage/

Mutual Fund Dealers Association of Canada Webpage. "Policy and Regulation." https://mfda.ca/policy-and-regulation/

National Instrument 21-101 *Marketplace Operations*. (September 14, 2020). https://www.osc.ca/en/securities-law/instruments-rules-policies/2/21-101

National Instrument 45-106, *Prospectus Exemptions*. (October 5, 2018). https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-106

National Instrument 23-101 *Trading Rules* (April 10, 2017). https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-101

Ontario Securities Commission. "OSC Staff Notice 31-715 Mystery Shopping for Investment Advice, Insights into advisory practices and the investor experience in Ontario." (2015). https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf

The Intermarket Surveillance Group Webpage. "Overview." https://isgportal.org/overview

The New York Stock Exchange Webpage. *"Securities Exchange Act of 1934* As Amended." https://www.nyse.com/publicdocs/nyse/regulation/nyse/sea34.pdf

U.S. Securities and Exchange Commission. "SEC Gives Regulatory Approval for NASD and NYSE Consolidation." (2007). https://www.sec.gov/news/press/2007/2007-151.htm

U.S. Securities and Exchange Commission. "Concept Release Concerning Self-Regulation." (2005). https://www.sec.gov/rules/concept/34-50700.htm

August 6, 2021

Good morning,

Creating simplicity is the way to go. IIROC and MFDA should be able to accomplish this mandate while increasing, or at least maintaining the investigative staffing levels. There must be an investigative team sufficient in numbers to maintain a balance of integrity, fairness and profit, in those firms showing the slightest deviation from the rules.

My suggestion is to enhance the protection of the small investor via holding corporations and investment / financing companies Feet to the fire.

I would use the firm Bridging Finance as an example. Where CSA has been neglectful in oversight of this entity and the small investor is now at great risk portions of their investments. Yes, due to possible criminal activity - still does not help the little guy.

Why can the guarantor pyramid not be turned on its head. If all investors of say, less than 250 K, are the first to be looked after in situations such as this, would that not suggest to the corporations, their large investors and their boards, that due diligence is theirs to follow up and ensure above board operations with "partners" who will respect the smaller investor.

The small investor depends on the oversight from regulators such as the CSA to keep things honest as they invest years of hard earned savings. They should be concerned only with normal market fluctuations for their investment, not need to be fearful that losses could be created by larger entities who switch and play with their portfolios for personal gain.

Having to look after the small investor first should certainly raise the bar on honesty and integrity in the investment world.

Ernest Ilson

Kenmar Associates

September 8, 2021

The Secretary Ontario Securities Commission
20 Queen Street West 22nd Floor Toronto, Ontario M5H 3S8
Fax: 416-593-2318 Email: 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
Fax : 514- 864-638 Email: consultation-en-cours@lautorite.qc.ca

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador Superintendent of Securities,
Northwest Territories Superintendent of Securities,
Yukon Territory Superintendent of Securities, Nunavut

CSA Position Paper 25-404 - New Self-Regulatory Organization Framework

Kenmar welcome the opportunity to provide feedback on the CSA SEO Position Paper. We are pleased to see that the CSA did not opt for a patch to the existing SRO framework. In this submission we outline our "Hot Button" issues and ideas.

Per the position Paper, the IWC will engage and consult with existing SRO and IPF staff, as well as other stakeholders (including advocacy and industry). Integrated Working Committee (IWC) engagement with investors at an early stage is key to the success of New SRO, particularly in respect the objective of underscoring the new organization's public interest mandate. To that end we urge the CSA to include investor representatives/advocates on the IWC.

There is a critical need for the CSA to adopt an accelerated implementation process and avoid deferring other important regulatory initiatives (CFR, OBSI binding mandate) pending the launch of the New SRO. The longer the implementation phase, the more regulatory attention and resources this project will absorb and the higher the probability things will either be deferred or go off the rails.

Bringing IIROC and MFDA registrants into a New 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 consolidation is effected without a breakdown in organizational morale or increase in staff stress. The careers of many dedicated people could be impacted by the CSA decision. It would not be fair to keep them in a prolonged state of uncertainty. An undue implementation delay will adversely impact investor protection.

The CSA have undertaken a bold and ambitious project. It comes in the middle of a pandemic where people are stressed, normal work patterns are disrupted and work from home remains the norm. In addition, numerous CSA initiatives such as CFR, protection of seniors and vulnerable investors and title reform are underway. In addition, investor demands for improved complaint handling, a binding decision mandate for OBSI and ESG disclosure consume limited CSA resources. Finally, Canada's largest Commission, the OSC, will be undergoing a major structural and organizational change. This is a very challenging environment in which to introduce material changes.

A project management approach must be taken when making any significant changes in an already operating system. A Project Manager should be named who would be responsible and accountable for the project.The project plan should contain publicly disclosed milestones and deadlines for key activities to help ensure timely completion of New SRO foundation and infrastructure.Project management and execution of action plans will require dedicated staff members at various institutions, supported by expert advisors and professionals. A new Board of Directors should be among the first priorities.

A key point we want to make is that for New SRO to work effectively, the CSA and New SRO 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 attention.

New SRO has the potential to improve investor protection, reduce regulatory complexity and better harmonize and modernize regulation across Canada. However, it is vitally important that all participants involved in the transition process are fully committed to positive results without any counterproductive turf protection and NIH. The CSA must provide the necessary leadership and be prepared to weed out "blockers".

New SRO: Process Risks, Issues and Ideas

While Kenmar generally support the planned New SRO structure, we will be closely monitoring certain features:

- A substantive culture change that prioritizes the Public interest, the appointment of independent Directors and the choice of New SRO leadership team members
- Assessing " acknowledging proportionate regulation" application and its impact on investor protection
- New , improved approaches to dealer compliance oversight

- Robust enforcement intensity and depth generally, especially towards Member Firms
- Level and nature of retail investor engagement
- Dedication to Title reform and CRM3
- The mandate ,composition and transparency of the Investor Advisory Panel
- Evidence that New SRO gains a deeper understanding of the retail investor population via empirical research. Example MFDA Client Research Report https://mfda.ca/wp-content/uploads/2017_MFDA_ClientResearchReport.pdf
- Dealing with criminal activity, fraud, theft, forgery and other unlawful activities such as money laundering
- Establishing clear, high level qualitative and quantitative performance benchmarks for the CSA evaluation / oversight of New SRO.

Kenmar have identified the following concerns/issues:

Clarifying the Public interest: New SRO should clearly articulate how it intends to achieve, and be seen to achieving, its Public interest mandate. Going forward, for all significant decisions (including new or amended rules), New SRO should be required to explain how and why the decision is in the Public interest. The following high-level criteria should be considered :
• The decision would be in the best interest of, or would not negatively impact, investors;
• The decision would not inappropriately stifle innovation or competition;
• The decision would not unfairly discriminate against certain types of dealers , products , services or investors;
• The decision would not inappropriately discourage technology solutions to increase investor access to self-help tools
• Any other criterion that may be appropriate for the subject of the specific decision.

Design risks: Major changes such this SRO re-build carry risk, and the broader the scope of the changes, the greater the risk of problems or even failure. In our view the major risks are:
o ensuring the investor perspective is integrated into the New SRO governance structure in a way that is both meaningful and effective
o The potential for "regulatory capture" of the SRO system by one powerful segment of the industry e.g. bank-owned dealers
o Reduced standards of regulation and supervision under the new system- adopting a lowest common denominator approach
o Overloading the New SRO expanded responsibilities before it has the time to build capacity or mobilize resources.

Transitional risks: Whenever structural changes are made to a regulatory system, important transitional issues must be addressed. These include ensuring that:
o The momentum that currently exists to put this New SRO in place as quickly and efficiently as possible is not dissipated in protracted power struggles and institutional intransigence

o All existing regulatory processes continue uninterrupted, especially supervision of markets and intermediaries and CFR implementation.
o Regulated persons remain within the legal jurisdiction of a regulator at all times.
o Open files and cases are transferred to new bodies without loss of jurisdiction.
o The transition to new management and governance is as seamless as possible.
o Human resources issues are addressed, including maintaining staff morale, retaining staff, and addressing the employment rights of any staff members who are transferred or terminated.
o Complaint/Dispute resolution mechanisms are agreed to address any unforeseen issues that arise during the transition period.

Legal and regulatory risk: If institutions' regulatory responsibilities are changed in the new structure, plans to minimize legal and regulatory risk are needed. Transfers of responsibilities will likely require (1) transfer of rules from one body's rulebook to another's, (2) transfer of responsibility for supervision programs, (3) transfer of experienced managers and staff, and (4) transfer of infrastructure including IT systems and tools. Agreement must be reached on the precise division of responsibilities, and documented in legal agreements or MOUs. Suitable arrangements will be necessary for the transfers of those responsibilities and assets, as well as for handling of open files and cases.

New OSC mandate risk: We note that the Ontario government's Task force recommendations are being adopted to expand the OSC's mandate and alter its structure. An expanded mandate to include capital formation raises investor protection issues. The new mandate could very well be in conflict with investor protection especially with a meddling provincial government in place. Another concern is that OSC budgets will not be increased to accommodate this demanding new mandate, thereby draining the already constrained investor protection resources .We urge the CSA to be cognizant of these concerns in defining the role of the OSC in overseeing New SRO.

Impact on small dealers risk: A reduction in smaller dealers could have an adverse impact on small investor access to advice (such as it is).

Decision Making Capacity: The New SRO must be equipped with a decision-making ability that is more nimble and responsive than those now in place for the two existing SROs and the CSA. In order to be able to achieve its Public interest market in the context of today's dynamically evolving capital markets, the New SRO will require the ability to identify, assess and respond to market disruptions and/or market risks in hours and days, not months and years. The ability to regulate quickly and effectively will go a long way in establishing the credibility and ultimate viability of New SRO.

Governance: The Position paper addresses issues we have raised but how high level principles translate into practice remains to be seen. New SRO governance is a key success factor in bringing about true SRO reform. Our view is straightforward. Positions for industry participants should be reserved who best bring industry-

specific knowledge, experience and issues to the Board table. Similarly, positions should be reserved for individuals with complementary skills such as:

- Financial consumer protection
- Dispute resolution expertise / ombudsman experience
- Professional advice giving e.g. CFA holder
- Academia/securities law expertise
- Technology/IT security/fintech / regtech capability
- Auditing/ compliance experience
- Class action lawyers involved with securities cases
- Behavioural finance practices related to financial services industry regulation
- Criminal law / forensics
- ESG/ crypto currency issue knowledge

To the extent actual and perceived conflicts-of-interest are avoided, it is to that extent New SRO will be accepted by the public as a trusted regulator. The worst possible result would be if power (real and/or perceived) ended up in the hands of a majority of current and former industry Directors.

Firm accountability: Member Firms must be held accountable for the actions of their Representatives. Firm accountability is congruent with client expectations when they open an account with a SRO Member Firm and the G20 High Level Principles of Financial Consumer Protection https://www.oecd.org/daf/fin/financial-markets/48892010.pdf section 6. *Responsible Business Conduct of Financial Services Providers and Authorised Agents: Financial services providers and authorised agents should have as an objective, to work in the best interest of their customers and be responsible for upholding financial consumer protection.* ***Financial services providers should also be responsible and accountable for the actions of their authorised agents*** 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 profiling and other tools, information system and compensation/reward scheme etc. are the root cause(s) of the wrongdoing, the Firm shall be held responsible and accountable.

The contractual relationship is between the client and the Firm. The contract is not between the client 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 registered individual should also not be held accountable. NOTE: OBSI resolve client complaints as against Participating Firms, not individuals representing the Firms.

Domination by the banks and insurance companies :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 will 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.

Access to advice: The Position paper refers to rural investors not always having access to fulsome personalized advice. While this may have been a not insignificant issue in the past, we would argue that video conferencing, e-signatures and other technological innovations has pretty well made this a non-issue. One major concern though with New SRO is that retail investors with small account balances will be shut out by New SRO Firms imposing high minimum account balances and/or high minimum annual account fees. We also encourage the Committee to take steps to ensure that DIY investors who cannot afford personalized financial advice, do not trust advisors or simply want to control their investments are not denied access by New SRO to the information, tools, calculators and model portfolios that will allow them to control their own financial destiny. Current discount broker rules and guidance appear to us to be too restrictive especially in light of industry innovations, technology advances, societal changes, social media and the impact of the pandemic.

Mutual fund regulation: Mutual funds are core investments for retail investors with nearly $2 trillion invested, much of which is intended as retirement income security. The fund industry has had a disproportionate share of regulatory issues involving abusive sales practices, document adulteration, mis-selling, account churning, deception, misleading advertising/ marketing, deficient disclosure, market timing, weak governance, closet indexing, fraud etc. Several class actions are underway. OBSI list mutual funds as the investment product that most attracts complaints. Recently, ESG fund mis-labelling ("greenwashing) has been added to the list. The mutual fund is a very unique product with "advice" embedded in the cost of the product, which triggers major conflict- of-interests .We therefore emphasize the critical need for retention of seasoned MFDA (and IIROC) staff with experience in regulating this problematic sector of the industry. We also strongly recommend that a discrete identifiable mutual fund unit of New SRO be established.

Advising the elderly and vulnerable: Providing competent trustworthy financial advice to seniors is one of the greatest challenges facing the wealth management industry today. Seniors/retirees are attractive clients because of accumulated assets but are extremely vulnerable due to the physical and cognitive effects of aging. According to statistics, seniors are disproportionately (38% over age 60) cited as complainants. If one examines how the two existing SRO's have dealt with the challenge, it should be clear that they have fallen far short of what was required. We have raised important questions concerning communication style, KYC capture approach, competency as regards de-accumulating accounts, income tax optimization, understanding the needs of senior investors, robust sanctions against those who exploit the elderly, fair complaint handling including the use of opportunity loss calculation methodology and the use of POA's. Our appeals for meaningful change have not inspired SRO' action.

The only positive change that we've seen concerns the protection of seniors and vulnerable clients from third-party fraudsters and even that came from the CSA and won't come into force until January 2022. If New SRO expects to be taken seriously, it will have to put a high priority for the Board and executives on providing professional advice to our elderly and protecting them from excessive fees, exploitive recommendations, OBA, personal financial dealings and advisor fraud. There is a great opportunity here for New SRO, but when opportunity knocks, someone must actually answer the door.

Information Technology Platforms: IT Systems will need to be combined in order to provide continued meaningful information to the public .These systems 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 the amount of time it is taking the CSA to update its technological framework, including SEDAR. Concrete steps need to be taken to ensure valuable historical information is not lost in the transition process.

Enforcement: The Position paper is somewhat light on indicating direction. As described in our Comment letter, increased emphasis needs to be put on prosecuting Member Firms, meaningful sanctions and addressing the underlying sources of wrongdoing/ lack of detection. Sanction guidelines should emphasize investor compensation as a goal of enforcement. The failure to fully and fairly compensate all clients impacted by the wrongdoing should be an explicit aggravating factor in New SRO sanction guidelines. .Hearing Panels should be more cognizant of underlying systemic issues in their decision making. Root cause analysis is absolutely essential. The emphasis of enforcement should not be limited to the individual case but should focus as well on the broader implications designed to lead to improved systems and prevent recurrence. Deterrence alone is not going to improve the system. Core failure mechanisms must be eliminated as part of a continuous improvement process. Victim impact statements should be permitted at Hearing panel deliberations. Disgorgement should be an explicit sanction option with any funds collected distributed to the impacted investor(s).

Advisors acting as executors/trustees We would want to see the MFDA ban on representatives acting as trustees and executors retained in the New SRO rule book.

Sanctioning guidelines Both existing 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 compliance/enforcement and investor protection.

Directed Commissions The big concerns here involve accountability, investor restitution and fine collection. Legal, regulatory and tax issues impact the directed commission decision. The use of directed commissions also involves labour laws and associated employment standards Acts. A determination needs to be made of the employment status of the registered individuals. Are they employees, temporary

workers, part time employees or independent contractors? The employment classification should be a helpful guide as to the applicability/legality of directed commissions. The CSA also need to decide if mutual fund trailing commissions are sales transaction commissions or fees for personalized investment advice. (trailing commissions are paid directly to dealers who may share the cash received with registered individuals in the form of a sales commission, bonus or other method)

Given the rigid CFR regulatory framework applicable to salespersons, do such persons actually run a professional practice comparable to a doctor or lawyer? Or are directed commissions just a clever scheme to minimize taxation and keep cash insulated from regulators and client claims? Will those salespersons utilizing personal corporations be more incented to transact sales than those who do not? Should registered persons utilizing personal corporations be required to carry E&O insurance?

As an aside, we make the observation that there is a question as to the status of fees earned by an advisor providing professional advisory services under a fee-based account contract. Is such a compensation scheme a sales commission, a professional service fee or regular salary?

Complaint handling. There is a need for a complete overhaul of SRO complaint handling rules. Neither SRO has rules that compare favourably with international best practices or investor expectations Internal "ombudsman "should be explicitly excluded from the complaint handling process as they are not a unregulated entity. The CSA must support New SRO by expanding NI31-103 complaint handling requirements and giving OBSI a binding decision mandate and higher compensation limit ($500K was recommended by Ontario Taskforce) . Consideration should be given to ending IIROC arbitration unless the investor cost is subsidized by New SRO and the compensation limit is increased to at least $1 million.

The OBSI-New SRO relationship: The Position paper obliquely addresses this critical interaction. Our Comment letter explained why it is critical to obtain fair compensation for victims of financial assault or negligence. We urge the Committee to embed this relationship into New SRO DNA. Exploitive, low-ball investor compensation settlements have no place in the New SRO modus operandi. The head of the New SRO Investor Office should be the designated SRO Rep on the CSA OBSI JRC. This would strengthen the capability (and credibility) of the JRC to oversee OBSI.

Investor Protection Funds: Combining the IIROC and MFDA investor protection funds and keeping it independent is a sensible go-forward plan .Kenmar recommend that, as part of the initiative, the CSA take the opportunity to make the existing $1 M cap subject to a periodic inflation adjustment formula.(The CSA should also consider requiring the registration categories not currently covered by any investor protection Fund, to establish an Investor Protection fund as deemed appropriate for those registration categories).

Bifurcated regulation of mutual fund industry: In the Position Paper, the AMF announced that it will recognize the New SRO in the same way as the other CSA members to ensure harmonized oversight of firms registered as investment dealers and mutual fund dealers as well as individuals registered in the categories of investment dealer representative and mutual fund dealer representative on the firms' behalf. However, because the CSF's powers and mandate will not be affected by the recognition of the New SRO, the CSF will continue to have oversight over mutual fund dealer representatives with respect to compliance and disciplinary matters. When one splits the regulation of the individuals from the regulator of the company responsible for their activity, it can create problems particularly when the "regulator" (i.e. Chambre or what Advocis and FP Canada hope to be) is essentially an advisor association. This is an issue that should be addressed by not creating the bifurcation or by clearly defining the respective roles between the parties and their interactions. Since professional financial planners are not regulated by CSA members, it makes sense that a professional association for that profession is in place. From all accounts, it does a good job in that role. That is what should be done in Ontario instead of the Title Protection Act covering financial advisors. CSA title reform should deal with misleading titles and designations.

Gaps, Duplications and Inconsistencies: In our regulatory system, multiple Regulators and market infrastructure entities (and OBSI) have different jurisdictions and may oversee the same or different market participants. Inevitably there are some duplications, inconsistencies and gaps. We recommend that the Integrated Working Committee clarity the respective roles of the various Regulators and market infrastructure entities.

Funding for investor initiatives Depending on how enforcement actions are split as between New SRO and the CSA, there could be 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 New SRO dominates fine collection, the cash available to statutory regulators for these investor-friendly activities would be significantly reduced unless supplemented by other sources from operating budgets.

CSA oversight of New SRO: K Currently, the CSA Recognizing Regulators have adopted a risk-based methodology to determine the scope of SRO oversight Reviews. In our view, this approach is a weakness - 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 limited to assessing 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, metrics and results.

An annual assessment report card should be made public as a means to report whether the SRO was fulfilling its investor protection and Public interest mandates.

Kenmar also recommend that New SRO oversight should be undertaken by a dedicated unit within the CSA. The SEC has established such a dedicated oversight unit for FINRA; 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 The unit should also serve as the formal receptor of any unaddressed investor or Firm complaints against New SRO. This will provide invaluable grass roots insight into New SRO behaviour and performance.

Conclusion

Establishing an accountable New SRO involves more than securities regulation. For millions of Canadians, the investments made via Member Firms are their primary source of retirement income security. The New SRO is therefore an integral part of our socio-economic network.

The establishment of New SRO is a long overdue investor protection improvement. Weak regulation of Firms by SRO's has cost retail investors billions of dollars over the last decade. Examples include the double billing scandal, the fiasco involving discount brokers collecting commissions for personalized advice, exploitive contract terms, abusive low-ball complaint settlements and low proficiency / conduct standards. It is our expectation that the points we have made herein will receive serious consideration and where they are not addressed, appropriately justified.

A single national SRO has the potential to deliver significant benefits to investors by enhancing investor protection and ultimately improving investor outcomes.

Kenmar looks forward to working with the Integrated Working Committee and New SRO Board on the activities to establish a New SRO in an expeditious manner.

Sincerely,

Ken Kivenko, President
Kenmar Associates

REFERENCES

G20 HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION
https://www.oecd.org/daf/fin/financial-markets/48892010.pdf

Financial Consumer Protection Approaches in the digital age: OECD
https://www.gpfi.org/sites/gpfi/files/documents/G20_OECD_Policy_Guidance_Financial_Consumer_Protection_Approaches_in_the_Digital_Age.pdf

Behavioural economics and financial consumer protection: OECD
https://www.oecd-ilibrary.org/docserver/0c8685b2-en.pdf?expires=1630750856&id=id&accname=guest&checksum=E2A7ADCC436B1919CD26BF9C733B56E5

NASAA Investor Bill of Rights
https://www.nasaa.org/2715/investor-bill-of-rights/

Lokanan, M.E. (2015). Self-Regulation in the Canadian Securities Industry: Funnel In, Funnel Out, or Funnel Away? International Journal of Law, Crime and Justice, 43(4), 456- 480.
https://viurrspace.ca/bitstream/handle/10613/5102/IDA_Article_Funnel_JLCJ_Revised.pdf?sequence=1&isAllowed=y

Credible Deterrence In The Enforcement Of Securities Regulation: IOSCO
https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf

OBSI Seniors Report (2019)
https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/seniors-report_FINAL_EN.pdf
ESTABLISHING A QUALITY ASSURANCE PRACTICE IN FINANCIAL INSTITUTIONS
https://www.fisglobal.com/-/media/fisglobal/files/pdf/white-paper/white-paper_qa-practice.pdf

SRO overhaul could hit speed bumps | Investment Executive
https://www.investmentexecutive.com/newspaper_/news-newspaper/sro-overhaul-could-hit-speed-bumps/

MICA
CAPITAL

Par courriel
consultation-en-cours@lautorite.qc.ca

Québec, le 28 septembre 2021

Me Philippe Lebel
Secrétaire et directeur général des affaires juridiques
Autorité des marchés financiers
Place de la Cité, tour Cominar,
2640, boulevard Laurier, bureau 400
Québec (Québec), G1V 5C1

Objet : Commentaires de MICA Capital inc. sur l'énoncé de position 25-404 des ACVM, Nouveau cadre réglementaire des organismes d'autoréglementation

Monsieur Lebel,

MICA Capital Inc. est un cabinet de services financiers inscrit auprès de l'Autorité des marchés financiers au Québec à titre, entre autre, de courtier en épargne collective et en marché dispensé. Environ 230 représentants y sont rattachés et œuvrent sur tout le territoire québécois. Cette entreprise est la propriété d'intérêts privés et n'est donc pas la propriété d'une compagnie d'assurances ni d'une institution financière.

MICA Capital Inc. permet de distribuer, par l'entremise de ses représentants, les fonds mutuels de plus de 60 sociétés de fonds d'investissement différentes ainsi que les produits du marché dispensé d'une dizaine d'émetteurs. Nous n'émettons aucun produit et ne distribuons donc aucun produit « maison ». Par ailleurs, MICA n'est pas membre de l'ACFM (MFDA).

Nous sommes particulièrement interpellés par le sujet soulevé par l'énoncé de position 25-404 des ACVM portant sur un nouveau cadre réglementaire des organismes d'autoréglementation.

Nous tenons à vous remercier de nous donner l'opportunité de faire valoir nos commentaires à cet égard. La volonté manifestée d'obtenir les commentaires des intervenants de l'industrie démontre un souci d'être à l'écoute des principaux intéressés et nous l'apprécions.

7900, boul. Pierre-Bertrand, bureau 300, Québec (Québec) G2J 0C5
T 418 622-6422 | 1 800 463-1516 poste 139 | F 418 622-3939 | micasf.com

Portée de nos commentaires

Tenant compte du contenu, somme toute, assez général de l'énoncé de position 25-404 des ACVM, nos commentaires sont émis sur les grandes orientations de celui-ci. Vu l'importance du sujet abordé et que la création d'un nouvel OAR est un dossier d'importance qui aura des répercussions majeures sur l'évolution future de l'industrie, nous croyons qu'il sera nécessaire pour les ACVM d'éventuellement consulter à nouveau l'industrie sur différents thèmes plus précis afin de recueillir des commentaires plus ciblés dans le but d'alimenter leur réflexion sur divers enjeux. Nous demandons donc que, le moment venu, les ACVM initient d'autres consultations plus ciblées auxquelles il nous fera plaisir de répondre afin d'émettre nos commentaires spécifiques.

Vu l'envergure des changements à intervenir quant au nouveau cadre réglementaire des organismes d'autoréglementation, nous croyons que certains enjeux nécessitent des réflexions plus approfondies. Ainsi, nous nous réservons le droit de présenter des commentaires additionnels, au besoin, si nous identifiions d'autres enjeux potentiels.

Nos commentaires porteront sur les thèmes suivants :

1. Gouvernance et représentativité pour le nouvel OAR
2. Renforcement des compétences
3. Amélioration de l'accès aux conseils
4. Réduction des coûts sectoriels
5. Promotion de l'harmonisation/des efficiences
6. Harmonisation relative au versement autorisé de commissions à des tiers
7. Particularités du Québec
8. Approche par « principes » versus approche prescriptive.
9. Champs de compétence du nouvel OAR

Voici donc nos commentaires et propositions.

1. Gouvernance et représentativité pour le nouvel OAR

a) Dans le but d'assurer la protection des intérêts spécifiques du Québec, nous sommes d'avis que le conseil d'administration du nouvel OAR devrait être composé d'un nombre précis d'administrateurs dont la provenance serait le Québec afin de lui assurer une représentation adéquate. Vu la place que le Québec occupe dans le secteur des valeurs mobilières au Canada, nous croyons essentiel qu'il y soit adéquatement représenté.

b) Vu la diversité de modèles d'affaires existant au Canada, il est primordial que la composition du conseil d'administration du nouvel OAR reflète cette diversité en permettant à tous les types de modèles d'entreprises d'y être adéquatement représentés.

c) La durée des mandats accordés aux administrateurs du nouvel OAR devrait être limitée. Ceci favoriserait l'implication et la diversité des intervenants. Ceci permettrait aussi une rotation parmi les administrateurs et ainsi, favoriserait la diversité des idées et la venue de nouveaux administrateurs.

d) le principe des mandats décalés dans le temps permettrait une bonne continuité au sein de l'organisme. Ceci éviterait que l'ensemble des administrateurs soient à remplacer la même année.

e) Il est approprié qu'une bonne proportion des administrateurs soient indépendants. Il sera toutefois important de bien préciser la définition des termes « administrateur indépendant ». Malgré ceci, il ne faudra tout de même pas perdre de vue que l'apport des administrateurs provenant de l'industrie est très important. Ceux-ci sont en bonne position pour amener leur vision et les réalités de l'industrie dont l'organisme devra prendre en compte.

f) Nous croyons que le nombre d'administrateurs devrait être augmenté afin de permettre une représentation adéquate des différents modèles d'affaires existant au Canada.

g) Nous sommes d'avis que le nouvel OAR devra avoir une proximité avec les intervenants du secteur et devra être accessible tant pour les consommateurs que pour les intervenants de l'industrie. Si le siège social de l'organisme n'est pas installé au Québec, nous croyons qu'il sera nécessaire que l'organisme ait une présence physique significative sur le territoire du Québec et qu'il y ait du personnel présent sur les lieux et qui sont conscients des particularités du Québec.

2. Renforcement des compétences

a) Nous sommes favorables à un renforcement et d'une harmonisation des normes de compétence pour les courtiers en placement et les courtiers en épargne collective. Toutefois, à ce chapitre, il faudra tenir compte de ce qui existe déjà au Québec. Actuellement, des règles précises existent à cet égard et l'histoire a démontré l'efficience de ces règles. Il sera important de considérer que les exigences de formation soient harmonisées dans l'ensemble du Canada. De plus, il sera important de déterminer avec précision si la Chambre de la sécurité financière continuera ou non à veiller à l'application des exigences de formation ou si ce sera le nouvel OAR qui le fera au Québec. Nous proposons le maintien du statuquo quant à la formation continue au Québec et croyons que cette responsabilité devrait continuer d'être assumée par la Chambre de la sécurité financière.

b) Nous sommes d'accords avec le fait que des activités distinctes de courtage en placement et de courtage en épargne collective puissent dorénavant coexister au sein d'une même entité membre, ce qui éliminera les obstacles empêchant les investisseurs d'avoir accès à une gamme de produits élargie.

c) Nous sommes d'accords avec le fait d'envisager de proposer des catégories d'inscription fondées sur les compétences qui soient plus nuancées afin d'assurer des normes de qualité uniformes pour les clients.

3. Amélioration de l'accès aux conseils

a) Nous félicitons la volonté de permettre les arrangements entre un remisier et un courtier chargé de comptes pour les courtiers en épargne collective et les courtiers en placement. Ceci permettra aux conseillers en épargne collective, grâce à différents modèles d'entreprise, une plus grande flexibilité leur permettant d'accéder à une gamme élargie de produits actuellement autorisés, comme les FNB et les obligations autorisées.

b) Le fait de permettre à un courtier à double plateforme de regrouper ses activités de courtier en épargne collective et de courtier en placement au sein d'une même entité juridique et d'intégrer des fonctionnalités administratives similaires favorisera les entreprises souhaitant élargir leurs horizons de développements et leur volonté de rendre ses services plus accessibles et plus nombreux aux consommateurs.

4. Réduction des coûts sectoriels

a) Toute initiative visant à réduire les coûts sectoriels permettra une meilleure efficience à plusieurs niveaux.

b) De plus, nous souhaitons que l'initiative de permettre à un courtier à double plateforme de regrouper ses activités de courtier en épargne collective et de courtier en placement au sein d'une même entité juridique amènera une économie d'échelle quant aux frais à assumer.

c) Ceci dit, il nous est difficile, à ce moment-ci, d'identifier avec précision ce qui pourrait permettre à un courtier inscrit uniquement au Québec de réduire les coûts actuels qu'il assume présentement. Nous ne voyons donc pas en quoi la création de ce nouvel OAR permettra à un courtier inscrit uniquement au Québec de réduire ses coûts. Au contraire, nous craignons plutôt une augmentation des coûts pour ceux-ci. Nous croyons plutôt que l'aspect « réduction des coûts » s'applique plus aux courtiers inscrits dans plus d'un territoire au Canada.

5. Promotion de l'harmonisation/des efficiences

a) Nous considérons qu'il est primordial que les futures règles du nouvel OAR soient des règles adaptables ou proportionnelles aux différents types et aux différentes tailles des sociétés membres et à leurs modèles d'entreprise respectifs.

b) Nous croyons nécessaire que le nouvel OAR, dans l'établissement de ses règles tienne compte, en tout temps, de l'évaluation de l'incidence économique de l'application et des modifications éventuelles des règles proposées sur les parties prenantes touchées.

c) De toute évidence, lorsque ce sera possible, il faudra que les règles de l'OAR soient harmonisées dans l'ensemble du Canada et que leur application soit, elle aussi, harmonisée. Le nouvel OAR

devra s'assurer que l'application des règles se fasse de façon cohérente et équitable dans le pays. Cette équité devrait tenir compte des différents modèles d'affaires existant parmi ses différents membres.

6. Harmonisation relative au versement autorisé de commissions à des tiers

a) Nous sommes heureux de constater que ce sujet ait fait l'objet de discussions, lesquelles devront toutefois se poursuivre vu la complexité du dossier. Ce sujet est d'une importance capitale pour les intervenants du Québec et plusieurs de ceux-ci ont déjà fait, depuis des années, des représentations à ce sujet tant auprès de l'Autorité des marchés financiers qu'auprès du Ministre des finances du Québec.

Il semble que des travaux additionnels devront être réalisés, dont des consultations auprès d'autres parties prenantes des ACVM, afin d'en arriver à des décisions finales sur le traitement approprié selon le modèle du nouvel OAR. Ces travaux devraient être effectués dans le cadre du processus d'élaboration des règles du nouvel OAR.

Nous nous réjouissons aussi de la création d'un groupe de travail sur le versement autorisé de commissions à des tiers qui devrait se pencher sur la situation fiscale des personnes physiques inscrites et vérifier si le fait de permettre les accords de versement autorisé de commissions à des tiers – du moins jusqu'à ce que soient étudiées d'autres options comme l'adoption d'un véritable régime des représentants constitués en société – entraînerait des préoccupations sur le plan réglementaire.

Donc, puisque les pourparlers devront se poursuivre à cet égard, nous sommes d'avis que pour en arriver à trouver une solution complète et définitive, les autorités fiscales du pays et des provinces devront être sollicitées et mises à contribution. Nous croyons que les ACVM devraient provoquer un dialogue avec les autorités fiscales afin qu'une solution globale et définitive soit convenue.

La situation fiscale des personnes physiques inscrites qui ont recours à un accord de versement autorisé de commissions à des tiers n'est pas claire. L'établissement d'une société qui n'exerce pas les activités pour lesquelles les commissions sont versées et qui agit simplement comme conduit pour recevoir les commissions pourrait ne pas permettre d'atteindre les résultats souhaités sur le plan fiscal.

Ce qui nous fait dire : À quoi bon essayer de permettre le versement de commissions à une société non-inscrite si le volet fiscal n'est pas abordé et réglé une bonne fois pour toute?

Au Québec, malgré que l'article 160.1.1 de la loi sur les valeurs mobilières permette le partage de commissions avec une société non-inscrite, Revenu Québec s'entête, d'un point de vue fiscal, à cotiser plusieurs représentants ayant effectué un tel partage, ne reconnaissant pas la validité de celui-ci au motif que le partage de commissions d'un représentant en épargne collective avec une société non-inscrite ne peut être considéré comme un revenu de ladite société puisque ce n'est pas elle qui a rendu le service. Revenu Québec a même publié une lettre d'interprétation sous le numéro 18-043523-001. Dans cette lettre, Revenu Québec est venu préciser sa pensée : Elle prétend que la société non-inscrite peut recevoir des honoraires de la part du représentant mais

seulement une fois que le représentant ait déclaré toutes ses commissions à titre de revenus personnels.

Une solution simple, à notre avis, serait que le législateur québécois permette aux représentants de s'incorporer et ainsi, il pourrait recevoir sa rémunération directement dans sa société, réglant ainsi définitivement les enjeux fiscaux actuels.

À notre avis, ce sujet est d'une importance capitale! Nous croyons que le fait de permettre aux représentants de s'incorporer et recevoir leurs commissions dans cette société réglera ceci :

i) Fera disparaitre une inéquité. À l'instar de plusieurs autres professions, les représentants devraient eux-aussi avoir ce droit de s'incorporer. Eux aussi devraient pouvoir bénéficier de traitements fiscaux plus avantageux.

ii) Ce faisant, ceci pourrait constituer un attrait non négligeable aidant à assurer la relève parmi les conseillers.

7. Particularités du Québec

a) L'anglais et le français étant les 2 langues officielles au Canada, le nouvel OAR qui aura juridiction dans tout le pays devra être en mesure d'offrir des services dans un français de très bonne qualité et ce, dans l'ensemble de son organisation. Il est primordial que les intervenants du secteur des valeurs mobilières ou encore, les consommateurs ayant à échanger avec le nouvel OAR puissent le faire, à leur choix, autant en anglais qu'en français. Nous devons reconnaitre qu'il existe au Québec des personnes unilingues francophones qui devront avoir le même service que n'importe qui d'autres.

b) À notre avis, le nouvel OAR devra, dans l'établissement de ses règles, veiller à ce que celles-ci n'entrent pas en conflit avec les dispositions du code civil du Québec et tenir compte des spécificités du Québec à plusieurs égards.

c) Nous prenons acte du fait que l'Autorité reconnaitra le nouvel OAR afin d'assurer l'harmonisation de l'encadrement des sociétés inscrites. Nous prenons aussi acte du fait qu'elle ne modifiera pas le mandat ainsi que les fonctions et pouvoirs de la Chambre de la sécurité financière. Mais plus concrètement, nous nous questionnons quant à la forme que prendra la coexistence des rôles respectifs de l'Autorité, la Chambre de la sécurité financière, et le nouvel OAR. Nous sommes d'opinion qu'il sera nécessaire de définir clairement les rôles de l'un par rapport à l'autre afin d'éviter toute confusion, tant dans l'esprit des intervenants du secteur des valeurs mobilières que dans celui des consommateurs. Nous aimerions en savoir plus quant à l'arrimage qui devra se faire entre les 3 entités. À notre point de vue, il est crucial de parfaitement définir les rôles et responsabilités de chacun.

d) L'Autorité semble avoir l'intention de maintenir le Fonds d'indemnisation des services financiers (FISF), fonds dans lequel les représentants du Québec contribuent. Par ailleurs, il y aura un fonds de protection des épargnants (FPE) additionnel sous l'égide du nouvel OAR auxquels les représentants du Canada devront contribuer. Si les représentants du Québec doivent contribuer, à la fois au FISF et au FPE alors que les représentants du reste du Canada n'auront qu'à contribuer

au FPE, ceci créera une inéquité flagrante et un déséquilibre important. Ainsi, il en coûterait donc plus cher à un représentant inscrit au Québec par rapport à ses homologues inscrits ailleurs au Canada? Nous aimerions savoir comment les ACVM, et plus particulièrement l'Autorité, feront pour éviter qu'il en coûte plus cher à un représentant du Québec par rapport aux autres représentants du Canada?

8. Approche par « principes » versus approche prescriptive.

a) Nous proposons que l'approche réglementaire que devrait adopter le nouvel OAR devrait être basée sur des principes au lieu d'être prescriptive. Nous sommes d'avis qu'une approche basée sur des principes permet aux membres de l'industrie de se conformer aux règlements tout en leur permettant de mieux s'adapter aux réalités spécifiques de leurs modèles d'affaires respectifs. Toutefois, malgré l'adaptabilité de telles règles, il sera important de maintenir une cohérence et une équité dans leur application à travers le Canada.

9. Champs de compétence du nouvel OAR

a) À notre avis, le nouvel OAR ne devrait avoir juridiction uniquement que dans les disciplines de valeurs mobilières prévues au Règlement 31-103 et ne devrait pas s'immiscer dans d'autres secteurs d'activités tels l'assurance de personne ou la planification financière; la légitimité de sa juridiction trouvant sa source dans la réglementation propre au domaine des valeurs mobilières.

Conclusion

En terminant, nous vous remercions de cette opportunité de vous soumettre notre point de vue quant au sujet concerné.

Au besoin, nous demeurerons disponibles pour toute demande d'informations complémentaires ou encore, à participer à d'éventuelles rencontres d'échanges.

Veuillez accepter, Me Lebel, l'expression de nos salutations les plus cordiales!

_____ _____

Gino Sebastian Savard, B.A., A.V.A.
Président

Yvan Morin, LL.B., Avocat,
Vice-président, affaires juridiques,

MICA Capital Inc.
7900, boulevard Pierre-Bertrand, Bureau 300,
Québec (Québec), G2J 0C5

micasf.com

Manulife

Rick Annaert
SVP, Head of Advisory Services
President & CEO, Manulife Securities

September 29, 2021

Sent via e-mail: comments@osc.goc.on.ca; consultation-en-cours@lautorite.qc.ca

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

ATTN:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318

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
Fax : 514- 864-638

Re: CSA Position Paper 25-404 – New Self-Regulatory Organization Framework

Dear Sirs/Mesdames:

Manulife welcomes the opportunity to share our comments in response to the CSA's New Self-Regulatory Organization Framework.

About Manulife

Manulife is a leading international financial institution with $1.3 trillion in assets under management. With our global headquarters in Toronto, we operate as Manulife across Canada, Asia and Europe, and primarily as John Hancock in the United States. Through our global work force of more than 37,000 employees and 118,000 agents, we provide financial advice, insurance and wealth and asset management solutions for 30 million customers, including one in five Canadians.

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.

New SRO Framework

Manulife applauds the CSA for its leadership in conducting an in-depth review of the securities' industry current regulatory framework and for establishing a new SRO structure which prioritizes, among other things, increasing investors' access to financial advice, reducing investor confusion, and minimizing regulatory inefficiencies.

We are supportive of the CSA's position to establish a single enhanced SRO (New SRO), and separately consolidating the two current investor protection funds (IPFs) into one single protection independent of the New SRO. Our view is that this will meet the CSA's targeted outcome of eliminating duplicative regulatory costs.

New Leadership

In order to promote the New SRO's public interest mandate during rapid technological and market changes, it is imperative that the New SRO will be equipped with a new and enhanced corporate governance structure; a new board of directors composed of diverse and independent directors; and a new Chief Executive Officer. In addition to the number of opportunities for improvement addressed by the CSA in the position paper, we believe this new leadership will address the investor concerns raised by industry stakeholders during the consultation period.

New SRO Implementation Process

We are supportive of the CSA's two-phased approach to implementing the New SRO. Our position is that outcome focused stages best support regulatory reform, which necessitates substantial and complex coordination between provincial and territorial securities commissions, regulators and industry stakeholders.

However, it is necessary that our industry's regulatory framework undergo a timely reform as our industry's business models and investors' expectations continue to quickly evolve. As such, we strongly encourage the CSA to prioritize establishing the Integrated Working Committee (IWC) and commence the first phase of the implementation process as soon as possible.

At the same time, we strongly encourage a process that remains true to the CSA's position paper, where rapid change is not prioritized over ensuring the New SRO appropriately addresses the seven issues identified by the CSA in the position paper.

Lastly, we look forward to the formal consultation of the second phase of the process where other registration categories will be considered as part of the New SRO's expanded mandate.

Manulife

In Closing

Manulife is appreciative of the opportunity to provide comment, and we would be pleased to respond to any questions you may have towards our comments.

Yours very truly,

Rick Annaert

Rick Annaert
SVP, Head of Advisory Services
President & CEO, Manulife Securities

ARCHER
GESTION DE PATRIMOINE

Montréal le 30 septembre 2021

Me Philippe Lebel
Secrétaire et directeur général des affaires juridiques
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Télécopieur : 514 864-6381
Courriel : consultation-en-cours@lautorite.qc.ca

Objet : Énoncé de position 25-404 des ACVM

Cher Me Lebel,

Nous sommes heureux d'avoir l'opportunité de commenter l'Énoncé de position 25-404 des ACVM – *Nouveau cadre réglementaire des organismes d'autoréglementation*.

Archer gestion de patrimoine est un conseiller en placement – gestionnaire de portefeuille indépendant inscrit auprès de l'AMF et de la Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick).

Archer appui la position des ACVM visant l'établissement d'un nouvel OAR unique et amélioré. Nous sommes d'avis que l'existence d'OAR distincts pour le courtage de valeurs mobilières et le courtage en épargne collective est un anachronisme qui sert mal les investisseurs et ne correspond plus à la réalité des marchés financiers modernes. Les silos actuels limitent l'accès aux produits les mieux adaptés, les moins couteux et les plus performants à long terme – les FNB indiciels – et constituent un frein à l'émergence et au développement de firmes ayant des modèles d'affaires indépendants des manufacturiers et des grandes institutions financières et en mesure de mieux servir l'intérêt des investisseurs.

Nous souhaitons commenter sur 2 questions spécifiques.

La double inscription auprès de l'AMF

Le Québec est la seule province où il est présentement possible d'être inscrit à la fois dans les catégories de conseiller en placement – gestionnaire de portefeuille et de courtier en épargne collective, ces 2 inscriptions se faisant auprès de l'AMF. Cette double inscription facilite la migration de représentants en épargne collective vers une firme comme Archer qui développe

ARCHER
GESTION DE PATRIMOINE

et déploie des modèles de portefeuille. Ainsi, pour le représentant qui ne s'occupe que de la relation avec les clients (alors que le représentant-conseil s'occupe de la gestion des portefeuilles), il est admis que les exigences d'inscription sont celles d'un représentant en épargne collective.

Cette spécificité du modèle québécois devra être maintenue à la suite de la mise en place du nouvel OAR et, idéalement, étendue aux autres provinces canadiennes.

Inscription des gestionnaires de portefeuille (GP)

Bien que cette question ne sera abordée qu'en phase 2, nous sommes d'avis que la catégorie des GP ne devrait pas être intégrée au nouvel OAR. Les règles des 2 OAR existants visent en effet à encadrer des activités de nature transactionnelle dans un contexte où les risques liés aux conflits d'intérêt sont un enjeu constant; les courtiers n'ayant pas l'obligation d'agir dans le meilleur intérêt du client. Il en sera sans doute de même des règles du nouvel OAR. Le fardeau qu'imposent ces règles – nécessairement prescriptives et contraignantes – est justifié par l'impératif de protections des investisseurs.

Le modèle d'affaires du GP quant à lui n'est pas transactionnel et est exempt de conflits d'intérêt; le GP ayant l'obligation de toujours agir dans le meilleur intérêt du client. Le nouvel OAR imposerait donc au GP un cadre règlementaire qui n'est pas adapté à ses activités ou justifié par des impératifs de protection des investisseurs. Le développement de firmes dont le modèle d'affaires sert parfaitement bien l'intérêt des investisseurs serait ainsi compromis. En fait, dans la mesure ou ses revenus lui proviennent surtout des courtiers – qui font compétitions aux GP – le nouvel OAR serait lui-même en situation de conflit d'intérêt s'il devait encadrer l'activité des GP.

Ce sont sans doute ces considérations qui ont amené les États-Unis à ne pas intégrer les GP à l'OAR (FINRA) et à conserver leur encadrement par la SEC. Les GP américains indépendants constituent le modèle d'affaire connaissant la plus forte croissance. Et pour cause, les clients y obtiennent des conseils financiers exempts de conflits d'intérêt et bénéficient de frais nettement moins élevés qu'au Canada.

Meilleures salutations.

DocuSigned by:
richard morin
09B385EF72EF458...

Richard Morin
Président et chef de la direction
rmorin@archerpatrimoine.com

1155 boul. René-Lévesque O., bureau 2500
Montréal (QC) H3B 2K4
514 395-2151
www.archerpatrimoine.com

FAIR | Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

October 1, 2021

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

Sent via email to:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: 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
Email: consultation-en-cours@lautorite.qc.ca

CSA Position Paper 25-404 - New Self-Regulatory Organization Framework

FAIR Canada is pleased to provide our comments and recommendations on CSA Position Paper 25-404 - *New Self-Regulatory Organization Framework* (Position Paper).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investor' rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy

36 Toronto Street, Suite 850 | Toronto, ON | M5C 2C5 | www.faircanada.ca

issues, policy submissions to governments and regulators, and proactive identification of emerging issues.[1]

Putting Investors and the Public Interest First

We agree with, and endorse, the 14 areas identified in the Position Paper that need to be addressed and solved. If the solutions are designed and implemented with a commitment to comprehensive reforms, including that a public interest focused culture takes root, the CSA have the potential to improve investor outcomes and increase public confidence.

We also support the decision to forego a straight merger of IIROC and the MFDA in favour of a thorough review and enhanced SRO. This is the time to address fundamental concerns with the current SRO structure and provide meaningful solutions. For example, by establishing a stronger governance structure that delivers on the organization's public interest mandate. Or creating new practices that support a full consideration of investor perspectives in SRO policy making and enforcement priorities. Or, equipping the new SRO so that it regularly collects in-depth data at the firm, account, and client level to support priority setting and decision-making.

Also welcome are the proposed enhancements to strengthen SRO oversight by the CSA. To ensure success of this oversight, it will be important for the program to include a formal periodic assessment of whether the new SRO is meeting its public interest mandate.

In addition, the planned new Investor Office, dedicated to enhancing investor education and reducing investor confusion, should prove helpful, especially regarding the complaints process.

Finally, to achieve real change, it will be essential to set the right tone at the top of the new organization. This will be important to ensure that staff of the new organization, as well as its many external stakeholders, see a fundamental change in the SRO's culture and its approach to its public interest mandate.

Creating a new SRO structure is something we will be living with for many decades. As such, those responsible for establishing the new structure should not race towards arbitrary deadlines, but rather focus on meaningful change and improvements to the current system.

[1] Visit www.-faircanada.ca for more information.

36 Toronto Street, Suite 850 | Toronto, ON | M5C 2C5 | www.faircanada.ca

SRO Enforcement Programs

A key area of necessary reform concerns the existing SRO enforcement programs. Although the Position Paper references a small number of specific solutions being considered, additional solutions and detail are needed. Enforcement-related issues that should be specifically addressed include:

- **Firm Supervision:** The current SRO enforcement approach has rarely involved taking action against firms or senior management for failure to supervise their employees. While the Position Paper calls for increased public transparency in enforcement notices regarding assessments of firm supervision, there is no statement reflecting the CSA position on the historic lack of enforcement action against firms or senior management and the need for the new SRO to be more proactive in addressing supervision issues.

- **Investor Compensation:** Although the Position Paper references the ongoing IIROC initiative to obtain enhanced enforcement and investor compensation powers, the specific solutions being considered by the CSA are not mentioned. The CSA should ensure the new SRO's enforcement program prioritizes investor compensation for losses incurred due to rule violations.

- **Fair Outcomes vs. Technical Compliance:** SRO compliance programs tend to focus on technical compliance with rules rather than achieving fair outcomes for clients. As part of compliance or other reviews, SROs should document findings where client outcomes do not meet public interest expectations, despite having technically complied with the rules. A prime example is the recent unfortunate decision of several large Canadian banks to limit availability of third-party mutual funds in response to the Client Focused Reforms. While technical compliance is important, ensuring that firms' compliance practices consistently deliver fair outcomes must not be overlooked.

In our view, the full scope of enforcement-related solutions being considered by the CSA needs to be clearly articulated and subject to stakeholder review.

Next Steps

As noted in the Position Paper, active stakeholder participation will be important for successful implementation. The Paper indicates that this will be obtained by consulting stakeholders "as required". We strongly believe that the better approach would be to include stakeholder representation on the Integrated Working Committee. This will enable stakeholder participation in the initial stages of the design of the solutions, resulting in outcomes that better reflect stakeholder concerns. Moreover, implementation of key reforms should include publication of formal proposals accompanied by requests for public comment.

36 Toronto Street, Suite 850 | Toronto, ON | M5C 2C5 | www.faircanada.ca

We thank the CSA for the opportunity to provide our comments in this submission. We would be pleased to discuss our submission with the CSA should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@faircanada.ca.

Sincerely,

"Jean-Paul Bureaud"

Jean-Paul Bureaud,
Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights

Advocis The Financial Advisors Association of Canada

October 4, 2021

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Care of:

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 marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec, QC G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames,

Re: CSA Position Paper 25-404 – New Self-Regulatory Organization Framework

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to provide our comments to CSA Position Paper 25-404 on the New Self-Regulatory Organization (New SRO) framework.

1. ABOUT ADVOCIS

Advocis is the association of choice for financial advisors and planners. With over 17,000 member-clients across the country, we are the definitive voice of the profession. Advocis champions professionalism, consumer protection, and the value of financial advice. We

advocate for an environment where all Canadians have access to the professional advice they need.

Advocis members advise consumers on wealth management; risk management; estate, retirement and tax planning; employee benefits; and life, accident and sickness, critical illness and disability insurance. In doing so, Advocis members help consumers make sound financial decisions, ultimately leading to greater financial stability and independence. In all that they do, our members are driven by Advocis' motto: *non solis nobis* – not for ourselves alone.

2. OUR COMMENTS

Advocis supports the CSA's work in establishing a single national SRO. Consolidating SROs affords flexibility and efficiency in the regulatory framework. In addition, a consolidated SRO reduces investor confusion and can better address the changing needs of businesses and consumers. We applaud the CSA for all the work it has done on this initiative, as we recognize the complexity of modernizing a major piece of Canada's securities infrastructure.

The proposal to create a New SRO is a step in the right direction. However, we believe that the implementation of a new regulatory framework should reflect the diversity of interests among all stakeholders. It is important that the New SRO offers a level and accommodative playing field for stakeholders both large and small, and from across Canada.

We urge the CSA to leverage the title protection regulatory framework being pursued by several Canadian provinces and modernize financial services regulation by recognizing the professionalization of financial advice. This includes a recognition of the role of financial advisors in educating investors and the fact that access to product does not equate to access to advice. Lastly, we encourage the CSA to take an expansive approach to directed commissions and incorporation by ensuring a level playing field while ensuring consumers remain protected.

2.1 Improving Governance

Advocis supports the proposal that independent members form a majority on the board of the New SRO, with particular focus on those with expertise and knowledge in investor protection. However, with respect to the governance of the New SRO generally, we are concerned that it may be dominated by the interests of large financial institutions located in Central Canada. We urge the CSA to ensure that a diverse set of constituencies is represented in the New SRO, which would include smaller, independent dealers and those located outside of Central Canada.

Further, we believe that, as the primary client-facing constituents in the securities regulatory framework, financial advisors must also be represented in a meaningful way within the New SRO. We are disappointed to see that the New SRO could actually represent a step backward in this regard. Currently, while financial advisors do not have representation on the boards of

either IIROC or the MFDA (other than by those who also represent dealers), advisors have at least had an opportunity to provide some input through SRO regional councils. But with the New SRO, the CSA proposes to centralize and transfer current IIROC District Council decision-making functions to the board and staff of the New SRO, with existing SRO regional councils being demoted to having advisory roles.[1]

If the New SRO is to remain responsible for the conduct supervision of financial advisors, then advisors deserve a seat at the table. We concede that this was not always the case: advisors were largely transactional conduits to the products offered by the dealers, and their archaic names in these structures (whether "Approved Person" or "Dealing Representative") reflect this. The dealers were responsible for what was ultimately a sales tool. But this view is out of date. The CSA's own recent publications demonstrate its recognition that the provision of financial advice has become a profession, with the focus shifting palpably from a product-first mindset to one which centres on the client relationship.[2]

Title protection efforts currently underway in Ontario, Saskatchewan and New Brunswick (so far, with more likely to come) further evidence this transition. On this development, it is worth noting that the existing SROs will likely apply to be credentialing bodies for the purpose of the title protection frameworks. This would move the existing SROs (and by extension, the eventual New SRO) even further into the realm of regulating advisors and professional advice. So even if the SROs were originally created to strictly represent their member-dealers, their scope of influence has clearly grown and professional advisors are a key and legitimate constituency that should be represented within them.

We remain open-minded as to how the advisor constituency is represented, so long as that representation is meaningful. The CSA proposes significant enhancements to investor representation on the New SRO, which we support; advisors could also be welcomed into those fora where they could provide the unique, balanced perspective that comes from being positioned 'between' the investor and the dealer.

In any event, financial advisors have earned their professional standing and they remain the face of the financial services industry to the consumer. The existing SRO structure does not give this important constituency a voice that is proportionate to their role in the sector. With the New SRO, the CSA has a prime opportunity to correct this longstanding oversight.

---

[1] We recognize that the CSA proposes some sort of "escalation mechanism" for regional issues, but this still represents another administrative layer in a structure where advisor issues already did not have prominence.

[2] See, for example: CSA Notice of Amendments to National Instrument 31-103 and 31-103 Companion Policy – "Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms" (October 3, 2019). At: www.osc.ca/sites/default/files/pdfs/irps/ni_20191003_31-103_reforms-enhance-client-registrant-relationship.pdf; and CSA Consultation Paper 33-404 "Proposals to Enhance the Obligations of Advisors, dealers, and representatives towards their clients" (April 28, 2016). At: www.osc.ca/sites/default/files/pdfs/irps/csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.pdf.

2.2 Enhancing Investor Education and Access to Advice

Advocis supports the solutions presented by the CSA to improve investor education. However, we ask the CSA to be mindful that the most effective way of bolstering the public's financial literacy is to ensure that they have access to financial advice. It is the advisor that invests the time with the client to educate and explain the most relevant financial matters in an accessible, interactive and plain-language format.

While we appreciate the CSA's discussion that the New SRO must consider access to advice, we are concerned that the CSA is conflating "access to product" with "access to advice". For instance, under the section regarding the CSA's goal of improving access to advice, it speaks to proposing a broker arrangement between mutual fund and investment dealers to allow access to a broader range of products for consumers. While this is a practical solution to reduce mechanical frictions and something we can certainly support from a market efficiency perspective, the CSA's message only underlines that it still operates with the misconception that financial advice is about transacting in product. It is not. Financial advice is first and foremost about understanding the client's financial objectives and developing strategies to address those needs.[3]

To further "access to advice", the CSA should promote a regulatory framework that is competitive and viable for independent advisors who can prioritize clients' interests and are not beholden to any particular product manufacturer or financial institution. In doing so, the CSA should encourage a variety of delivery and compensation models and it should recognize that while cost is an important factor – and one that absolutely should be discussed openly with clients – it is not the only factor and the more relevant discussion should focus on value.

Multiple studies have shown that individuals who receive financial advice fare better than those who do not receive advice. A financial advisor can increase individual retirement savings by at least 50%,[4] with material improvements to the advised consumer's behaviour regarding savings discipline and spending habits looming large.[5] Other studies have demonstrated that investors prefer to work with advisors who understand their individual circumstances and can make recommendations based on their personal situation.[6] These studies evidence that the benefits to consumers of financial advice lie not in access to product, but access to the advisor's holistic skill and professional conduct in the client relationship. It is this value that the CSA should be

[3] For clarity, we also support the CSA improving access to product. Routes such as order-execution-only discount brokerages or robo-advisors are excellent at providing access to product, and there certainly is a role for these services. But these services do not provide professional advice (and the benefits thereof) and we urge the CSA to appreciate the distinction. Access to product is a means to an end, and not an end in itself.
[4] Investment Executive, "Study shows value of financial advice" (June 25, 2020). At: www.investmentexecutive.com/news/research-and-markets/study-shows-value-of-financial-advice/
[5] The Conference Board of Canada, "Saving for the Future: Impacts of Financial Advice on the Canadian Economy". At: www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=24991&lang=en_CA
[6] Russell Investments, "2021 Value of an Advisor Study". At: russellinvestments.com/Publications/US/Document/Value_of_an_Advisor_Study.pdf

mindful of unlocking for all investors. With this in mind, the New SRO should strive to create a level playing field for independent advisors, dealers of all sizes, and online platforms.

2.3 Strengthening Proficiency

Advocis supports establishing a nuanced proficiency-based registration framework and the on-going work on the Client-focused Reforms including enhancements to proficiency standards and clarity to titles and designations. In setting its own proficiency standards, we ask the New SRO to consider the title protection frameworks that are currently being pursued by Ontario, Saskatchewan and New Brunswick. Surveys show that on average, half of respondents already believe that the title of "financial advisor" is regulated and serves as a meaningful indication of the user's skills, education, and expertise.[7] Incorporating the work done in these jurisdictions would efficiently harmonize interprovincial standards and reduce consumer confusion.

Regarding continuing education, the CSA encourages the New SRO to leverage the current IIROC program and the forthcoming MFDA program as a starting point. While streamlining continuing education programs is a step in the right direction, the CSA must address concerns regarding longstanding limited competition and unfairness in this space. In particular, IIROC has been using CECAP, which is owned by the parent company of CSI Global Education (CSI), Moody's Analytics Global Education (Canada) Inc., as its exclusive accreditation service provider for continuing education programs for over fifteen years.[8]

CECAP charges an extraordinarily high price for its accreditation services: its $585-per-credit hour price is an outlier, far above other well-established accreditation providers.[9] In this arrangement, CECAP-affiliated CSI has an unfair competitive advantage over other course providers. While CECAP's high prices discourage many other would-be providers from seeking accreditation,[10] CSI effectively pays itself to accredit IIROC courses and therefore does not face the same economic barriers. This stifling competition is not good for advisors – and therefore consumers – and we urge the New SRO to open the selection of its accreditation service provider to a fair competition as soon as practicable.

---

[7] Advocis, "Submission re the Regulation of Financial Advisor and Financial Planner Titles" (September 9, 2019). At: myadvocis.ca/wp-content/uploads/2019/09/190909-Advocis-re-FCAA-FA-FP-Titles-v2.pdf; Wealth Professional, "Advocis calls for 'financial advisor' title regulation" (October 26, 2018). At: www.wealthprofessional.ca/news/industry-news/advocis-calls-for-financial-advisor-title-regulation/249841

[8] The Investment Dealers Association of Canada (IDA), which is the predecessor of IIROC, initially selected Harrington Lane to run CECAP in 2004. Subsequent to Harrington Lane's withdrawal and sale in 2006, the IDA retained CSI Global Education to take over the CECAP program.

[9] For example, Advocis' affiliated The Institute for Financial Education charges $125 per credit hour, which is in line with the rest of the (non-CECAP) market.

[10] See, for example, the open letter from Learnedly, "Addressing the Conflicts of Continuing Education" (July 22, 2021). At: www.learnedly.com/blog/2021/7/22/addressing-the-conflicts-of-continuing-education

2.4 Reducing Industry Cost

The CSA has proposed that the fees in the New SRO be proportionate to the registrant's activities and has voiced the need to avoid regulatory duplication for dual platform dealers. We support this direction. It is critical that the New SRO's cost structure does not favour larger dealers and major financial institutions that have greater resources to comply with regulatory requirements.

The regulatory expectations on, and registration fees for, any particular dealer should be proportionate to the nature of the firm's activities and the risk those activities could represent to consumers. For example, mutual fund-only dealers generally represent less risk than dealers which transact in individual securities, corporate bonds, derivatives and margin accounts. The new fee structure should strive to ensure a thriving role for smaller, independent dealers that provide services to Canadians living outside of major urban centres and should reasonably relate to a firm's cost of being regulated.

2.5 Harmonizing Directed Commissions

Advocis supports a flexible approach to directed commissions and advisor incorporation. Incorporation enables advisors to take advantage of beneficial tax treatment and administrative benefits offered to incorporated entities, and to enhance contingencies and succession planning during these uncertain times. To Advocis' knowledge, consumers have not been harmed because of these arrangements. The MFDA has also previously found that advisor incorporation and directed commissions do not negatively impact investors.[11]

Advisors in the insurance sector, as well as those on the MFDA platform – except in Alberta – have been allowed to engage in this practice for some time. However, investment dealers on the IIROC platform have been unable to reap the benefits of incorporation and directed commissions. This has created an unlevel playing field and needless regulatory burden where advisors licensed on more than one platform have been required to maintain more than one set of books. We urge the New SRO to modernize its practices and allow for incorporation and directed commissions in both the mutual fund and investment dealer divisions.

While the CSA has not reached a definitive conclusion on the treatment of directed commission arrangements under the New SRO regulatory framework, the creation of a Working Group to review the legal and taxation implications of these arrangements is a step in the right direction. We look forward to working with the Directed Commissions Working Group on this matter in the coming future.

[11] Application submitted by MFDA to Recognizing jurisdictions Re: "Mutual Fund Dealers Association of Canada Application for amendment and restatement of terms and conditions of order recognizing self-regulatory organization" (July 16, 2008). At: www.bcsc.bc.ca/-/media/PWS/Resources/Securities_Law/HistPolicies/HistPolicyBCN/Application_letter_BCN200840.pdf

2.6 Making OBSI Decisions Binding

The CSA will establish an OBSI Working Group to assess the need for an appeal or review mechanism regarding continuing efforts to make OBSI decisions binding. We ask the CSA to be mindful of the recommendation of the Ontario Capital Markets Modernization Taskforce (the Taskforce) in its final report of January 2021.[12]

The Taskforce recommended providing the OSC with statutory authorization to designate a dispute resolution service (DRS) with binding decision-making powers. However, it stipulated that the DRS (whether OBSI or otherwise) must have the appropriate governance, transparency, and professionalism standards in place as a pre-requisite, with its administrative practices satisfying quasi-judicial standards regarding procedural fairness (including a right of appeal) that are fitting of a body that has binding authority.

While we are open to the idea of a DRS with binding authority, our members have reported that they have had very challenging dealings with OBSI in its current form. Their concerns relate to a sentiment that the existing OBSI process is not fair to all participants and does not adequately consider all evidence, and the adjudicator is apt to substitute its own *ex-post* judgment to a scenario. If the CSA ultimately decides to grant OBSI binding authority, the gravity of that responsibility demands that OBSI first undertake the necessary reforms in accordance with the Taskforce's expectations.

3. CONCLUSION

We thank the CSA for its leadership in proposing a merger of the SROs – this is clearly not an easy effort, but the right one to modernize the regulatory landscape. The proposal addresses many of the challenges arising from the current framework. However, we believe that the CSA can strengthen its proposal by addressing outstanding concerns related to financial advice and its evolving role into a profession. We continue to advocate for a regulatory framework that takes a client-centric approach and moves away from a product-based focus.

We look forward to further productive discussions with the CSA on the issues highlighted in this submission. Should you have any questions, please do not hesitate to contact the undersigned, or James Ryu, Vice-President, Legal and Regulatory Affairs at jryu@advocis.ca.

[12] Ontario Capital Markets Modernization Taskforce, "Final Report" (January 2021). At: files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf

Sincerely,

(original signed by)

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

(original signed by)

Rob Eby, CFP, RRC
Chair, National Board of Directors

October 4, 2021

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/Mesdames:

RE: CSA Position Paper 25-404 – *New Self-Regulatory Organization Framework* (the "Position Paper")

This comment letter is being submitted on behalf of RBC Dominion Securities Inc., RBC Direct Investing Inc., Royal Mutual Funds Inc., RBC Global Asset Management Inc., RBC Phillips, Hager & North Investment Counsel Inc., RBC InvestEase Inc. and Phillips, Hager & North Investment Funds Ltd.; each of which is a registered firm providing investment products, services, and/or advice to Canadians. We will refer to these firms collectively as "RBC."

RBC supports the CSA's objectives of establishing a new self-regulatory organization (the "New SRO") and consolidating the current investor protection funds into a single, independently operated investor protection fund. RBC has participated in both the IIAC and IFIC working groups and generally supports the comments raised in their submissions. Additionally, we welcome this opportunity to provide some of our own initial comments on the Position Paper with a view to engaging in an ongoing dialogue with the CSA throughout the New SRO's development and implementation.

First and foremost, we believe that the establishment of the New SRO should be driven by what is best for investors, ensuring the broadest possible access to meaningful investment advice and services. We are aligned with the CSA in prioritizing as guiding principles underpinning the framework for the New SRO: (1) increasing regulatory efficiencies, accommodating innovation and ensuring flexibility and responsiveness to the future needs of evolving capital markets; and (2) not imposing barriers to registrants providing access to advice and products for investors of different demographics. We also support the CSA's objective of supporting the development of a regulatory framework that has a clear public interest mandate and fosters capital markets that are fair and efficient.

In our view, Canadians currently benefit from a range of service offerings that meet their unique needs, experiences, and circumstances, which stands to be further enhanced by the full implementation of the Client Focused Reforms and a thoughtfully-developed framework for the New SRO. We caution against changes to registration and proficiency standards that could unduly disrupt the current advice delivery landscape. We are mindful of lessons learned from other jurisdictions, where regulatory reforms resulted in making meaningful investment advice less accessible for average investors. Furthermore, any regulatory changes should be deliberately made following considered input from all stakeholders, not ancillary to the adoption of the New SRO governance model.

We acknowledge the CSA's concerns and objectives in respect of independence from industry from a governance perspective. That said, we believe that the New SRO will be best positioned to meet its objectives by leveraging the expertise of industry participants, both as a part of the Integrated Working Committee and post implementation by incorporating versions of the current

IIROC District and MFDA Regional Councils into the New SRO's decision-making process. In our view, an appropriate balancing of independence and experience will lead to more effective regulation, to the benefit of both clients and participants.

We appreciate the opportunity to provide these comments and welcome the opportunity to discuss the foregoing with you in further detail. If you have any questions or require further information, please do not hesitate to contact Sean.McGratten@rbc.com or any of the undersigned.

Yours sincerely,

"David Agnew"	***"Katherine Dudtschak"***	***"Doug Coulter"***
CEO RBC Canadian Wealth Management	CEO Royal Mutual Funds Inc.	President, Retail RBC Global Asset Management Inc.

IIACACCVM
INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

TD WEST TOWER | 100 WELLINGTON STREET WEST
SUITE 1910, PO BOX 173 | TORONTO, ON M5K 1H6
416.364.2754 | www.iiac.ca

Laura Paglia
President & CEO

Adrian Walrath
Director

October 4, 2021

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

M^e^ Philippe Lebel, Corporate Secretary Ontario
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 Position Paper 25-404 – *New Self-Regulatory Organization Framework* (the "Position Paper")

The IIAC welcomes the opportunity to provide comments on the Canadian Securities Administrators' (the "CSA") Position Paper. The IIAC is comprised of 116 IIROC regulated investment dealer member firms from small regional firms to large national and multi-national firms. Several of our members also have MFDA regulated mutual fund dealers. Our members account for the vast majority of financial advisory services provided to investors, including but not limited to the distribution of mutual funds. IIAC members

trade in debt and equity on all Canadian marketplaces, provide carrying broker services and underwrite issuers in public and private markets.

The IIAC is committed to the service of the investing public. As a representative of the dealers providing the majority of the financial advisory, trading and underwriting services in Canada, the IIAC is able to provide a knowledgeable and considered contribution to the development of a single, enhanced national self-regulatory organization. [1]

Summary: The IIAC supports the development of a single, enhanced national self-regulatory organization.

Recommendations: Some key recommendations include the following:

- The need for a dependable, short timeline. The IIAC encourages the CSA to consistently select the most expeditious and cost effective means available to achieve implementation. Consideration of any substantive rule or policy changes should take place after the SRO is operational and have regard to regulatory initiatives currently underway.
- Support for proposals that improve public awareness of how the regulatory framework operates and a regulatory framework designed to meet evolving investor needs and preferences.
- Encouragement for proposals that facilitate easier, more cost-effective access to a broader range of products and services to clients through a proportionate, flexible, risk-based approach to regulation that recognizes different business models designed to meet investor needs.
- The benefit to the Integrated Working Committee ("IWC"), the executive committee and the operational committee and their subcommittees of the experience and knowledge of the IIAC, its membership and both current SROs, all of whom should positively contribute to timely and successful implementation.
- Meaningful industry representation on the Board of Directors to assist the SRO to respond effectively to evolving investor concerns.
- Formalized advisory roles for IIROC District Councils, MFDA Regional Councils and Marketplaces to the Board of Directors.
- Support for independent directors, with a cooling off period applicable to all stakeholders.
- The granting of exemptions from the 270-day rule to allow and assist dealers with an appropriate transitioning into the SRO and to work in parallel with the MFDA, IIROC and the CSA's proposals for the SRO.

These and other recommendations are detailed below.

The IIAC commends the CSA for its decision to support the development of a single, enhanced national self-regulatory organization (the "SRO") for Canadian capital markets. There is now a clear consensus on the need for the SRO. The decision to support the development of a single SRO, necessarily results in a period of uncertainty for investors and dealers as they wait to learn about the details of how the SRO will function, and the timeline for its implementation. Consequently, it is imperative that this process proceed

[1] For more information about the IIAC, please see https://iiac.ca/

as quickly and expeditiously as possible to support efficient capital markets and their ability to meet investor needs and expectations.

SRO Framework

The IIAC agrees with the SRO Framework proposed by the CSA and its targeted outcomes. We had strongly advocated for a phased approach to first establish and operationalize the SRO with MFDA and IIROC dealer members, and then consult on the potential inclusion of other registrants as part of Phase II.

The IIAC appreciates the need for and importance of the IWC, the executive committee and the operational committee that will be responsible to co-ordinate and work with external advisors and different subject matter experts within the CSA. The IIAC believes the IWC, the executive committee and the operational committee will benefit from the experience and knowledge of the IIAC, its members and both current SROs and meaningful representation from their membership, both which could positively contribute to timely and successful implementation.

The Need for a Short Timeline

It is noted that as work in Phase I progresses, some initiatives may be implemented by subgroups of the IWC, the executive committee, the operational committee or by other committees formed by the CSA. Though the IIAC appreciates the value that subgroups and other committees bring to the process, the IIAC cautions against delays that a sub-group and committee process may bring and encourages the CSA to consistently select the most expeditious means available to achieve implementation. For example, the committees and/or working groups suggested by the CSA in Appendix C may provide recommendations to the SRO post implementation and as part of an ongoing initiative to enhance the SRO.

The IIAC also appreciates that the work of the IWC in Phase I will focus on integration, harmonization, and governance. Our comments on these issues are set out below:

i) Timeline for Integration

We agree with the CSA's approach to integrate the existing SROs through the appropriate legal and corporate transactions that optimize outcomes, minimize impact, and manage execution risk. Given the importance of the SRO to Canadian capital markets, it is imperative that the corporate structure is selected on an expeditious and informed basis and does not result in unnecessary delay or costs.

The CSA has advised that upon finalizing the appropriate corporate structure, the IWC will issue a public communique providing details of the integration plan, including timeline. It is fundamental to business and operational plans designed to meet investor needs to have a dependable, short timeline, with clear understanding of how the SRO is to be formed and what "Day 1" under the SRO looks like.

ii) Harmonization

The IWC has been tasked with coordinating the harmonization of the existing SRO rules, policies, compliance and enforcement processes, and fee models. While the IIAC appreciates the importance of this work, it is essential to ensure that this process does not delay the integration of firms into the SRO. For example, the IIROC Plain Language Rule Book Project ("PLRs"), aimed to modernize the language in existing IIROC Dealer Member Rules, involved multiple public consultations over several years, various rule revisions and has been a significant project for dealers to implement.

In contrast, IIROC and MFDA rules and guidance should reflect the CSA's National Instruments and not require undue time and process to harmonize, where appropriate. Priority should be given to housekeeping

amendments to the existing MFDA and IIROC rules and guidance to easily coordinate them where possible. Once the SRO is operational, then where needed, substantive changes to rules, if any, may be considered.

iii) Governance

Statement of Principles

The IIAC agrees with the Guiding Principles that were developed by the CSA to inform its IWC's research and analysis in order to best achieve the CSA's targeted outcomes.

This SRO is an integration of IIROC and MFDA as overseen by the CSA. The IIAC agrees that the SRO's mandate should be outlined in the Recognition Orders, by-laws and other applicable constating documents.

A broader Statement of Principles, setting out the CSA's targeted outcome, should be included as part of these constating documents. Further, the Statement of Principles should confirm the SRO's commitment to adopting a risk-based, balanced approach to regulation, and its commitment to:

- promoting access to advice for all investors;
- reducing investor confusion;
- enhancing investor education;
- fostering fair, efficient and competitive capital markets and confidence in those markets;
- encouraging capital formation and growth;
- advancing the confidence in and stability of capital markets;
- eliminating duplicative costs, reducing industry costs, and minimizing regulatory inefficiencies;
- enhancing structural flexibility;
- acknowledging proportionate regulation;
- strengthening proficiency;
- increasing controls and improving transparency of enforcement mechanisms; and
- maintaining strong market surveillance.

As set out further in this submission, the principles the IWC will consider in its rule harmonization policy initiative should be required to guide all new rule development at the SRO and form part of its Statement of Principles.

Board Composition

The IIAC is generally supportive of the CSA's proposal for the SRO's Board composition, subject to the comments below.

It remains essential to recognize that meaningful industry representation is needed on the Board of Directors for the SRO to respond effectively to evolving investor concerns.

The IIROC By-Laws currently require seven independent directors, five dealer directors, the President and two marketplace directors. We believe only having five dealer directors out of fifteen is not reflective of the industry and inconsistent with the notion of self-regulation. The SRO's By-Laws should remove an

outdated requirement to maintain two marketplace directors and instead increase the number of dealer directors. While marketplace members will remain an important stakeholder (given the SRO's marketplace surveillance responsibilities) we believe they can have an advisory role to the Board similar to role the CSA has proposed for IIROC District Councils and MFDA Regional Councils (the "Councils"). This is even more important under the SRO, given the diverse array of business models of dealers the Board of Directors will represent.

The IIAC supports the "Councils" retaining an advisory role on regional and national issues. The IIAC agrees with the CSA's proposal to include an escalation method within the SRO as applicable. The IIAC believes that representatives of the Councils should directly address the Board of the SRO at its meetings on a regular basis. A standing committee of the Board should be formed to respond to issues raised by the Councils.

As noted in our 2020 comment letter, the IIAC supports the CSA in its expansion of the experience criteria for independent directors, as well as introducing term limits for all directors, maintaining only independent directors on the nominating committees, and introducing a formal cooling off period to be considered for any independent director positions. With respect to the criteria to qualify as independent, we believe the cooling off period should be applicable to all stakeholders. For example, there should be a similar cooling off period for individuals leaving regulators, exchanges, the OBSI, investor advocate associations as there are for individuals leaving a dealer, or trade association.

Though the CSA has proposed that the Nominating Committee of the Board be composed of independent directors, the process for selection of the Nominating Committee and its process for selection of a Board of Directors and the number of Directors to be selected has not been explained. The IIAC requests greater transparency on the board appointment process.

The IIAC has publicly supported many of the CSA's proposals with respect to CSA involvement in the SRO corporate governance and understands the importance of CSA of oversight of the SRO. We ask that the CSA remains mindful of the need to balance its oversight function and providing the SRO with the necessary authority to be responsive to the changing needs of Canadian capital markets. The IIAC encourages the CSA to exercise any powers of non-objection with regard to the role and expertise of the SRO and the materiality of the issue and provide transparency in their rationale if an objection is raised.

Proficiency

The IIAC supports the CSA's proposed solutions related to proficiency. IIAC member firms support examining more nuanced proficiency-based registration requirements that would retain the high standards of professionalism in the industry. Proficiency and registration categories impact all investors and areas of the dealer business. Given their importance, broad public consultations may be needed, though these should be conducted after the SRO is established to prevent unnecessary delays and uncertainties.

The IIAC appreciates the CSA acknowledgement that IIROC's proficiency upgrade requirement (the "270-day rule") is likely no longer fulfilling the initial policy objective and may act as a barrier to dealers providing investors with a broader product offering in a streamlined registration category. Pending the establishment of the SRO, the CSA should permit IIROC to grant exemptions from the 270-day rule. There is no policy basis for delaying relief for IIROC dealers seeking these exemptions which remain for the benefit of investors. These exemption requests are to allow and assist dealers with an appropriate transitioning into the SRO and to work in parallel with the MFDA, IIROC and the CSA's proposals for the SRO.

Investor Education

We support proposals to improve public awareness of how the regulatory framework operates. We further support a regulatory framework designed to meet evolving investor needs and preferences.

Access to Advice

Improving the client experience and increasing investor access to advice and services, were core reasons IIAC member firms advocated for changes to the current SRO regulatory framework. In our 2020 comment letter, the IIAC outlined various regulatory barriers that limited client access to certain products and advice. The IIAC is pleased that the CSA is addressing these barriers.

In particular, we believe the following will facilitate easier, more cost-effective access to a broader range of products and services to clients:

- Allowing introducing/carrying broker arrangements between mutual fund dealers and investment dealers;
- Enabling dual platform dealers to integrate their similar back-office functionalities and;
- Permitting dealers to centrally gather standard client information and know your client information in digital format across multiple accounts and between affiliated firms.

The transfer of client data between unaffiliated firms raises privacy concerns and other considerations which will require further assessment after the SRO is implemented.

Industry Costs

The IIAC supports the CSA's proposed solutions related to reducing industry costs[2].

We appreciate the CSA's statement that they will ensure the fees in the SRO are proportionate to registrants' activities and do not carry over any duplications currently experienced by dual platform dealers.

The SRO should be able to realize various operating efficiencies. We expect the SRO to result in benefits including a reduction in regulatory fees and costs for all dealers, including for non-dual platform dealers.

We strongly support the CSA's decision to include language in the terms and conditions of the SRO to enable support for dealers developing and employing technological advancements.

A Flexible Approach to Harmonization and Efficiencies

We agree consistent rule development and interpretation across IIROC and MFDA registrant categories is a key benefit of the SRO. As previously noted, while we support the rule harmonization policy initiative, the status of its completion should not delay the establishment of the SRO.

[2] Deloitte LLP on behalf of IIROC, released ***An Assessment of Benefits and Costs of Self-Regulatory Organization Consolidation,*** which concluded that consolidation would result in aggregate industry savings of between $380 and $490 million over the next 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.

The approach the SRO takes to rule making is central to its ability to be a leading regulator. The guiding considerations outlined by the CSA for the rule harmonization policy initiative, should be required to guide all new rule development at the SRO and form part of its Statement of Principles. In particular:

(i) guidance that clearly articulates the intended outcomes for the rules;

(ii) ensuring the rules are scalable or proportionate to the different types and sizes of member firms and their respective business models;

(iii) assessment of the economic impact of proposed rule changes to affected stakeholders; and

(iv) harmonization of rules that individually may require unnecessary technological systems or processes.

Rules and guidance must be scalable or proportionate to size and business models including support for innovation in business models and product offerings, for example, some dual-platform firms may choose to maintain two separate legal entities for their current IIROC and MFDA dealers.

The IIAC has also suggested that post implementation analysis is important to developing a disciplined approach to rule making and we believe it should be incorporated into the Statement of Principles for the SRO.

Market Surveillance

The IIAC is pleased that the CSA has concluded that market surveillance responsibilities should remain with the SRO. We believe that the surveillance function increases the robustness of the regulator by providing direct insight into investor behavior and improved line of sight into capital market trends. The SRO will similarly benefit by retaining this function.

Recognizing Other Initiatives

The pace of regulatory change over the last several years has been substantial. IIAC member firms are in the process of making changes to systems, operations and processes and policies in response to the IIROC PLRs, the Client Focused Reforms, Vulnerable Clients rules, the Consumer Protection Framework, AML changes, etc. It is important for the SRO to leverage the current initiatives being undertaken by IIROC, the MFDA, the CSA and other government and regulatory bodies.

We ask the CSA, IIROC and MFDA to be mindful of the significant undertaking it will be for certain firms to transition to the SRO when setting implementation dates and if considering any new initiatives.

Reasonable and Seamless Transition Period

IIAC wish to ensure a seamless transition which avoids any disruption to client service.

Any transition period should be reasonable to prevent disruption or confusion for clients. It is not practical to expect dealers to be able to implement substantial changes from the current MFDA or IIROC rule books at the initial outset of the establishment of the SRO. As we have previously stated, initial consideration must be given to housekeeping amendments to harmonize the rules were possible and then if substantive changes are contemplated, public consultations should occur after the SRO is established and with appropriate transition periods.

* * * *

The IIAC would be pleased to respond to any questions that you may have in respect of our comments.

Yours sincerely,

"Laura Paglia" *"Adrian Walrath"*

GOLDSTEIN FINANCIAL INVESTMENTS INC.

October 4th, 2021

CSA Directors
c/o OSC

RE: Consolidation of SROs

To Whom It May Concern

As a "boutique" MFDA dealer with myself and two sub-advisors, who has been in the mutual fund business since 1987, and who services a middle income clientele, I would like to comment on the proposed consolidation.

It is of great concern that what I have seen so far really looks like IIROC is trying to railroad the CSA directors into a merger which would allow them to eventually control the sale of all securities, including mutual funds. That would be categorically wrong. Their members, for the most part, will not accept accounts under $100,000 and if they control the mutual fund dealers, smaller dealers, like myself, could be forced to turn away potential clients.

I do not want to see an investment world here in Canada where the middle income population is forced to deal only with banks and their unlicensed staff who will only be selling proprietary funds, or worse, interest bearing accounts and GICs, regardless of what is good for the client. You need to approach this as a new way for regulators to regulate our industry and the securities industry with a whole new approach, not a quick and dirty merger with IIROC.

Please continue to give this careful consideration and go back to your original framework of an entirely new SRO with new people in charge and fair treatment of all of the firms selling mutual funds and securities.

Thank you for your consideration.

Yours truly,
Signed
"Sonny Goldstein"
Sonny Goldstein, CFP
President

5160 Yonge St., Suite 1850, Toronto ON M2N 6L9 Tel. 416-218-0070 Fax 416-221-1957

October 4, 2021

VIA E-MAIL

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
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Me Phillippe 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
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

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

Re: CSA Position Paper 25-404 – *New 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 Position Paper 25-404 – *New Self-Regulatory Organization Framework*

(the **Position Paper**). PMAC represents over 300 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). Our members manage assets in excess of $2.9 trillion for institutional and private client portfolios; they range in size from one-person firms to large and bank-owned institutions, include traditional and online advisers, and operate domestically and internationally.

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. 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.

PMAC takes no position on the decision to establish a new self-regulatory organization (**SRO**) to replace the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**), and to consolidate the two current investor protection funds (**IPFs**). We are strong supporters of good corporate governance and therefore have focused our recommendations on ways to strengthen CSA oversight of the new SRO and ensure the inherent conflicts of interest within an SRO structure are managed.

CSA Direct Regulation of Portfolio Managers and Investment Fund Managers

PMAC supports the continued direct regulation of PMs, EMDs and IFMs by the CSA. We understand the CSA's decision to focus on the merger of the two SROs and defer any consideration of incorporating other registration categories (PM, EMD, SPD) into the new SRO. As we stated in our response (**2020 Letter**) to the CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*, we are strongly opposed to delegating the regulation of PM and/or PM/EMD firms away from the CSA to the new SRO.

We have summarized the primary factors set out in our 2020 Letter supporting our position that PM firms should continue to be directly regulated by the CSA:

- Direct regulation of PMs by the CSA is and historically has proven to be extremely effective. CSA staff have the long-term experience and 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 approach to PM regulation provides the flexibility required to respond to and promote the wide variety of business models employed by PMs, whether they be investment counsellors, robo-advisers, family offices, global asset managers or large PM/IFMs. Many PMs are also registered as EMDs, usually for the purpose of managing and offering proprietary funds to clients of the PM – maintaining regulation of these

registration categories with the CSA will be more efficient and ensure a competitive Canadian market;

- The prescriptive nature of SRO regulation is inappropriate for, and incompatible with, the business models and client types served by PM firms, which include pensions, foundations and other institutional clients;
- PMs are subject to the highest proficiency standards in the industry and are fiduciaries to their clients, with a duty to act in clients' best interests. A "one-size-fits-all" model of regulation carries the risk of proficiencies being lowered over time;
- Direct CSA regulation is more in line with international regulation, which is predominantly principles-based, direct government regulation in other jurisdictions. Any shift to a prescriptive, self-regulatory model and rules-based regulation would put Canadian PM registrants at a significant competitive disadvantage globally;
- Many PM firms are also registered as IFMs and/or EMDs. Approximately 65% of PMAC members are both PMs and IFMs, and many are part of international firms. PMs and IFMs are closely intertwined – dividing their regulation between the 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 SRO consolidation;
- Direct regulation is strong regulation and better serves the investing public by minimizing conflicts of interest and other inherent problems with the SRO model. No market or investor protection reasons have been raised in support of delegating PM regulation to an outside body.

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.

We look forward to responding to a future consultation regarding the regulation of PM firms in Phase 2 of the implementation process. We will restrict our comments to the proposed changes that will occur during Phase 1 described in the Position Paper.

KEY RECOMMENDATION

CSA oversight of the new SRO should be significantly strengthened

We are very pleased with many of the suggested SRO governance and oversight reforms proposed in the Position Paper. We appreciate that the CSA took stakeholder feedback into consideration and made significant efforts to adopt an investor protection lens in developing these proposals. However, there are some instances

where we believe the CSA should take a more active role in its oversight of the new SRO, as discussed below.

We have the following specific comments on various aspects of the Position Paper. Our comments are set out in blue in the order and under the headings they appear in the Position Paper. We have omitted those sections where we have no comments.

a) Improving Governance

Clear communication of public interest mandate

The New SRO will clearly convey how the public interest informs the New SRO's regulatory actions and responsibilities, specifically by:

- Emphasizing the public interest mandate in the ROs, by-laws, and other applicable constating documents of the New SRO.

  PMAC agrees that investor protection and the public interest must be the primary mandate and focus of regulators, including SROs. The public interest mandate should permeate the culture of the SRO, including the selection of candidates to fill Board, senior management and staff positions. The definition of the "public interest" should be determined by the CSA.

  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).

- Requiring the New SRO to inform stakeholders of its public interest mandate and corporate governance structure, rulemaking processes and enforcement processes. We agree.

- Requiring training to directors, board committee members, senior management, and staff in interpreting its public interest mandate, to ensure alignment of the public interest between the New SRO, statutory regulators, and governments.

  We agree that this is an effective way to emphasize the paramountcy of the public interest.

- Requiring the New SRO to describe the public interest impact of rule proposals, guidance and policies published for comment. We agree.

- Requiring the compensation structure for New SRO executives to be linked to the delivery of the New SRO's public interest mandate.

  We also agree that this is likely to maintain a focus on the public interest within the organization.

New SRO board composition

- Requiring a majority of the New SRO's directors to be independent.

  PMAC agrees that the majority of the SRO's board of directors should be independent. As we noted in our 2020 Letter, we believe that industry directors should not represent more than one third of any SRO board.

- Requiring that the Chair of the New SRO board be an independent director and that the roles of Chief Executive Officer (CEO) and Chair be occupied by separate persons. We agree.

- Requiring that the Governance / Nominating committee of the board be composed entirely of independent directors and requiring that the Chairs of other committees such as Audit, Human Resources, etc. be independent. We agree

- Requiring that a reasonable proportion of New SRO directors have relevant experience regarding investor protection issues (as has already been implemented by IIROC).

  We believe that most, if not all, SRO directors should have investor protection experience, and that this should be a significant factor in appointment decision-making. In addition to directors having investor protection experience, we believe that investors must be independently represented on the board of the SRO. These measures will demonstrate a firm commitment to the SRO's investor protection mandate.

- Providing a CSA non-objection process grounded in principles-based considerations for all independent directors, including:

  We do not see the policy reasons for limiting the proposed CSA non-objection process to independent directors; we are of the view that all directors should be appointed jointly by CSA member jurisdictions.

  - a mechanism for the New SRO to undertake due diligence and other governance best practices such as the use of evergreen lists and development of board skills matrices that would take into account the attributes or backgrounds needed for a balanced board, including

considering board diversity in terms of (i) director-type and (ii) geographic board representation, which will ensure an equitable balance of interests;

- a mechanism for the CSA to review the initial matrices and any subsequent changes to them, including a reporting requirement in the RO for material change to the matrices; and

  We do not believe that a "review" of matrices developed by the SRO goes far enough. Instead, the CSA should be directly involved in the appointment of all directors, including the development and approval of any selection criteria.

- Requiring that appropriate cooling-off periods commensurate with governance best-practices for CSA regulators be considered for any independent director positions.

  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.

- Maintaining a workable board size for the New SRO of not more than 15 directors (including the CEO), subject to change with CSA approval. We agree.

- Maintaining appropriate term limits for the New SRO board members and extending these term limits to the CEO.

  We agree and suggest term limits of 9 years, with no allowance for legacy directors to have their terms extended. We also believe that key executive positions should be subject to term limits.

- Requiring the New SRO to develop diversity and inclusion policies aimed at increasing underrepresented groups on the board. We agree.

Independence criteria for independent directors

- Requiring the New SRO to create, in consultation with the CSA, criteria to assess the independence of directors annually (e.g., affiliations with industry associations).

  We agree that the independence of directors should be annually assessed according to pre-determined criteria. We believe the CSA should approve the criteria. As we noted in our 2020 Letter, we think that conflicts of interest policies and codes of conduct should be independently audited.

- Ensuring that independence requirements for New SRO directors are at least comparable to those for directors of public companies (as provided for in National Instrument 52-110 Audit Committees (NI 52-110), with necessary adaptations), including appropriate cooling-off periods. It is recognized that the context of NI 52-110 is different from the SRO context and that other prerequisites will be considered in determining the appropriate independence requirements for the directors of the New SRO.

  As noted above, we do not agree with the notion of "cooling-off" periods if directors are to be truly independent.

Formal investor advocacy mechanisms

- Requiring the New SRO to establish an investor advisory panel to provide independent research or input to regulatory and/or public interest matters (potentially financed through a restricted fund). The Working Group acknowledges that IIROC has made public statements of their intention to establish a similar expert investor issues panel. We agree.

- Requiring the New SRO to create a mechanism to formally engage directly with investor groups (on an advisory basis) to obtain broader input on the design and implementation of applicable policy proposals and rulemaking. We agree.

- Requiring regulatory policy advisory committees to include a reasonable proportion of investor / independent / public representatives. We agree.

CSA involvement in new SRO corporate governance

- Requiring the New SRO to engage with the CSA regarding the appropriateness of the nominees for independent directors and providing for a CSA non-objection to such nominees, selected through a fit and proper assessment process.

  As noted above, we do not see the policy rationale for limiting CSA engagement to independent directors, and believe that the CSA should be responsible for appointing all SRO directors.

- Providing for a CSA non-objection process for the appointment of the CEO, including a requirement for the New SRO to develop a sub-matrix of appropriate criteria to inform the non-objection process.

  We are of the view that the CSA should have the ability to veto all key appointments, including the Chair and the CEO. We believe that the criteria to inform the non-objection process should be determined by the CSA, not the SRO, or at minimum, that it should be subject to CSA approval.

- Clarifying existing authority in an appropriate governing document, as applicable for each CSA jurisdiction, to direct the New SRO to enact, amend, or repeal, either in whole or in part, any by-law, rule, regulation, policy, prescribed form, procedure, interpretation or practice. We agree.

- Enabling a specific by-law provision for the New SRO requiring that a director of the board be terminated from that position if the director no longer meets the relevant fit and proper criteria (e.g., Code of Ethics) as established by the New SRO and approved by the recognizing regulators. We agree.

CSA oversight

- Enabling CSA review / non-objection process for member exemptions brought to the board of the New SRO. We agree.

- CSA publication of an annual activities report on the CSA's oversight of the New SRO and New IPF. We agree.

- Consideration of annual meetings between the CSA Chairs and the Chair of the New SRO as well as the Chairs of the New SRO's board committees. We agree.

- Ensuring that the New SRO's RO includes appropriate general requirements regarding the adequacy and location of New SRO staff / executives / board directors. We agree.

- A specific reporting requirement in the RO to refer escalated complaints about the New SRO by members or others under its jurisdiction to the CSA. We agree.

- Codifying within the new RO a requirement that the New SRO solicits CSA comments and input on annual priorities, strategic plans and business plans (including budget); and that the CSA maintains a non-objection mechanism, including over significant future publications and communications.

  We agree that the SRO annual priorities, strategic plans and business plans (including budget) should be submitted to the CSA for comment and input, but we believe they should also be subject to CSA approval. We agree that the CSA should have the ability to veto any significant publications, including guidance or rule interpretations.

Other solutions

- Transferring all current IIROC District Council regulatory decision-making functions to the board and staff of the New SRO. IIROC District Councils and MFDA Regional Councils will retain their advisory role with respect to regional issues, as well as the provision of regional perspective on national issues. This

would involve ensuring an escalation mechanism within the New SRO as applicable. We agree.

- Requiring that all directors of the New SRO receive mandatory annual training on industry, governance, and investor protection issues, including training on their specific role and responsibilities within the corporate governance structure in support of the public interest mandate and the management of conflicts of interest. We agree.

- Requiring independent directors of the New SRO to have a separate "in camera" session at board meetings. We agree.

- Requiring the board of the New SRO to meet with the proposed investor advisory panel at least annually in addition to meeting with executives. We agree.

b) Strengthening Proficiency

- Consider proposing more nuanced proficiency-based registration categories to ensure consistent quality of standards for clients.

  As we noted in our 2020 Letter, 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.

  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.

  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.

  In our view, the wider the variety of products offered by a registrant, the higher the proficiency standards should be. It is our belief that anyone offering

discretionary advice must have the highest level of proficiency and be subject to a fiduciary duty.

More than establishing registration categories and required proficiency, investor protection requires effective compliance oversight and addressing registrant misconduct. Products and services change rapidly, and the regulatory framework must have the flexibility to adapt to ensure consumer protection.

- Leverage ongoing and future work on proficiency standards, titles and designations that is part of the broader CSA Client Focused Reforms project. We agree.

- The New SRO to continue to promote the merits of additional credentials for individual registrants (e.g., so that they are better equipped to provide more holistic advice to their clients on financial concepts, planning for financial goals, budgeting or debt management, tax and estate planning). We agree

c) Enhancing investor education

- The establishment of a separate investor office within the New SRO that is prominently positioned and supports policy development and is easily identifiable and accessible to investors. We agree.

- Funding the aforementioned investor education or outreach activities through a new requirement in the New SRO budget or a specific part of the restricted fund.

  We agree. We also support continued investor education initiatives and behavioural research studies, such as those undertaken recently by the OSC.

- Adding specific terms and conditions to the RO to require, to the extent possible, public transparency in enforcement notices in respect of processes for assessing firm supervision and reasons for disciplinary decisions. We agree.

- Reviewing the New SRO sanction guidelines / policies on the public disclosure of credit for cooperation, specifically for the inclusion and consideration of compensation to clients harmed by misconduct as a mitigating factor (or an aggravating factor if inadequate compensation was provided) in assessing appropriate sanctions. We agree.

  We also encourage enhanced investor education regarding the establishment of the new SRO. There has been a great deal of coverage in the media regarding the future of the SROs and the SRO framework, and continued

information and transparency will be important to keep investors informed about the coming changes.

f) Fostering Harmonization/Efficiencies

- As outlined in section 3 of this Position Paper, the IWC will oversee a policy review of the existing IIROC and MFDA rule books / guidance to increase harmonization of similar rules, as well as their interpretation and application. The focus will be to identify differences in the rules / guidance, arbitrage opportunities and overlaps, and propose either (i) to maintain necessary differences, or (ii) seek appropriate amendments to harmonize or eliminate regulatory gaps.

  As part of this policy initiative, the IWC will consider the following:
  - harmonized interpretation of rules with securities legislation (e.g., Client Focused Reforms);
  - guidance that clearly articulates the intended outcomes for rules;
  - rules that are scalable or proportionate to the different types and sizes of member firms and their respective business models;
  - assessment of the economic impact of proposed rule changes to affected stakeholders;
  - harmonization of rules that individually may require unnecessary technological systems or processes; and
  - identifying improvements to internal processes (e.g., for SRO examination reports, as applicable, to reference guidance to assist firms in improving outcomes).

  We agree that the working group should complete a comprehensive policy review of the existing IIROC and MFDA rules and guidance to increase harmonization of the rules, their interpretation and application. We agree that the review should focus on intended outcomes.

  As noted in our 2020 Letter, 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 the SRO, its deployment of those tools and the CSA's oversight of the SRO's business compliance and enforcement functions.

  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.

- To foster harmonization between the New SRO and the CSA, require the New SRO to solicit CSA comment and input on annual priorities and business plan (including budget); and furthermore, the CSA to maintain a non-objection mechanism, including over significant future publications and communications.

  As noted above, we are of the view that the CSA should approve the SRO's annual priorities and business plan (including budget), and significant publications including rules and guidance.

- To assist investors in effectively navigating the complaint resolution processes, review existing regulatory processes across channels with the intent to:
  - centralize the complaint reporting process and explore the merits of creating a single complaint filing portal for the New SRO through which investors could use a standard complaint form to file all types of complaints which the portal would then consolidate, filter and route to the appropriate organization (e.g., the registered firm, internally within the New SRO, appropriate CSA member, OBSI);
  - apply a consistent complaint handling process to review and investigate all types of complaints;
  - develop and apply service standards for complaint resolution; and
  - consider the merits or feasibility of allowing client / victim impact statements for consideration by a hearing panel during the sanction proceedings.

  In the longer term, consideration will be given to expanding the process to include a single complaint filing portal for all registration categories, integrating current CSA processes.

  We agree that the complaint reporting process should also be reviewed, and that a single complaint filing portal should be considered. We will provide any comments we have with respect to whether the single filing portal should include firms in other registration categories, in the planned Phase 2 consultation.

- Given the similarities in coverage for the IPFs, to alleviate investor confusion and to facilitate an improved understanding of the role of investor protection funds, consolidate CIPF and the MFDA IPC into a single protection fund that is independent from the New SRO. An appropriate governance structure for this New IPF will be considered as well.

  The New IPF will review and propose changes to its policies related to disclosure, coverage and claims, focusing on improving plain language disclosure. Furthermore, until any proposed changes are approved, the New IPF would be required to maintain separate coverage pools for investment and

mutual fund dealers. Initially maintaining separate coverage pools will enable the consolidated protection fund to conduct a proper assessment of insolvency risks for the different types of dealers. Until the assessment is complete, a moratorium on any change to the methodology, applied to fees or assessments that would result in a material increase in applicable IPF fees without CSA authorization, will apply.

In the second phase, when consideration is given to assessing the feasibility of incorporating other registration categories within the one SRO framework, consideration will also be given to the possibility of providing coverage to clients of the other registration categories and harmonizing the consolidated protection fund with the Fonds d'indemnisation des services financiers in Québec.

We have no comment on the consolidation of the existing IPFs. We will provide any comments we have with respect to whether IPF coverage should be expanded to include firms in other registration categories, in the planned Phase 2 consultation.

g) Harmonizing Directed Commissions

Our only comment with respect to this section of the Position Paper is that we believe the working group should consider the potential consequences of allowing registrants to use personal corporations, such as whether the corporation may be used to conduct Outside Business Activities, and whether registrants may use corporate titles that could be misleading to investors.

i) Leveraging Ongoing Related Projects

Consolidation of databases and harmonization with insurance regulators

- The CSA SEDAR+ project which will improve the CSA's national consolidated database and enhance public disclosure of registered firms and individuals in one portal, including historical disciplinary information of active or former registrants. Regulatory staff involved in the project should consider the merits of including public disclosure and easy access to information pertaining to registrants similar to that contained in the SEC's Form ADV, or the current IIROC Advisor Report.

- The CSA initiative with the Canadian Council of Insurance Regulators on full cost disclosure and performance reports.

We agree. In our 2020 Letter, 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 increasing investor information.

Conclusion

We are very pleased that the CSA has taken this opportunity to improve investor protection and market efficiency by proposing measures that will significantly strengthen the governance and oversight of the new SRO.

We will continue to advocate that PMs and EMDs that are also registered as PMs should continue to be directly regulated by the CSA; we believe that direct government regulation is stronger regulation and is more appropriate for discretionary managed accounts guided by a fiduciary duty. 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.

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

"Katie Walmsley"
Katie Walmsley
President

"Margaret Gunawan"
Margaret Gunawan
Director
Chair of Industry, Regulation & Tax Committee

Managing Director – Head of Canada Legal & Compliance
BlackRock Asset Management Canada Limited

Federation of Mutual Fund Dealers
Fédération des courtiers en fonds mutuels

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

VIA EMAIL ONLY:
comments@osc.gov.on.ca
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission

Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs Autorité des marchés financiers

Dear Sirs/Mesdames,

Re: CSA Position Paper 25-404 – New 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, it's advisors, and their clients.

The Paper advises that the CSA has decided to move forward to implement a single SRO the NEW SRO, and includes consolidation of the IPFs into a single legal entity that is independent from the New SRO. We appreciate the deliberateness with which the CSA has pursued this complex topic and the expansive work that has been done to-date.

We agree with the CSAs oversight of the existing SROs and IPFs so that those organizations remain committed to maintaining the functional resources and personnel necessary to achieve a successful transition. We believe this is vital if this project is to succeed in a timely fashion.

Methodology

As mentioned above, we appreciate the expansive work done to-date. You state the Working Group made recommendations to strengthen existing control mechanisms and identify opportunities for enhanced information sharing and other procedural changes. We would be interested in receiving those recommendations for review.

New SRO Framework

We are encouraged by the enhanced governance structure as this has been a priority for the Federation since the establishment of the MFDA, and a harmonized approach will be welcomed. We suggest that the new board does not provide reserved seats on the board of directors for any party, but instead makes them available in the regular manner by category. This agrees with the enhanced governance principle and facilitates the widest possible diversity of representation.

We would like to remind the CSA as it continues deliberation of the Framework that this is supposed to be a "self" regulatory organization and that the board composition should reflect that.

Implementation Process

Phase 1 says that an implementation timeline will be communicated. It would be helpful to understand what the CSAs forecast is for the entirety of the project.

Specific Solutions

We support the Formal Investor Advocacy Mechanisms.

Regarding Policy Committees, we are concerned there will be a 'chilling effect' created with the co-mingling of participants. Doing so deprives both sides of the full benefit of a policy development forum and the SRO of their unvarnished opinions and expertise. We do not want to see any party hampered in presenting their views fully. There may be value found in an open discussion amongst all parties at certain later points of the policy development process. We are not aware of any CSA member that co-mingles policy committees in this way.

Strengthening Proficiency

We would suggest the CSA take on the broader project that is proficiency in the industry; course providers which are currently limited in numbers due to the unnecessarily grueling process of changing SRO rules, the quality of the courses

offered, as well as the potential for overlapping requirements and fee structures with multiple agencies assessing registrants, and additional/higher fees.

We would also like to see each CSA member considering implementing an independent title regime to collaborate closely with the CSA in the development of this New SRO, leveraging the CSA's ongoing and future work on proficiency standards, titles, and designations to ameliorate the looming issues and difficulties being created, not least of which include increased investor confusion, additional compliance burden, and costs. Harmonization and cost efficiency are key successes for the new future of our regulatory environment, and we acclaim all efforts in this regard.

Enhancing Investor Education

We agree with the importance of investor education to the goal of achieving investor protection, and believe that a skilled and adequately funded investor office is a benefit to Canadians. We would like to see a clear plan for a nationally harmonized education objective and estimated annual costing for that goal. Details on how we can avoid overlapping investor offices and their respective goals throughout the provinces while simultaneously achieving funding for this objective would be welcome.

Increasing Access to Advice, Reducing Industry Costs

We agree with these proposals and welcome the option of allowing introducing / carrying broker arrangements between mutual (investment) funds and investment (securities) dealers. We suggest these services will also be provided at a fee, which is not necessarily less than what is available in the MFDA currently. Many mutual fund 'wraps' are now offered at cost equivalence to the underlying ETF.

What the mutual fund (investment fund) industry needs, is a reduction of regulatory burden in regard to accessing the marketplace of products they are already permitted to distribute. The challenges are nebulous and regulatory, particularly around 'best execution' and market access. Consider that it is possible to provide controlled access to a limited marketplace 'shelf' of allowable products. There is also a regulatory boundary that disallows mutual fund dealers from having direct access to the market, and to provide ETFs to a client currently requires an IIROC 'swivel chair' in-between orders and the marketplace. Consider rule adjustments permitting 'straight-through-processing' of orders into investment dealer systems and/or the market. It could activate and empower mutual fund dealers to bring these products to the most distant rural markets in a timely manner.

Reducing Industry Costs

We endorse efforts to reduce industry costs. We look forward to opportunities to provide specific ideas and feedback in this area.

Fostering Harmonization

We endorse efforts to foster harmonization between SROs and support the concept of 'like regulation for like conduct', proportionality of regulation, and an appreciation of both the risk (or lack of risk) and different business models represented by industry participants.

Harmonizing Directed Commissions

The Federation notes that MFDA member firms and their registered representatives have enjoyed the option of incorporation to run their practices for many years, and is in favour of this benefit being extended to all market participants.

Likewise, the Federation advocates for the minimal disruption of in-place advisory practices and maximum distribution of accessible low-cost advice to as many Canadians as possible; therefore we also support the harmonization of the beneficial 'Client Name' option to all market participants.

We appreciate the opportunity to comment and look forward to further consultations on this project as it progresses.

Respectfully,

"Matthew T. Latimer"

MATTHEW T. LATIMER
Executive Director

(647) 772-4268
matthew.latimer@fmfd.ca

www.fmfd.ca

CI Assante Wealth Management
199 Bay Street, Suite 2700
Toronto, ON, M5L 1E2

T : (416) 348-9994
1-888-348-9994
www.assante.com

October 4, 2021

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
New Brunswick Superintendent of Securities
Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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 la Cité, tour Cominar 2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-6381
E-mail : consultation-en-cours@lautorite.qc.ca

Re: CSA Position Paper 25-404 - *New Self-Regulatory Organization Framework*

CI Assante Wealth Management ("Assante") appreciates the opportunity to provide additional comments to its previously submitted Comment Letter to 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 and now the CSA Position Paper 25-404: *New Self-Regulatory Organization Framework* ("the Position Paper") on August 3, 2021.

About Assante

Assante is one of Canada's largest independent wealth management firms with over 900 professional advisors overseeing over $50 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

Assante wants to reiterate its support for the initiatives that will result in efficient and effective regulation and we thus applaud the CSA in continuing with its consultative process and to seek additional comments to the Position Paper for the implementation of a single self-regulatory organization ("SRO"). 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. As noted in our previous submission to the Paper, which have also been reiterated in the Position Paper, we highlighted the need to:

1. Remove duplicative operating costs, which will greatly benefit dual platform dealer like Assante. Each current SRO has different but substantially similar rules, dual platform firms such as Assante 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.

2. Address structural inflexibility where 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. 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.

3. Address investor confusion as 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 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.

Assante's Comments on the Position Paper

As noted above, Assante is encouraged that the CSA is continuing with its desire to create a single SRO. To that end, we also wish to provide additional comments to the Position Paper, notably the need to continue with progress that has been achieved to date, the importance of addressing the issue of harmonizing directed commissions, the need to enhance governance and the need to continue to have regional representation in any new governance structure.

Continuation of Momentum

Assante commends the CSA, as well as IIROC and the MFDA, for their collective efforts to date on their work, both independently and collectively with the CSA, on creating a single SRO. One area that could begin immediately is to undertake a review of existing and overlapping regulatory rules. As noted in section (f) *Fostering Harmonization / Efficiencies*, a policy review of the existing IIROC and MFDA rule books / guidance can be undertaken to "increase harmonization of similar rules, as well as their interpretation and application." Given exiting harmonization of rules under National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations,* including those related to the Client Focused Reforms, much of the work has already begun. In addition, it would be beneficial to set target dates to measure success and should be part of each current SROs strategic plans and initiatives. It would be a shame to investor interests and the capital markets if unnecessary roadblocks impede commendable progress to date.

Harmonizing Directed Commissions

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 (except Alberta); IIROC does not currently allow commission redirection. We also agree, as noted in the Position Paper, that directed commission arrangements is a complex matter with many considerations and we welcome that a new Directed Commissions Working Group ("DCWG") will be created to look at all options, including advisor incorporation which would be the more preferential outcome given that other professionals, such as physicians, lawyers and accountants use this model.

If, as noted in the Position Paper, that the implementation of a directed / incorporated commission solution would require a considerable amount of time to implement, even though legislative amendments have been made to the securities legislation of Alberta and Saskatchewan (but have

CI ASSANTE WEALTH MANAGEMENT

not yet been proclaimed), the DCWG should be struck sooner rather than later and begin the analysis how to best implement a solution.

Governance and Regional Representation

We agree with the CSA and the comments made in the Position Pater related to improving governance. We agree that the composition of the new SRO's board of directors should include more independent directors. We also agree in establishing an investor advisory panel to provide input on regulatory and / or public interest matters. We also see the need to continue with regional representation, such as IIROC District Councils and MFDA Regional Councils, as these have been incredibly important in speaking to the regional differences across Canada.

Conclusion

As a dual platform dealer, Assante appreciates the benefits of a single SRO structure. It is important however that the momentum to date continues as failure to implement a new SRO structure will have direct consequences to investors and the investment community. If we agree that the one, if not the primary goal of the new SRO is to 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 while also addressing important issues such as harmonizing directed commissions and enhancing regulatory governance, every effort must be made to continue with progress made to date.

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

Sean Etherington
President, CI Assante Wealth Management

October 4th, 2021

Delivered by email
The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: 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
Fax : 514- 864-638
Email: consultation-en-cours@lautorite.qc.ca

RE: CSA Position Paper 25-404 New Self-Regulatory Organization Framework

About PFSL

PFSL Investments Canada Ltd. ("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 Fund 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 7,400 Approved Persons ("APs") and administers over $14 billion of client investments, the vast majority of which serve the saving needs of middle-income Canadians. Our life insurance company contracts over 11,700 licensed life insurance agents across the country, protecting Canadian families with over $131 billion of term life insurance.

Primerica dedicates its efforts to providing middle-income families with access to simple yet essential products and services through one of the nation's largest and exclusive (captive) sales forces. 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.
We submit our comments to the CSA based on this experience and with a focus on preserving access to affordable financial products and advice.

New SRO Implementation Process

We believe that the SRO model of regulation of the investment industry should emphasize and promote appropriate and efficient market regulation that is tailored to retail investors. Self-Regulatory Organizations are better able to identify trends that may impact investors and adjust their regulatory approach accordingly. We agree that establishing and operationalizing the new SRO model in two phases will help ensure an efficient transition. The use of an integrated working group will be helpful in transitioning existing organizations into the new SRO.

Registration Categories

We believe it is important to maintain a funds registration category (mutual funds, ETF's) for dealers and for advisors (currently MFDA Approved Persons). This distribution channel has demonstrated its importance in serving investors of all means, particularly those with more modest amounts to invest. Further, the channel provides greater access to advice for new investors, combined with personal advice to help achieve their financial goals.

Proficiency requirements, including continuing education, should be commensurate with the required product knowledge of each registration category and should be streamlined and harmonized where possible to minimize red tape.

Fees and Allocation of Costs

The development of the new fee model and allocation of costs will be a complex undertaking. With this in mind, we strongly encourage industry consultation while this model is under development.

Leverage Ongoing Related Projects

While the CSA intends to consolidate the databases and harmonize with insurance regulators through the SEDAR+ project, we would like to emphasize that this is an opportunity to address the shortcomings of the current NRD database. In particular, the input required for registration information, public disclosure, and disciplinary information is burdensome and can be streamlined. We also hope to have a support framework for the new system and encourage collaboration with industry to ensure the new database is designed to increase efficiency for both regulators and industry. We would be pleased to assist in this effort.

Conclusion

We believe that the following outcomes are critical in establishing the new SRO framework and will promote efficiency and reduce regulatory burden. More importantly, these principles will protect access and confidence for all investors:

- A consistent approach to retail investor protection;
- Regulatory oversight commensurate with investors' needs and products being sold;
- Maintaining current funds dealer and advisor registration categories;
- Maintaining fees at current levels, or ideally passing along savings from efficiencies achieved so that serving modest investors does not become uneconomical; and

- The ability for both dealers and advisors to move to more complex product registration categories by obtaining supplemental proficiencies.

We appreciate the opportunity to provide comments on CSA Consultation Paper 25-404. We remain open to working with the CSA, the MFDA and IIROC to help ensure that the right regulatory model is established. Arriving at the right SRO structure will be critical in ensuring that Canadian investors continue to have confidence in the industry. It is equally critical in ensuring that the industry remains competitive and able to continue serving investors with different budget and savings needs.

Sincerely,

[*Original Signed by*]

John A. Adams CPA, CA
Chief Executive Officer

October 4, 2021

To: 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 (New Brunswick)
Superintendent of Securities, Dept. of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Via email : The Secretary, OSC, comments@osc.gov.on.ca
Me Philippe Lebel, AMF, consultation-en-cours@lautorite.qc.ca

Re: Comment on CSA Position Paper 25-404 – New Self-Regulatory Organization Framework.

The Canadian Securities Institute (CSI) is pleased to submit its comments on CSA's position paper on the new self-regulatory framework.

CSI is a leading provider of accredited financial services proficiency learning solutions in Canada. We offer courses and examinations for securities, mutual funds and insurance licensing purposes and a broad range of specialized certificates and designations. We have been IIROC's primary proficiency course and examination partner for decades. We also administer courses and examinations endorsed by the CSA and MFDA for numerous registration categories.

We strongly support the CSA's initiative to establish a new single enhanced self-regulatory organization. Leveraging the expertise and organizational strengths of IIROC and the MFDA should enable the CSA Integrated Working Group to move quickly on this initiative which will lead to more efficient regulation, increased investor access and protection and more robust capital markets.

We will focus our comments on the Strengthening Proficiency section of the position paper.

The new SRO will facilitate a more comprehensive and integrated proficiency regime for all registrants. At present the proficiency requirements for securities registrants differs significantly from those for

mutual fund registrants, particularly as it relates to client-facing representatives, as they have been developed somewhat in silos over many years.

Over the past few decades, the investment industry has changed from a transactional, trading focused environment to one where advice and guidance exemplify the role and expectations of client-facing representatives regardless of whether or not they are securities or mutual fund licensed. Proficiency standards have been raised accordingly but, between securities and mutual fund registrants, the upgrade has not been consistent nor harmonized which has created significant differences and gaps, something that the single SRO will be in an excellent position to address.

Recent regulatory changes such as the Client Relationship Model and Client Focused Reforms as well as the rise in popularity of ETFs and liquid alternatives have started to bring proficiency requirements closer together but there is still room for improvement.

A harmonized approach will not only address the issue of uneven standards but also create a more integrated proficiency path which will enable increased mobility for advisors between platforms allowing advisors and their firms to better address the changing needs of their clients.

CSA has proposed a few solutions relating to strengthening proficiency in their position paper.

- More nuanced proficiency-based registration categories

A new SRO will be better able to set clear and efficient proficiency categories based on the competency requirements of specific roles. Where there are significant differences between roles within the same registration category, there may be need to split that registration category based on competency requirements and create proficiency paths aligned with those competencies. For example, there is a wide range of role responsibilities within the mutual fund dealing representative category. Some representatives provide expansive financial advice and sell both basic and complex proprietary and non-proprietary products (within what their license allows) whereas, in that same registration category, there are representatives that only provide very limited advice and sell basic proprietary products.

Aligning proficiency requirements with competencies, could help reduce or eliminate the uneven proficiency standards that the position paper mentions and also help create a more harmonized and streamlined approach to proficiency that could be designed to better facilitate the movement of registrants between platforms. The single SRO will also be able to address proficiency requirements for products that are sold on both platforms including mutual funds, ETFs and liquid alternatives.

- Leveraging on-going and future work on proficiency by the CSA

The Client Focused Reforms have created a level-playing field for all registrants in many key areas such as conflicts of interest, Know Your Client, Know Your Product and disclosure which are at the heart of the proficiency regimes in financial services. Future work by the CSA in collaboration with the New SRO

and course and exam providers such as CSI should foster a proficiency regime that continues to evolve with the changing needs of the industry and investors. CSI has worked very closely with IIROC staff and IIROC member firms to build and maintain a very robust and extensive proficiency regime for IIROC registrants. We suggest that CSA's future work on proficiency should leverage this expertise as well as IIROC's extensive Competency Profile review and CSI's ongoing curriculum reviews of its regulatory courses.

- Continue to promote the merits of additional credentials

As client needs continue to be more diverse and complex, additional credentials beyond basic licensing allow registrants to enhance their skills and expertise in various areas. As a credentialing body, CSI has seen very strong growth in its credentials in areas such as financial planning, investment management and wealth management over the past decade. Continued support by the new SRO of the merits of credentials will complement efforts to improve the proficiency regime for the registrants mentioned above.

- Streamlining Continued Education programs

The streamlining of CE regimes will be welcomed by advisors, firms and course providers as it will facilitate tracking, reduce costs and improve the quality of ongoing professional development.

The position paper also proposes to enhance investor education as well as enable more efficient registration. CSI is fully supportive of these efforts and would be pleased to share its expertise in these areas with the New SRO.

CSI looks forward to working closely with the Integrated Working Committee to support the transition to the New SRO and to contribute, in particular, to the review and enhancement of the proficiency regime.

Regards,

"Marc Flynn"

Marc Flynn
Senior Director - Regulatory Relations and Credentialing
Canadian Securities Institute (CSI)
marc.flynn@moodys.com

October 4th, 2021

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8
E-mail: 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
E-mail: consultation-en-cours@lautorite.qc.ca

The comments below are submitted on behalf of Learnedly, an education provider for Canadian financial professionals.

CSA Members,

Thank you for the opportunity to comment.

We applaud the CSA Members for their efforts to develop a modern and efficient SRO framework, and support any initiative that will reduce regulatory burden and cost to industry participants. We also encourage Regulators to take this opportunity to address much needed reform with industry proficiency.

For as long as education has been a part of the licensing process, Canada's securities industry has operated without a formal process to recognize new licensing course providers. This is not just to the detriment of registrant proficiency and industry standards, but it also goes against the capital markets ethos to support fair and healthy competition.

But the current framework has also created cases of misconduct, material conflicts of interest, and abuse of dominant position within the continuing education

accreditation framework. These issues have existed for years and continue to go unaddressed, and something we have been vocal about over the last two years.

Learnedly.com/commentletters

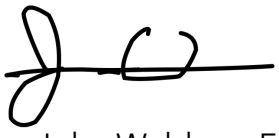
We appreciate the significant undertaking required to bring progressive reforms to Canada's securities industry, including much needed change to the proficiency framework; however, we urge CSA Members to take a more immediate look at the current state of continuing education accreditation within the industry.

There is an abundance of regulatory and cost burden across a fragmented landscape of accreditation regimes with minimal accountability and oversight. These costs do not translate into meaningful academic standard or rigor. Nor have the costs been quantified through independent studies – something we encourage the industry to consider.

Quality and accessibility of industry education matters to every Canadian dealer firm and every registrant. Any efforts to address the problems will be to the benefit of 100% of industry participants.

We appreciate the opportunity to voice our concerns. We are encouraged by the New SRO Framework initiative, and we will support the CSA Members in any way that we can.

Sincerely,



John Waldron, Founder
Learnedly
John.waldron@learnedly.com

BY EMAIL

October 4, 2021

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
Superintendent of Securities, Nunavut
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
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
E-mail: 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
Quebec, Québec G1V 5C1
E-mail : consultation-en-cours@lautorite.qc.ca

Subject: **IA Financial Group Comments on CSA Position Paper 25-404 - New Self-Regulatory Organization Framework**

Dear Sir/Madam:

iA Financial Group appreciates this opportunity to submit comments on CSA Position Paper 25-404 – New Self-Regulatory Organization Framework.

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:

- 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;

- IA Private Wealth, a full-service securities brokerage, and a member of the Investment Industry Regulatory Organization of Canada ("IIROC") and;
- IA Clarington Investments Inc., an investment fund manager and exempt market dealer.

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

As mentioned in our comment letter dated October 23, 2020, we support the idea of a new SRO framework in the securities industry in Canada and acknowledge its potential benefits and strengths. We reiterate our belief that the specialized industry expertise of the SROs and their proximity to the industry are beneficial to both industry participants and to investors and that the national scope of SROs provides a more uniform level of regulation and supervision. We also believe that embarking upon such a major industry transformation will be a great opportunity to adjust and enhance key principles that are the foundation of our industry such as investor protection, cost reduction, market surveillance and access to advice, just to name a few.

As the new SRO takes shape and more specifics or details emerge through future consultation, we believe it is necessary to highlight some of the general concerns or questions we have around this initial position paper. We also believe that not addressing these issues while our industry is undergoing this major overall would be a mistake and would continue to create confusion in the marketplace. In a world of fast-changing environments, it is important to show the public and industry participants that we are serious about this complex exercise.

Before providing you with our concerns and/or questions around each of the specific solutions proposed to support the new SRO, we have a few general questions which would help us understand the difference between Phase 1 and Phase 2:

1. Does this mean that advisors/dealers will be regulated by the new SRO as well as their current one and will this not increase the regulatory burden for both?
2. Does this mean that Portfolio Managers and Exempt Market dealers will have different regulatory obligations which could potentially impact their current business model?
3. Should we plan a Regulatory arbitrage process to avoid temporary non-competitive proposals which would not be in the best interest of clients?

Below is a list of concerns and/or questions we have with respect to the proposed solutions to support the new SRO:

1. Improving Governance

- We agree that there should be clear communication with respect to a public interest mandate to mitigate and clarify expectations;
- As the province of Quebec has a unique legislative environment in Canada, we recommend adequate representation for the province of Quebec at the board of directors of the new SRO;

- In the formation of the new SRO board, it should embrace and adhere to the same level of reporting and transparency as publicly traded corporations, in particular encompassing independence requirements and geographic representation as outlined;
- Independence, transparency, and the inclusion of different members of the industry, as well as a limited mandate, will be critical for the governance model of the new SRO.

2. Strengthening Proficiency

- We support the fact that the need to amend or repeal the IIROC proficiency upgrade requirement is likely lessened as the new SRO supports separate mutual fund and investment dealer business within a single member entity;
- We agree with the proposed solution, however, we feel that the discussion should also include the CSF educational program for Quebec advisors who are also insurance licensed. This will require clarity around how the CSF would supervise and train.

3. Enhancing Investor Education

- We support the idea of a separate investor office within the new SRO that is prominently positioned and supports policy development, and which is easily identifiable and accessible to investors;
- We fully support the view that investor education is a central pillar to achieving investor protection, however, it must be balanced with investor accountability;
- Concerning coordination with CSA Investor Education and Communication groups on joint efforts to expand the reach and impact of investor education in promoting investor protection, we recommend a positive industry message in favor of the value of advice and not presenting the industry as a "shark" for investors.

4. Increasing Access to Advice

- There seems to be a bias towards equating "Access to Advice" with "Access to a broad range of investment products". It is important to keep in mind that 81-102 products package things like equities, options, ETF's and may actually provide them in a more risk effective structure to the investor;
- While the solutions contemplate guidance that would enable more part time advisors, parameters should be established to ensure that as an advisor builds their business, there comes a point where part time could not possibly ensure the provisioning of comprehensive advice and service to individual clients;
- As explained in the footnote at the bottom of page 17 of your document, the current regulatory framework allows introducing/carrying broker arrangements between mutual fund dealers and investment dealers and, as a result, ETFs are now offered by mutual fund dealers. Modifications introduced to the current framework also gives mutual fund advisors access to liquid alt funds;
- Platform costs are lower for mutual fund dealers than for IIROC dealers and allow a mutual fund dealer to settle trades via Fundserv. Mutual fund back office providers are primarily privately owned. The new SRO will increase the concentration of dealers using the services of bank subsidiaries managing current IIROC back office platforms, which will translate to higher trading costs for mutual fund products, which represent a significant portion of the Canadian market. The increased system/platform costs may eliminate the potential cost savings or efficiency gains of regrouping legal entities. In addition, this concentration will negatively impact small dealers in the industry, and potentially reduce the capacity to attract new members;
- The proposal of a rule to require the transfer of historical data upon request by the receiving dealer is not practical at the moment and/or will be very costly. In the past, we had rebuilt

historical data for advisors and their clients, and we know from experience that it is very complex and difficult to guarantee the accuracy of the data and the corresponding historical ROR. The new SRO will need to be flexible with respect to the quality of the information coming from the previous dealer and should also impose a standard transaction format as well as a specific industry starting point.

5. Reducing Industry Costs

- We applaud the focus on reducing industry costs that are associated with the complexities of product delivery and the duplicate costs incurred by dual platform dealers, however, we need to highlight the importance of ensuring that the mandate of the new SRO encompasses a review of the costs of the new SRO's delivery of regulatory oversight;
- While the solution contemplates enabling a dual platform dealer to include its MFDA and IIROC businesses within a single entity, true economies of scale could only be realized should the combined entity decide to migrate to a single book of record. This represents a multi-year project with immense effort and significant operational costs.
- As outlined in our October 23, 2020 comment paper, 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 is always better served if there is healthy competition among solution providers who are motivated to continually invest and improve their platforms and the client experience.
- We need clarity on what is meant by "proportionate to registrant's activities" to ensure that this is not interpreted as "proportionate to a firm's ability to pay", which has been a clear pattern particularly as it pertains to enforcement;
- A cost structure which is proportionate but allows for agility and transformation will be key;
- The cost should not be the primary purpose of the new SRO model.

6. Fostering Harmonization and Efficiencies

- We agree with the proposal, however, we are concerned that there is no clarity with respect to the supervision of Quebec domiciled mutual fund advisors currently registered and overseen by the Chambre de la Sécurité Financière (CSF). As you know, IIROC supervises investment brokers as well as advisors, however, for mutual fund activities, dealers and representatives are supervised by the AMF and the CSF respectively. It is critical to clarify the impact to and the recognition of the new SRO by the AMF. In the Addendum "Recognition of the New SRO in Québec" it is written: "This recognition of the new SRO will not affect the mandate, functions and powers of the CSF." It will be very important to clarify in concrete terms the impact to firms and their registered advisors;
- The new SRO should provide clarity on the impact to the training obligations for CSF registered advisors. There are a significant number of mutual funds advisors in Quebec who are also insurance-licensed, creating overlap in that they are also supervised and trained by the CSF;
- Clarity is required to identify the difference between Phase 1 and 2. As an example, does it mean that advisors and dealers registered in the exempt market category will be regulated by the new SRO and the current regulator? If true, this would increase the regulatory burden for representatives and dealers;
- Also, between the implementation of Phase 1 and 2, Portfolio Managers and Exempt Market dealers may need to fulfill different regulatory obligations, which would potentially affect the business model of the financial institution. We should contemplate a plan to address the potential

for a regulatory arbitrage between registration categories. We are concerned that this arbitrage could lead to the creation of a pool of unlicensed advisors who receive referral commissions in perpetuity and provide financial advice with no SRO oversight.

7. Harmonizing Directed Commissions

- It is critical for the mutual fund industry to receive clarity around this issue before engaging in the new SRO implementation. There are thousands of advisors who would be impacted immediately, with longer term implications to business succession for the mutual fund industry. This could also negatively impact recruiting efforts focused on attracting new talent to the industry;
- In addition, some mutual fund advisors registered in Quebec are already at a disadvantage because they are taxed by the province regardless of whether 31-303 allows advisors to direct commissions to a registered corporation. The New SRO working group will need to confirm with the CRA and other provincial tax authorities what consequences there would be for a mutual fund advisor using a registered corporation;
- From our point of view, the only acceptable solution would be to accept the incorporation of sales revenues, similar to what is accepted in the insurance industry.

8. Maintaining Strong Market Surveillance

- We fully support enhanced market surveillance on the trading activity within the Canadian equity markets;
- We also support enhanced enforcement proceedings where abuse or manipulation impacts individual investors.

9. Leveraging Ongoing Related Projects

- We are hesitant to support continuing efforts to make OBSI decisions binding without a clearly defined appeal or review mechanism to ensure informed, fair and equitable recommendations;
- We cannot disagree with this concept, but fear that all these projects would simply increase the workload of an industry that will already have a lot to absorb with the new SRO implementation.

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

Sincerely,

"Sean O'Brien"	"Louis H. DeConinck"	"Stéphan Bourbonnais"
Executive Vice-President	President	President
iA Wealth	Investia Financial Services	IA Private Wealth

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

October 4, 2021

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 by email to:
The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
E-mail: 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
E-mail : consultation-en-cours@lautorite.qc.ca

Dear Sirs & Mesdames:

Subject: CSA Position Paper 25-404, *New Self-Regulatory Organization Framework*

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on the CSA's consultation paper proposing a framework for a new national SRO.

About IFB
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 whose activities are regulated by their provincial securities commission(s).

IFB members are self-employed individuals who 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 spanning generations.

Advisors who have chosen to be independent provide an important community-based alternative to the financial advisory services offered by large integrated financial firms, and those restricted to the sale of proprietary products. IFB does not represent employees of financial firms/institutions or career agents of life insurance companies.

IFB members have become increasingly concerned with the impact a growing regulatory burden and costs associated with their financial advisory practice will have on their ability to advise clients, particularly those clients who are just beginning to invest or have smaller investment accounts. We think a new, more streamlined SRO framework, can be more efficient, reduce costs for registrants and their clients and, importantly, mitigate the confusion the current bifurcated SRO structure creates for the investing public.

We applaud the work the CSA has done in considering the many viewpoints expressed by commenters, such as IFB, to the previous consultations and believe the approach set out in this consultation demonstrates a positive move forward for the securities industry, its registrants, and investors.

Our comments

General comments on the New SRO framework:

IFB supports the proposed framework which will create a New SRO. We further agree with the CSA's phased approach which will initially, in Phase 1, integrate the existing SROs (the MFDA and IIROC) and their respective investor protection funds (New IFP). Phase 2 would examine the integration of the other registration categories, such as Portfolio Managers, Exempt Market Dealers and Scholarship Plan Dealers into the New SRO.

However, we are concerned that no timelines have been provided for either Phase 1 or Phase 2. The industry and its clients should not have to wait for a framework that is years away from implementation. Now that the CSA has examined the various alternatives, and set its direction, we urge the CSA to move forward as expeditiously as possible.

IFB supports national solutions which level the field for investors, firms, and advisors – regardless of the jurisdiction in which they conduct financial transactions. The current regulatory structure for securities and insurance is complex with 13 statutory provincial securities and insurance regulators and two national securities SROs. We are hopeful that the New SRO will address jurisdictional differences, current SRO differences, and reduce barriers for market participants and investors.

IFB encourages the CSA and its insurance counterparts, the CCIR/CISRO to work closely throughout the development of the New SRO to align the goal to treat all consumers fairly, regardless of the regime under which it is regulated. We agree that the Joint Forum of Financial Markets Regulators provides the

opportunity to consider harmonizing, where appropriate, securities and insurance regulation. We question why this is not scheduled to begin until Phase 2 and would encourage this to be a higher priority.

Governance:
IFB supports the proposed governance structure. In particular, we believe the public interest mandate, increasing the number of independent directors, and requiring the Chair to be independent, are important steps to improve upon the existing SRO structure. We also agree with increasing the CSA's oversight of the New SRO.

Given the size and power of this new SRO, an enhanced accountability framework will be essential. It must be reflective of the many types of SRO member firms that will be regulated by it and include strong investor representation.

Investor advocacy and representation:
The New SRO will be required to establish a separate investor office and investor advisory panel. IFB agrees that for the New SRO to adequately represent investors and fulfill its public interest mandate, there must be input from both industry stakeholders and investors.

Complaint handling:
IFB supports a centralized complaint reporting process. Consumers should have a single portal to lodge a complaint or report other infractions, such as suspected fraud, or unlicensed individuals or firms holding out in a misleading way.

IFB agrees that there should be service standards so those who file a complaint can have confidence that they will receive feedback within a specified time. Service standards are an important way for a regulator to set clear expectations and targets on what stakeholders and consumers can expect.

IFB recommends service standards more generally should form part of an overall performance measurement plan applicable to the New SRO, in its entirety. It should be reviewed by the Board as part of evaluating the New SRO's success in meeting its overall goals and objectives.

Greater transparency in enforcement:
IFB supports the CSA's intention to introduce greater transparency in the New SRO's enforcement processes and reasons for disciplinary decisions. As an advisor led association, we view transparency, fairness and a consistent approach to enforcement and disciplinary actions, as fundamental to ensuring the New SRO can deliver not only better investor protection but ensure registrants can be confident they will be treated in a fair and impartial manner.

IFB recommends that the New SRO publish its enforcement policies and processes on its website, so they are easily accessible to investors and those it regulates. The Financial Services Regulatory Authority of Ontario (FSRA) just completed a consultation on improving transparency in enforcement. It may be helpful for the CSA to consult with FSRA on its review.

Other matters

Directed Commissions:

IFB is pleased the CSA intends to establish a Directed Commission Working Group to examine the various tax and regulatory matters related to directed commission arrangements. As you note, Alberta and Saskatchewan amended their securities acts[1] to permit directed commissions after conducting research which found no reduction in regulatory authority in such instances. Currently, the MFDA and insurance regulators permit similar arrangements. Many of our members would welcome a harmonized, consistent approach to this matter.

Professional liability insurance:

IFB notes that there is no current requirement for mutual fund registrants to maintain valid Errors and Omissions insurance (E&O). We recommend that under the New SRO, all registrants be required to have, and maintain, E&O insurance as a mandatory licensing condition. This would bring mutual fund registrants in line with IIROC registrants and life insurance licensees. E&O provides an accessible and affordable recourse for investors in the event of a complaint.

Continuing Education:

Continuing education is considered to be a hallmark of professional development. IIROC has a CE requirement and the MFDA intends to introduce its CE at the end of 2021. As the New SRO moves forward, it will be important to streamline these two frameworks to reduce duplication and inconsistencies.

In addition, we urge the CSA to consider how best to encourage innovation and competition in the provision of CE. Currently, the IIROC CE approval process is expensive and uncompetitive. The MFDA system, through its proposed accreditation process, is very limiting for many educational providers. IFB supports a CE framework which is competitive and delivers a high standard of professional education. We believe the New SRO provides opportunities to improve upon the MFDA and IIROC models.

Access to advice:

IFB members are concerned that any newly formed SRO may lead to increased costs that will reduce their ability to advise clients of moderate means or be prohibitive to continuing to operate their financial practice. Access to advice will be undermined if existing mutual fund firms (and by extension their advisors) exit the investment industry due to an increase in cost or regulatory burden.

It will be important to reassure MFDA registrants that there will be a level regulatory field for mutual fund dealers and IIROC firms. The potential impact of increased costs will be far greater on smaller, independent mutual fund firms and their advisors, than on large integrated firms (like bank-owned investment firms). Clearly, large integrated firms are likely to realize a substantial reduction in costs under a single SRO, since they will no longer have to operate on both platforms.

In closing, IFB commends the CSA on its approach to implementing a New SRO. Our major concerns relate to the timing of its implementation, and potential costs for smaller, MFDA-only, firms and advisors. We are hopeful the process will move forward without significant delay and in a way that will

[1] These amendments have not been proclaimed.

recognize the importance of ensuring professional investment advice remains accessible for consumers regardless of their resources.

IFB looks forward to working with the CSA and commenting further as future consultations are published.

Should you have any questions or wish to discuss our comments, please contact the undersigned or Susan Allemang, Director, Policy & Regulatory Affairs (E: sallemang@ifbc.ca).

Yours truly,
"Nancy Allan"

Nancy Allan
Executive Director
T: 905.279.2727 Ext. 102
E: allan@ifbc.ca

E-MAIL:

comments@osc.gov.on.ca;
consultation-en-cours@lautorite.qc.ca

October 4, 2021

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 (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

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

Re: Canadian Securities Administrators (CSA) Position Paper 25-404 *New Self-Regulatory Organization Framework*

Investors Group Inc. (IG Wealth Management) is pleased to provide comments on the CSA's proposal (the Proposal) to consolidate the functions of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to create create a new, single self-regulatory organization (SRO) in Canada. As the financial services industry and investor needs continue to evolve, we believe a new, single SRO will be a critical step forward for the Canadian capital markets and investors, and we are fully supportive of this important initiative.

Our Company

IG Wealth Management is a diversified financial services company and one of Canada's largest managers and distributers of mutual funds, including the exclusive distributor of its own products. We carry out our distribution activities through our subsidiaries Investors Group Securities Inc. and Investors Group Financial Services Inc., which are members of IIROC and the MFDA, respectively. We are committed to comprehensive personal financial planning delivered through long-term client and advisor relationships. The company provides advice and services through a network of advisors to over one million clients across Canada. We currently have approximately 3000 advisors registered with the MFDA, and 300 advisors registered with IIROC, located across 67 regional offices spanning all provinces throughout Canada. IG Wealth Management has over $112 billion in assets under advisement as of June 30, 2021. We are part of IGM Financial Inc., which is a member of the Power Corporation of Canada group of companies.

Comments on the Proposal

We strongly support the CSA's proposal to develop a new, single SRO with a new mandate broadly based on the principles articulated by the CSA. As a member of both the MFDA and IIROC, and through our experience of providing financial planning and wealth management services to individuals, families, and business owners across Canada, we believe we have unique insight into the issues and tension points in the present SRO framework – making us well positioned to comment on the Proposal.

As the CSA moves forward with this important initiative, we strongly urge the CSA to consider the following. The new framework must bring timely, meaningful and impactful change. It must increase regulatory efficiencies, foster dealer innovation and deliver effective and efficient regulation by minimizing redundancies and complexities and ensuring flexibility and responsiveness to the future needs of investors. It is also important that this new SRO facilitate similarly situated investors being serviced in a consistent way, particularly by dual platform dealers such as IG Wealth Management. In this regard, we were very encouraged to see a recognition of the need for more nuanced proficiency-based registration categories.

We strongly believe that for real change to occur, the end-result must not be a simple consolidation of the existing SROs. A structurally different and new organization must emerge with a new culture and new strategic regulatory partnership between the CSA, industry, and the investing public. We believe the establishment of a new SRO as proposed will provide the greatest opportunity for the CSA to effect real change to the current framework, and is the best solution to address the issues the CSA has identified with the existing SRO structure. We urge the CSA to move forward with this new framework as soon as possible.

Conclusion

We thank you for the opportunity to provide comments on the Proposal. We would be pleased to engage further with you on the design and implementation of the new SRO framework in Canada.

Yours truly,

IG Wealth Management

"Damon Murchison"

Damon Murchison
President & Chief Executive Officer

QUADRUS

Quadrus Investment Services Ltd.

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: 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
Fax : 514- 864-638
Email: consultation-en-cours@lautorite.qc.ca

October 4, 2021

Thank you for providing the opportunity to comment on CSA Position Paper 25-404 – *New Self-Regulatory Organization Framework*.

Quadrus Investment Services Ltd. (Quadrus) and Canada Life Securities Ltd. are subsidiaries of The Canada Life Assurance Company (Canada Life). Quadrus is one of Canada's largest mutual fund dealers with approximately 3100 advisors in communities across the country. We support efforts to modernize Canada's securities self-regulatory framework. We agree that there are opportunities to find synergies and efficiencies without negatively impacting investor protection. With the decision made to proceed with a single SRO, the focus should now turn to implementation with minimal negative impact on investors, advisors and registrants while maintaining investor protection under a self-regulated model. We are hopeful that at the end of this process not only will oversight be streamlined, but investors will have more seamless access to financial advice and products.

QUADRUS

Quadrus Investment Services Ltd.

Canada Life is one of Canada's leading life and health insurers and has deep experience in and knowledge of regulatory developments in the life and health industry. As our businesses and our clients' advisors span both insurance and securities, we understand the challenges and benefits of approaches taken in both sectors. For example, you have proposed considering an incorporated salesperson model in the securities sector. A similar model has been allowed in insurance for some time and in our view has worked well with no client harm.

We would be pleased to engage in the important discussions that must now take place to make a single SRO a reality including participation on implementation working groups and committees. With IIROC and MFDA registrants in our corporate family and our extensive knowledge of the life and health insurance space, we are confident of our ability to make a meaningful contribution to the process.

Thank you again for the opportunity to participate in this important conversation.

Best regards,

Tim Prescott

Tim Prescott
President and Chief Executive Officer
Quadrus Investment Services Ltd.

ALIGNED
capital partners inc.

IIROC OCRCVM
Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

CIPF FCPE
MEMBER MEMBRE

October 4, 2021

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
New Brunswick Superintendent of Securities
Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

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 la Cité, tour Cominar 2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-6381
E-mail : consultation-en-cours@lautorite.qc.ca

Re: CSA Consultation Paper 25-404 Consultation on the New Self-Regulatory Organization Framework

Aligned Capital Partners Inc. ("ACPI") appreciates the opportunity to provide comments on the Canadian Securities Administrators ("CSA") Consultation Paper 25-404: New Self-Regulatory Organization Framework ("the Paper") that was published for comment on August 3, 2021. ACPI applauds the CSA for being responsive to the numerous calls within the securities industry to review the regulatory

framework of IIROC and the MFDA. ACPI supports the CSA's final position with respect to the establishment of a new SRO and is pleased in the CSA's decision to focus the new SRO mandate on the public interest to ensure the new SRO is effective in putting investor interests at the forefront and to further leverage the work that has been completed by the client focused reforms. It is encouraging that the regulators have already struck a few committees, namely an executive committee and operational committee, to focus on identifying the appropriate corporate structure and governance arrangement of the new SRO and moving forward on harmonizing rules and compliance and enforcement processes. ACPI encourages the CSA to expeditiously move forward with the implementation of Phase 1 and continue to seek stakeholder input throughout the implementation process.

For the purposes of this submission, we will be commenting on four key areas that ACPI believes are critical to be resolved as soon as possible in order to firstly, set up the new SRO for success and secondly, continue the progress and momentum that has been made thus far to enable the new SRO to commence operations in the near future.

1. Positive Investor Outcomes

We believe that a consolidated SRO will enhance and support positive client outcomes through an integrated, cost effective single SRO which is capable of regulating both mutual fund and investment dealers. Such an enterprise will be able to achieve economies of scale more readily than the existing regulatory paradigm. In so doing, we believe that the ultimate beneficiary of such an organization is the end client investor and the investing public for the following reasons:

a. The centralization of both MFDA and IIROC complaint management processes which will ensure investors are able to efficiently file complaints.
b. A unified investor protection fund which we believe will alleviate investor confusion regarding coverage issues and in turn will facilitate an enhancement to client awareness and understanding regarding the role of investor protection funds.
c. We strongly support the CSA's proposal of facilitating the flow of client historical information between member firms. A rule, as proposed in the position paper, that would require the transfer of client data between unaffiliated dealers upon request would serve the client's interests. Moreover, the portability and centralization of client data will also ensure consistency of standard client information (name, address, social insurance number, driver's license) and know your client information to be used across multiple accounts and formats. This will further facilitate the ease of client transfers between unaffiliated firms, with a corresponding reduction in repapering costs and the potential for errors. We firmly believe that increased ease of transfer of historical client data is critical to the success of the new SRO. Client data is the cornerstone of registrants "knowing their clients" which will enable clients to receive more timely, efficient and accurate investment recommendations from their licensed representative.

2. Harmonizing directed commissions (and evaluation of incorporated salesperson as the better solution given CRA considerations)

The harmonization of directed commissions will be a key issue to the success and palatability of the new SRO being an SRO for all (IIROC and MFDA) registrants. Far from a novel issue, presently, only MFDA registrants are effectively able to "incorporate their commissions" earned. This is accomplished through a directed commission strategy which entails a registrant "directing" their dealer to pay commissions earned to the registrant's personal holding company. This current model appears to be permitted (or perhaps tolerated) by the Canada Revenue Agency albeit less consistent with the approach taken by most professions across the country which have adopted the incorporated salesperson model. Setting aside whether the directed commissions model is valid from a taxation perspective, we believe that the incorporated salesperson model is the most appropriate method to proceed which serves to resolve a number of issues:

a. It supports the transition of existing and in some instances long standing arrangements presently in place for MFDA registrants.
b. It serves to create an even playing field among MFDA registrants and IIROC registrants (the latter are unable to avail themselves of any such structure).
c. From a taxation perspective, is acceptable by the Canada Revenue Agency given the existence of such models across the country presently as well as applicable to multiple professions (e.g. physicians, lawyers, accountants, dentists, etc.) for decades.
d. It recognizes the importance of wealth planners as a profession who should be entitled to avail themselves of similar tax planning opportunities as other professions.
e. Supports the concept that taxpayers should be entitled to structure their affairs in the most tax efficient manner possible.
f. Eliminates the ongoing debate surrounding this issue which we believe is an irritant and a distraction to all parties from focusing on more important issues, such as investor protection and the continued alignment of client and registrant interests.

We believe that to effect these changes appropriate amendments are required to provincial securities legislation which can be modelled upon the existing infrastructure used for other professions.
Regardless, and notwithstanding the ability of a registrant to "incorporate", these changes will in no way inhibit or prevent the new SRO from regulating its registrants and enforcing securities laws.

3. Maintaining level of consistency (knowledge/expertise) in management of New SRO

The new SRO's viability will be predicated on its leadership. It is imperative that the management have the broad-based experience necessary to provide stewardship over what must ultimately be a highly effective pan-Canadian SRO. Individuals who not only possess deep subject matter expertise across numerous disciplines, but also are the custodians of historical organizational and industry knowledge

which must not be lost, are crucial to the long-term success of the newly consolidated SRO. Recognition of both the short-term and long-term (i.e. – Phase 1 and Phase 2) objectives of the new SRO and its mandate should be determinative factors in selecting leadership, and that it is essential that individuals with experience that encompasses all areas to be captured under the SRO's mandate should be guiding the newly consolidated SRO from the outset. We further believe that many of these individuals are already in positions of leadership within the existing SRO structure and that those individuals should be integrated into positions of leadership within the newly consolidated SRO. To this end, we expect that natural synergistic opportunities will present themselves which we believe will support a cost efficient and integrated structure; however, it will be important to ensure that key personnel are retained, at a minimum in the short term.

4. Momentum – expeditiously moving forward with phase 1 implementation

As we have noted above, ACPI is fully supportive of the path forward that the CSA has created and the progress that has been made thus far. We are however mindful of the importance of proceeding expeditiously, so that the momentum gained through the CSA's publishment of its position paper (and perhaps, more importantly the joint endorsement of the initiatives set forth therein by both IIROC and the MFDA) is not lost. We say this knowing that leaving the current industry players in a perpetual or long-term state of uncertainty will not be beneficial to those individuals, dealer members, the capital markets or ultimately, end clients.

We therefore believe that the creation of those working committees to commence with the harmonization of dealer member rules, policies and processes of the current SROs is critical.

One area in particular that we would propose be a starting point, is the IIROC proficiency upgrade requirement, which requires mutual fund representatives transitioning to an IIROC platform to qualify as IIROC representatives within 270 days of approval. This requirement as noted in the consultation paper is likely no longer required. The new SRO will be empowered to regulate more nuanced categories of registration under a single platform and subject to the same rules which we believe will promote client outcomes, create a more efficient form of regulation and reduce investor confusion.

Sincerely,

Aligned Capital Partners Inc.

Christopher J. Enright
President

CSA Position Paper 25-404

New Self-Regulatory Organization Framework

Observations of the Groupe de recherche en droit des services financiers

by

Raymonde CRÊTE*, *Ad. E.*
Emeritus Professor
Emeritus Counsel
Codirector of the Groupe de recherche
en droit des services financiers
Faculty of Law
Université Laval

Cinthia DUCLOS*
Professor and Counsel
Codirector of the Groupe de recherche
en droit des services financiers
Faculty of Law
Université Laval

October 20, 2021

TABLE OF CONTENTS

Introduction

On August 3, 2021, the Canadian Securities Administrators (CSA) released its *Position Paper 25-404 – New Self-Regulatory Organization Framework* (the "*Position Paper*").[1] The *Position Paper* is part of the work launched by the CSA in 2019 to examine and assess the current regulatory framework for two Self-Regulatory Organizations (SROs), namely the Investment Industry Regulatory Organization of Canada (IIROC), which regulates investment dealers, their executives and representatives, and the Mutual Fund Dealers Association of Canada (MFDA), which regulates mutual fund dealers, their executives and representatives.

Prior to the publication of the *Position Paper*, the CSA published in June 2020 the *CSA Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework* (*Consultation Paper 25-402*).[2] During this consultation process, on behalf of the Groupe de recherche en droit des services financiers (GRDSF) at the Faculty of Law, Université Laval, the authors submitted a brief to provide input for the debate on some of the issues presented by the CSA and evaluate possible ways to improve the current legal framework (the "GRDSF brief").[3]

As part of the SRO framework review project, the solutions put forward in the *Position Paper* contain several positive elements that will help increase investor protection as well as regulatory efficiency and effectiveness. The approach presented is close to that of the GRDSF, which proposes the creation of an integrated, simplified, specialized and flexible framework to ensure protection for investors and maintain public trust in this key sector of our economy.[4]

---

* The authors wish to thank Benjamin Waterhouse for the translation of this text.

1 CANADIAN SECURITIES ADMINISTRATORS, *CSA Position Paper 25-404 – New Self-Regulatory Organization Framework*, August 3, 2021, [online]: https://lautorite.qc.ca/fileadmin/lautorite/consultations/bourses-chambres-oar/2021-10-04/2021aout03-25-404-enonce-position-oar-en.pdf.

2 CANADIAN SECURITIES ADMINISTRATORS, *CSA 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.

3 Raymonde Crête and Cinthia Duclos, *CSA Consultation 25-402 on the Self-Regulatory Organisation Framework - Brief submitted by the Groupe de recherche en droit des services financiers*, Québec, October 23, 2020 (*GRDSF Brief*), [online]: http://www.grdsf.ulaval.ca/sites/grdsf.ulaval.ca/files/grdsf-consultation_acvm_25-402version_anglaise27-10-2020.pdf.

4 *Ibid.*, p. 16-19.

In the following comments, we highlight several positive elements of the proposed reform, while suggesting areas for further exploration and possible solutions in order to improve or fine-tune some aspects before the reform is implemented.

To help readers understand the background for the review project submitted by the CSA, the first part of this brief sets out some of the features of the current SRO regulatory framework. In the second part, we make observations concerning the main elements of the reform planned by the CSA to create a New SRO, before focusing, in the third part, on the position of Québec's Autorité des marchés financiers (the "AMF") with respect to the implementation of the proposed new regulatory framework in Québec.

I. Main features of the current regulatory framework for SROs

Over the last four decades, the investment services industry, which provides services that include investment advice, portfolio management and securities trading via investment dealers, mutual fund dealers and their representatives (intermediaries), has experienced considerable growth. In this highly complex and constantly evolving world, the regulatory authorities recognize the need to put in place a strict framework for services in order to prevent or minimize risks for investors' interests in their relations with intermediaries.

The specialized frameworks set up by the provincial and territorial securities regulators, as well as the SROs, impose entry requirements for dealers and some of their executives[5] and representatives, as well as strict legal and ethical standards of conduct to ensure the competence, integrity, loyalty, transparency, diligence and solvability of intermediaries backed up by monitoring mechanisms and disciplinary controls on the regulated persons (through inspections, investigations, disciplinary complaints, legal proceedings and sanctions). This rigorous framework, similar to the professional obligations governing the members of professional orders, allows the regulatory authorities to safeguard investors' interests and ultimately preserve public trust in the industry.[6]

---

5 For the purpose of these observations, the term "executives" refers to members of the board of directors (directors), senior executives (chief executive officer, vice-presidents for sales, finance and operations, ultimate designated person, etc.) and other individuals holding a position that gives them key powers concerning day-to-day activities and the supervision and control of the firm and its staff (chief compliance officer, middle manager, branch manager, supervisor, etc.).

6 Concerning recognition of the professional nature of investment services and the similarities between the legal framework governing intermediaries (dealers, certain executives and representatives) and professionals subject to the *Professional Code*, CSR, C-26, (lawyers, accountants, doctors, etc.), see Raymonde Crête, Cinthia Duclos and Marc Lacoursière, "La rationalité du particularisme juridique des rapports de confiance dans les services de placement", in R. Crête, M. Naccarato, M. Lacoursière and G. Brisson (ed.), *Courtiers et conseillers financiers* –

Currently, responsibility for this administrative and disciplinary framework lies with the CSA's member authorities with respect to registration for intermediaries offering investment services, and with the SROs for the disciplinary aspects.[7] More specifically, in the field of investment dealers, the IIROC is recognized as the SRO by the securities regulators across Canada for the supervision of investment dealers, their executives and representatives active in Québec and elsewhere in Canada. In the field of mutual fund dealers, the MFDA is recognized as the SRO by the provincial and territorial securities regulatory authorities for the supervision of mutual fund dealers, their executives and representatives, except in Newfoundland and Québec. For mutual fund dealers in Québec, supervision is provided by three organizations: the AMF, the Financial Markets Administrative Tribunal (the "MAT") and the Chambre de la sécurité financière (the "CSF"). More specifically, in this sector, the AMF and the MAT are responsible for the supervision of mutual fund dealers and some of their executives pursuing activities in Québec. In the same sector of mutual fund dealers, the CSF, recognized as an SRO by legislative accreditation, is responsible for the disciplinary supervision of the representatives of mutual fund dealers pursuing their activities in Québec.

Overall, as emphasized by the CSA in *Consultation Paper 25-402* and by several other observers, the current investment services regulation is designed in a complex, fragmented, product-based manner, rather than an integrated approach based on the services provided by the intermediaries. This regulatory fragmentation has led to a multiplication of supervisory authorities and the establishment of various registration categories and various sets of rules applicable to intermediaries offering similar services, along with a variety of investor protection plans in the event of an intermediary's insolvency or fraud. The negative consequences of this complex and fragmented approach include overlapping, redundancy and administrative and financial

Encadrement des services de placement, vol. 1, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, p. 229 and p. 252-271.

7 This rule provides certain exceptions, in particular in Québec. Under the current framework, the AMF delegates the registration of investment dealer representatives to the IRROC. In addition, since no SRO currently supervises mutual fund dealers and their executives active in Québec, their conduct and supervision (disciplinary framework) are a responsibility of the AMF and the MAT. For the delegation to the IRROC of registration for dealing representatives, see Autorité des marchés financiers, *Délégation de fonctions et pouvoirs à l'Organisme canadien de réglementation du commerce des valeurs mobilières*, c. A-33.2, r.2.1, Décision No 2009-PDG-0100, online: https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/bourses-oar-chambres/2009pdg0100-deleg-pouvoir-ocrcvm-fr-en.pdf.

complexity, as well as risks for investors' interests. Consideration for these issues requires a review of the structure and content of the regulatory framework for SROs and for other elements covered by the SRO framework review project.

II. Main elements of the proposed reform

In the *Position Paper*, the CSA recognizes many of these issues and proposes the creation of a new framework for SROs to increase investor protection and regulatory effectiveness and efficiency.

- **Guiding principles and general objectives of the reform**

The *Position Paper* sets out the guiding principles developed for the CSA Working Group to inform it in its search for solutions to the issues raised in *Consultation Paper 25-402*.[8] The goal was to achieve the general objectives of the reform, described by the Working Group as follows:

> Each Guiding Principle was adopted with the objective to support the development of a regulatory framework that has a clear public interest mandate and fosters capital markets that are fair and efficient. As a result, the regulatory framework will be structured to focus on investor protection to promote public confidence and to accommodate innovation and change.[9]

The guiding principles and underlying general objectives will serve as points of reference for the drafting and implementation of the new regulatory framework. To provide suitable direction for the authorities during the review process, the fundamental concepts to which the Working Group refers need to be defined, including "public interest", "investor protection" and "efficient capital markets".

In our opinion, the "public interest mandate" in the financial services sector is an overarching concept that includes the objectives of investor protection and market efficiency. In other words, the public interest mandate should constitute the cornerstone for the reform and the basis for the articulation of the objectives of investor protection and promotion of market efficiency.

- **Integration and harmonization**

In Phase 1, the CSA proposes the creation of a new single SRO ("New SRO") to supervise investment dealers and mutual fund dealers in Canada. It also plans to consolidate the current investor protection funds (the Canadian Investor Protection Fund (CIPF) and the MFDA Investor

---

8 *Position Paper*, *supra*, note 1, p. 2 and 3.
9 *Ibid.*, p. 2. See also the reference to the public interest mandate *Position Paper*, p. 2.

Protection Corporation (MFDA IPC) into a single protection fund that would be independent of the New SRO.[10] In this first phase, the restructuration process will involve harmonizing the rules, policies, compliance and enforcement process for investment dealers and mutual fund dealers providing similar services.[11] In Phase 2, the CSA contemplates the possibility of enlarging the scope of the New SRO to incorporate the oversight of other categories of intermediaries, such as portfolio managers and exempt market dealers.[12] This second phase will also provide an opportunity to continue work to harmonize regulation of both the securities and insurance sectors.[13]

Several positive elements emerge from this proposal which, overall, reflects the guiding principles we set out in the *GRDSF brief* submitted to the CSA in October 2020 during the 25-402 consultation on the SRO regulatory framework.[14]

First, the restructuring required by the creation of the New SRO will be beneficial provided it offers an **integrated framework**, in other words, a framework that is not designed in a fragmented way, but rather in a holistic and coherent approach to cover various intermediaries offering investment services, including investment dealers, mutual fund dealers, their executives and representatives. In Phase 2, the CSA will consider the inclusion of other categories of intermediaries and continue work to harmonize securities regulation with the regulation of intermediaries in the insurance sector.

Second, the beneficial effects of the review process will probably include closer coordination between the supervisory authorities (the New SRO and the securities regulators) and harmonization of SRO rules, policies, compliance and enforcement processes and fee models.

Third, the framework review will enable the New SRO to consider both individual and organizational aspects of investment services, since it will be able to supervise three groups of stakeholders—firms, their executives and representatives—by drafting and enforcing standards of conduct. From the first signs of professional shortcomings on the part of the representative of an investment dealer or mutual fund dealer, the SRO will be able to assess, at the same time, potential

---

10 *Position Paper*, *supra*, note 1, p. 5-7.
11 *Ibid*, p. 7.
12 *Ibid.*, p. 7-8.
13 *Ibid.*, p. 2, 8, 26.
14 *GRDSF Brief*, *supra* note 3, p. 16 and ff.

investor-harming behaviour, whether individual or organizational. For example, the SRO will be able to verify whether the professional failure by the representative points to an organizational or systemic failure, in particular in terms of the supervision provided by the management of the firm where the representative works. In such circumstances, the New SRO will be able to intervene with the firm and with some of its senior managers after noting deficiencies in the supervisory and compliance mechanisms it has put in place.

In short, the creation of the New SRO will have a beneficial effect on structures, regulatory content and regulatory enforcement by reducing overlaps, redundancy and administrative and financial complexity and potential risks to investors' interests arising from the existence of multiple supervisory authorities and sets of rules applying to intermediaries offering similar services, and from the variable nature of the protection mechanisms provided.

- **Governance of the New SRO**

Among the detailed solutions proposed to address the issues identified in the *Consultation Paper 25–402,* the CSA, in the *Position Paper*, suggests some positive improvements for the governance of the New SRO, including clear communication of the public interest mandate, the independence of the New SRO's board of directors, exemplary governance practices, investor advocacy mechanisms, training for directors, and CSA oversight.[15] While recognizing the timely nature of the planned improvements, we would like to share our thoughts on ways to improve some of the proposed solutions.

  - **Formal investor advocacy mechanisms**

The CSA proposes the creation, by the New SRO, of an "investor advisory panel to provide independent research or input to regulatory and/or public interest matters […]".[16]

In our view, a distinction needs to be made between an "investor panel", in other words, a committee composed of investors who are not specialists in the field of investment services, and an "expert panel", which is a committee composed of individuals with in-depth knowledge of investment services and regulation of this sector. The expectations concerning the members of each type of committee are different, and so are the objectives targeted.

---

[15] *Position Paper*, *supra*, note 1, p. 8-13.
[16] *Ibid.*, p. 11.

Given this fact, the New SRO might consider the creation of two separate advisory panels, one made up of investors, to make known their needs and concerns, and one made up of experts, including specialists in law, administration, finance and other fields, to provide input on policies, rules, guidelines and other regulatory activities intended to improve investor protection.[17]

- **Decision-making functions within the new SRO**

The board of directors and staff of the New SRO will exercise all its decision-making functions nationwide.[18] While recognizing the advantage of centralizing decision-making powers at the New SRO, one of the questions is whether the individuals asked to take on these decision-making functions will have the necessary expertise and experience to deal with the specific features of a given environment, including the legal system based on civil-law tradition and the promotion of the French language, two characteristics of Québec society.

To respond to this concern, the composition of the board of directors and the staff of the New SRO should be designed to take into account the specific legal, social and economic features of a given environment, such as the features of Québec's legal system. Similarly, reflecting the current deployment of the IIROC regional offices in Québec, Alberta and British Columbia as well as the IIROC District Councils representing all provinces and territories in Canada, the CSA should consider the possibility of maintaining or integrating regional structures with the expertise and experience needed to adapt the regulation to the differences and features of a specific environment.[19]

---

[17] See, on this topic, the proposed creation of an IIROC Expert Investor Issues Panel, [online]:https://www.iiroc.ca/news-and-publications/notices-and-guidance/request-comments-iiroc-expert-investor-issues-panel.

[18] *Position Paper*, *supra*, note 1, p. 8.

[19] IIROC's head office is in Toronto with regional offices in Montréal, Calgary and Vancouver: *CSA Consultation Paper 25-402 supra*, note 2, p. 2; IIROC District Councils, [on line]: https://www.iiroc.ca/about-iiroc/district-councils. In Québec, see : Autorité des marchés financiers, *Reconnaissance de l'Organisme canadien de réglementation du commerce des valeurs mobilières à titre d'organisme d'autoréglementation en vertu de la Loi sur l'autorité des marchés financiers, L.R.Q., c. A-33.2*, Décision N° 2008-PDG-0126, [online] : https://lautorite.qc.ca/professionnels/structures-de-marche/organismes-dautoreglementation; Décision No 2021-PDG-0010-Organisme canadien de réglementation du commerce des valeurs mobilières, [online] : https://lautorite.qc.ca/fileadmin/lautorite/professionnels/structures-marche/bourses-oar-chambres/Decision_2021-PDG-0010.pdf.

- **Continuing education and proficiency strengthening**

The CSA recognizes the importance for the New SRO of promoting continuing education programs for investment dealers and mutual fund dealers.[20] In keeping with this focus on continuing education, it is important to emphasize skills upgrading for the representatives of mutual fund dealers so that they can offer a broader range of financial products and services taking into account the evolving needs of their clients. In addition, training programs should be planned for executives with managerial, leadership or supervisory functions within firms (investment dealers, mutual fund dealers). The training could focus on the professional nature of the services provided, the regulation and, more broadly, the legal and organizational issues of investor protection.

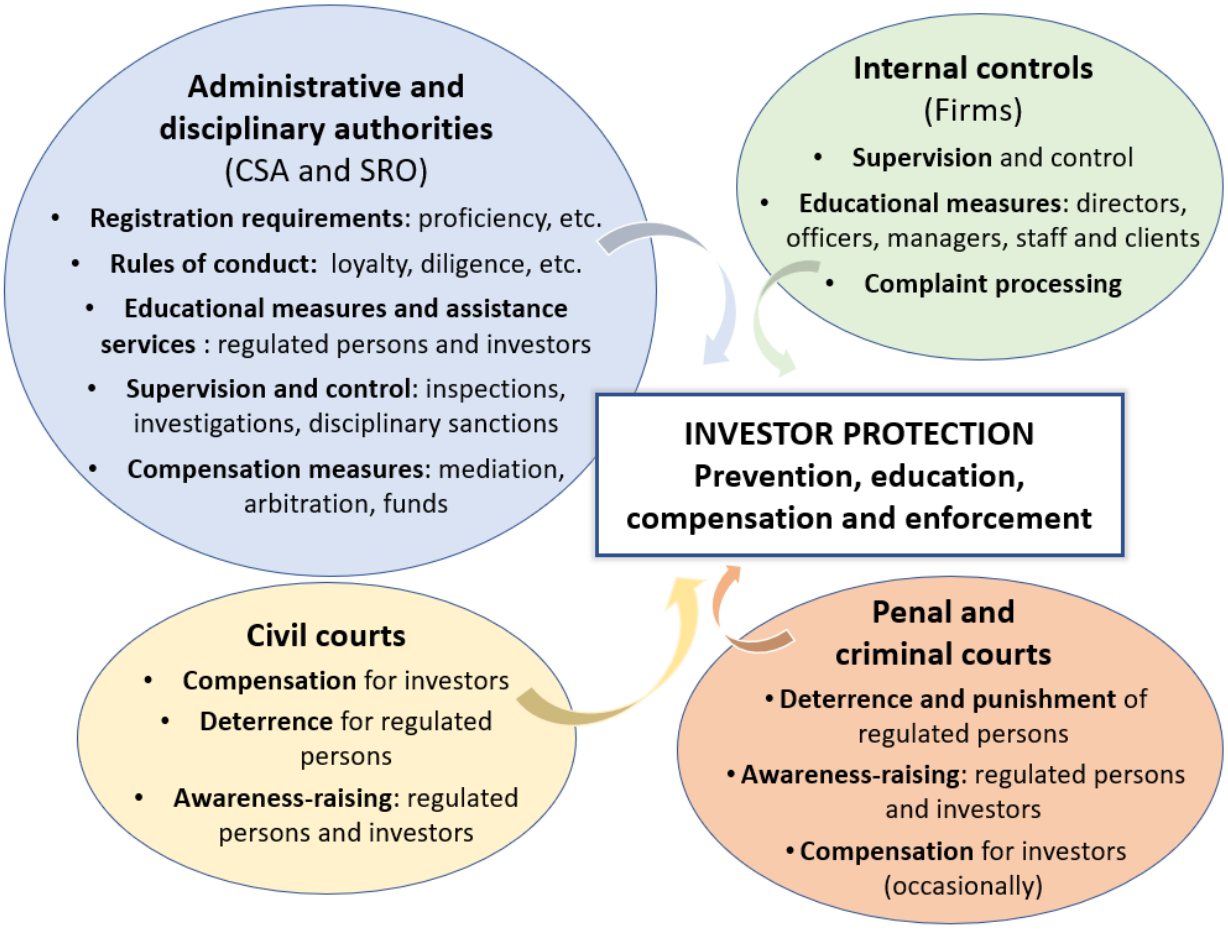
For the governance of the New SRO, the CSA also suggests enhancing training for members of the SRO board of directors to support the SRO's public interest mandate.[21] It would be appropriate to extend the offer of training programs to senior management members and mid-ranking managers exercising managerial functions at the New SRO.

- **Enhancing investor education and protection**

The CSA points out that "Investor education is a central pillar to achieving investor protection."[22] Without minimizing the need for investor education, it is clearly only one of several elements in the broad range of investor protection measures. As illustrated in Diagram 1 below (**Diagram 1: Range of investor protection measures**), investor protection must be considered holistically, taking into account all prevention, education, compensation and penalty measures for all stakeholders, including firms, executives, representatives and investors, and the authorities responsible for supervising the industry.

[20] *Position Paper*, *supra*, note 1, p. 13, 14.
[21] *Ibid.*, p. 13.
[22] *Ibid.*, p. 14.

Range of investor protection measures



For the consolidation of the two pan-Canadian investor protection funds, the CSA proposes, as part of Phase 2, an examination of the possibility of "harmonizing the consolidated protection fund with the *Fonds d'indemnisation des services financiers* in Québec" (FISF).[23] Since the consolidated fund and the FISF do not offer investors the same protection, in the first case focusing on insolvency and in the second case on fraud, fraudulent tactics or embezzlement, harmonization would be appropriate provided it increases the protection for Canadians investors rather than decreasing the protection for investors in Québec.

Similarly, we welcome the discussion about the inclusion in the disciplinary process of the New SRO of the payment of compensation to clients harmed by misconduct as a mitigating factor (or an aggravating factor if inadequate compensation was provided) in assessing appropriate

[23] *Ibid.*, p. 21.

sanctions.[24] The authorities could also contemplate extending the powers of the disciplinary committees and hearing panels to enable them, in some circumstances, to determine the amount paid to compensate clients who have suffered harm, and to add payment of compensation to the penalty imposed on the intermediaries at fault, reflecting the powers given to the courts in criminal trials.[25]

III. Position of the Autorité des marchés financiers

This section focuses on the position of the AMF with respect to the implementation of the proposed new regulatory framework in Québec. For this purpose, we present an overview of the existing framework before outlining and commenting the AMF position.

1. Overview of the current framework for SROs in Québec

As mentioned in the first part of this document, the regulation of investment dealers, their executives and representatives is currently a responsibility of the IIROC as recognized by the securities regulators in Canada, including the AMF. In the mutual fund sector, the MFDA is recognized as an SRO by the CSA except in Newfoundland and Québec. In this sector, in Québec, the supervision of mutual fund dealers and of some of their executives is a responsibility of the AMF and the MAT, while the disciplinary supervision of the representatives of mutual fund dealers (natural persons) is undertaken by the CSF.

It is important to note that mutual fund dealers pursuing activities in Québec and elsewhere in Canada are subject to the oversight of three authorities, namely the AMF and the MAT for their activities in Québec, and the MFDA (the pan-Canadian SRO) for their activities outside Québec. This dual oversight can cause regulatory, administrative and financial problems for the supervised entities, and a risk for investor protection. The restricted power of the CSF in this sector also raises concerns, since the Québec SRO can only intervene in disciplinary matters against mutual fund representatives. This prevents it from intervening against mutual fund dealers and their executives in the event of an organizational failure or misconduct. In comparison, the current powers of the

[24] *Ibid.*, p. 15.

[25] Depending on the circumstances, a court can impose a restitution order, for example to reimburse a victim for an amount of money stolen. See sections 737.1, 738, 739 of the *Criminal Code*. See also s. 262.1 (9) of the *Securities Act*, which gives the MAT the power to issue an order requiring the person to disgorge to the AMF amounts obtained as a result of a non-compliance with an obligation imposed by securities legislation.

MFDA are broader, since it can intervene in matters pertaining to proper conduct and discipline against three groups: mutual fund dealers, their executives and representatives.

In short, for the oversight of investment services provided by intermediaries pursuing their activities in Québec and elsewhere in Canada, the assigning of powers to different organizations, the IIROC, MFDA, AMF, MAT and CSF, may be a source of confusion and administrative and financial complexity. From the standpoint of risk reduction, the AMF position on the SRO framework review project includes the positive elements that we highlight here, along with several questions.

2. Recognition of the New SRO in Québec

The addendum to the *Position Paper* emphasizes that the AMF will recognize the New SRO to supervise investment dealers, mutual fund dealers and their representatives in Québec.

The following excerpt from the addendum sets out the AMF position:

> Accordingly, the AMF will recognize the New SRO in the same way as the other CSA members to ensure harmonized oversight of firms registered as investment dealers and mutual fund dealers as well as natural persons registered in the categories of investment dealer representative and mutual fund dealer representative acting on their behalf.[26]

As mentioned above, recognition of the New SRO by the CSA members, including the Autorité des marchés financiers, could be beneficial if it leads to the establishment of **integrated oversight** covering all investment dealers and mutual fund dealers across Canada. Such an integrated framework would also promote the harmonization of rules, policies, compliance and enforcement processes and fee models. Last, the framework would enable the SRO to take into account both the individual and the organizational factors of service provided by intermediaries by supervising three groups simultaneously—firms, executives and representatives—when drawing up and enforcing standards and rules of conduct.

While highlighting these positive aspects, the AMF position includes questions concerning the ongoing powers of the CSF.

[26] *Position Paper*, *supra*, note 1, p. 2 of the Addendum.

3. Maintaining current powers of the Chambre de la sécurité financière

Currently, the CSF, as an SRO recognized through legislative accreditation, is responsible for the disciplinary supervision of various types of representatives, including the representatives of mutual fund dealers in Québec.

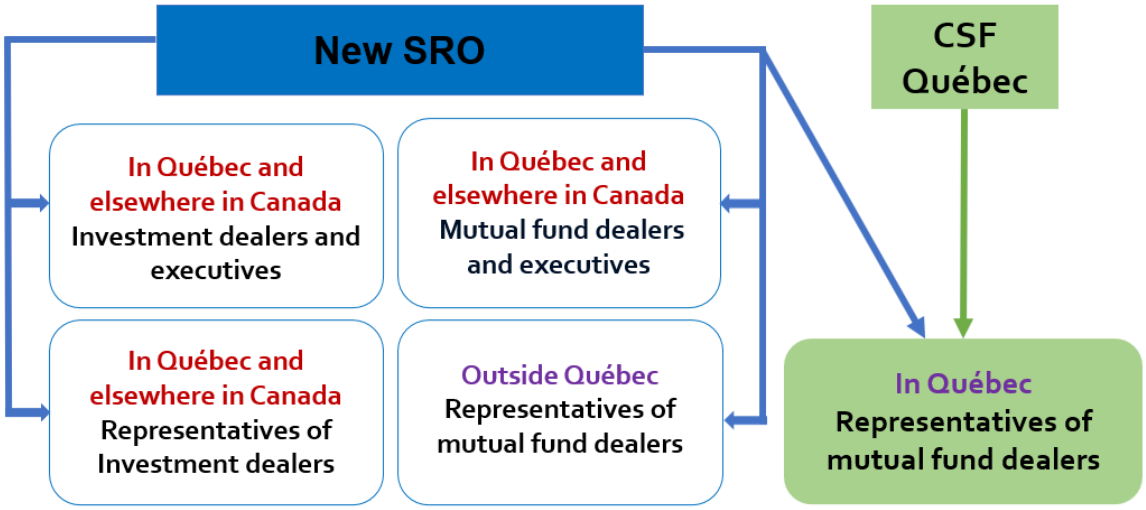
Although the AMF is considering the possibility of recognizing the New SRO for the oversight of investment dealers, mutual fund dealers and their respective representatives, it mentions that "[t]his recognition of the New SRO will not affect the mandate, functions and powers of the CSF." The AMF adds that "[t]hrough its power to approve the rules of the New SRO, the AMF will be able to ensure that those rules do not have duplicative effects where equivalent provisions apply to representatives of mutual fund dealers under Québec regulations."[27]

If the AMF recognizes the New SRO for the supervision of all investment and mutual fund dealers in Québec, including the representatives of mutual fund dealers, while maintaining the current powers of the CSF with respect to the same representatives, it seems reasonable to question the potential impacts of the new regulatory framework.

One of the questions is whether the scenario under consideration by the AMF will lead to an overlap between the functions of the two SROs. As illustrated in the diagram below (**Scenario 1**), mutual fund representatives could be subject to two different SROs, the New SRO and the CSF, which will both be able to exercise their respective disciplinary powers against the representatives, in particular through supervision (inspection procedures) and discipline (investigations, complaints process, and disciplinary sanctions).

[27] *Ibid.*

Scenario 1 – Recognition of the New SRO by the AMF and maintaining current powers of the CSF in Québec: potential overlaps



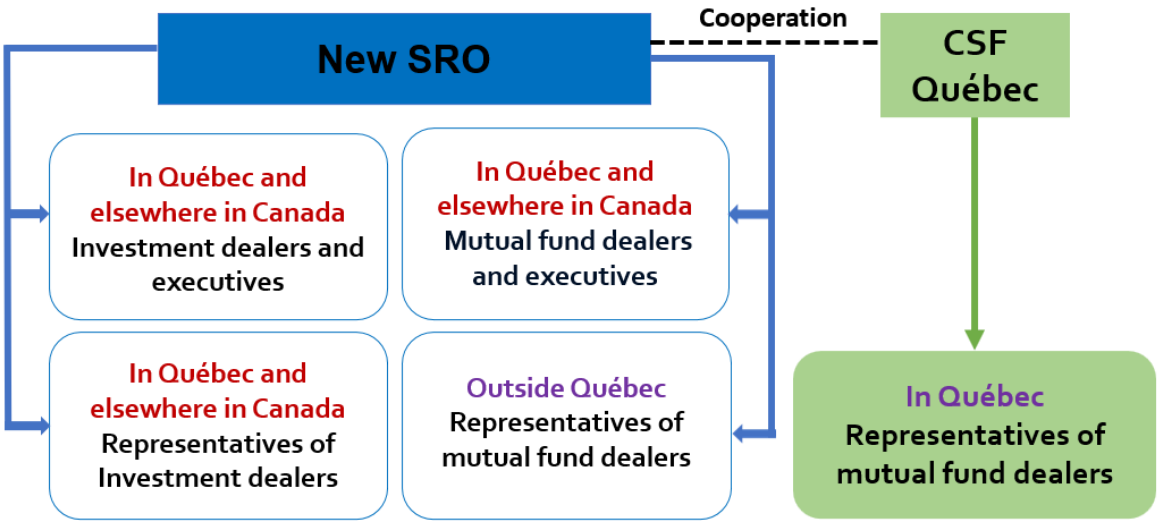
Given this situation, and although the possibility is not mentioned in the addendum, the New SRO and the CSA will probably be asked to enter into a cooperation agreement to avoid the overlaps in the supervision of representatives and their negative impacts. It is important to note that in 2004, the Agence nationale d'encadrement du secteur financier (later to become the AMF), along with the CSF and MFDA, entered into a cooperation agreement for the supervision of mutual fund dealers that were members of the MFDA and pursued activities in Québec and elsewhere in Canada.[28] The agreement includes provisions on the sharing of information, the inspection process, regulatory texts, regulatory enforcement and the process for dealing with complaints.

As illustrated in the diagram below (**Scenario 2**), if an agreement of this kind is entered into, it could recognize that in Québec, the New SRO would be responsible for the oversight of mutual fund dealers and their executives active in Québec and elsewhere in Canada, as well as for the representatives of mutual fund dealers pursuing activities outside Québec, while the CSF would remain responsible for the supervision of the representatives of mutual fund dealers pursuing

[28] *Entente de coopération conclue le 15 décembre 2004 entre l'Agence nationale d'encadrement du secteur financier (« Autorité »), Chambre de la sécurité financière (« Chambre ») et Association canadienne des courtiers de fonds mutuels (« ACCFM »)*, [online]: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/distribution/ententes/2004dec15-entente-csf-amf-accfm.pdf.

activities in Québec. It is appropriate here to review some of the advantages and disadvantages that could arise from this sharing of powers between the two SROs.

Scenario 2- Recognition of the New SRO and maintaining current powers of the CSF in Québec based on a cooperation agreement between the SROs



Among the advantages to be highlighted is the fact that maintaining the powers of the CSF over the representatives of mutual fund dealers would be beneficial because of the expertise and experience that this SRO has developed over the years in the mutual fund sector in Québec. In addition, the CSF, because of its proximity to the sector it oversees, has in-depth knowledge that enables it to intervene while taking into account the specific features of the Québec legal system in which the representatives operate. The functions of the CSF also match its multidisciplinary powers, which allow it to supervise representatives registered in various categories based on their areas of expertise, such as mutual funds, insurance and financial planning.

However, the possible sharing of powers between the New SRO and the CSF under a cooperation agreement also has, in our view, some weaknesses. One results from the restriction on the powers of the CSF, which would probably be maintained. The powers of the CSF under the current legislation mean that it can only intervene in the mutual fund sector with respect to representatives.[29] Because of this restriction to the individual aspects of service delivery, the CSF

[29] See the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2.

cannot intervene with respect to executives and firms in the event of an organization or systemic failure. For example, if the shortcomings of a representative also point to deficiencies in compliance mechanisms within a firm, the CSF cannot impose sanctions either on the firm or on any executives who failed in their supervisory duties with respect to the representative.

If a cooperation agreement between the two SROs is finalized, it will probably recognize the power of the New SRO to assess organizational aspects by conducting inspections and investigations and imposing sanctions on dealers and some of their executives, while the CSF will be able to act only against representatives. In this scenario, an automatic inspection or investigation mechanism should be established within each SRO, triggered when the CSF investigates or sanctions a representative.[30] For example, if the CSF imposes a disciplinary sanction on a mutual fund representative following a professional breach, the New SRO should, at the same time, launch an investigation of the mutual fund firm where the representative works. The sharing of information and synchronization of supervision and control activities between the two SROs would allow them to identify issues of a systemic nature that could have a negative impact on the behaviour of other representatives working for the same firm.

In short, if a cooperation agreement is entered into by the CSF and the New SRO to oversee the mutual fund sector in Québec, both SROs will be able to intervene within the same firm. Although this scenario has some positive elements, it could increase the administrative and financial complexity and investor confusion.

In comparison, a different situation would apply for the supervision of investment dealers pursuing activities in Québec and elsewhere in Canada. The creation of the New SRO would enable it to intervene with three groups (investment dealers, executives and representatives). The creation of this integrated oversight would allow the SRO to assess, within a single firm, the individual and organizational behaviour with potential to harm investors.[31] In addition, the integrated oversight

[30] The mechanism established needs to be stricter and more systematic, going beyond the forwarding of information about complaints received against a representative or firm and the possibility of requesting an investigation in "special circumstances", as currently provided for in the cooperation agreement. See *Entente de coopération, supra*, note 28, p. 6-8.

[31] For more details, see Cinthia Duclos, *La protection des épargnants dans l'industrie des services d'investissement: une analyse de l'influence des défaillances organisationnelles sous l'angle du Swiss Cheese Model*, coll. CÉDÉ, Éditions Yvon Blais, Montréal, 2021, p. 419 and ff.

provided by a single SRO would help reduce administrative and financial complexity and investor confusion.

Because of these advantages, the AMF could contemplate a similar solution by recognizing the New SRO as the sole authority for the supervision of mutual fund dealers and their executives and representatives active in Québec. Recognizing this sole responsibility of the New SRO would, however, require a legislative amendment to withdraw the CSF's power to discipline the representatives of mutual fund dealers active in Québec. This possibility, along with the other options we have discussed in previous documents, has both advantages and disadvantages that should be taken into consideration by the authorities responsible for implementing the reform.[32]

Conclusion

As pointed out by several observers, the current framework for the supervision of investment services has a complex and fragmented design based on products rather than on the activities pursued by intermediaries. This fragmentation has led to a multiplication of supervisory authorities that have established various registration categories and various sets of rules applicable to intermediaries offering similar services, along with a variety of investor protection plans in the event of an intermediary's insolvency or fraud. The negative consequences of this fragmented approach include overlapping, redundancy and administrative and financial complexity, as well as risks for investors' interests.

In the *Position Paper*, the CSA proposes the creation of a New SRO to supervise investment dealers, mutual fund dealers, their executives and representatives and, in a second phase, other categories of intermediaries. In our view, the creation of the New SRO will be beneficial provided it offers an integrated framework, in other words, a framework that offers a holistic and coherent approach to cover various intermediaries offering investment services. Integrated supervision will

[32] Raymonde Crête and Cinthia Duclos, *Réflexions sur l'encadrement des services de courtage en épargne collective*, brief submitted during the consultation on the *Rapport sur l'application de la Loi sur la distribution des produits et services financiers*, Québec, September 30, 2015, p. 28-35, [online]: http://www.finances.gouv.qc.ca/documents/ministere/fr/MINFR_LDPSF_Raymonde_Crete-Cinthia_Duclos.pdf; Raymonde Crête and Cinthia Duclos, *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*, Mémoire du Groupe de recherche en droit des services financiers soumis à la Commission des finances publiques, January 18, 2018, p. 34, 35, [online]: http://www.grdsf.ulaval.ca/sites/grdsf.ulaval.ca/files/grdsf-memoire-projet_de_loi_14118-01-2018.pdf. See also C. Duclos, *supra*, note 31, p. 419 and ff.

support a harmonization of rules, policies and regulatory compliance and enforcement processes. The proposed reform will enable the New SRO to consider both individual and organizational aspects in the services provided by intermediaries, since it will be able to supervise three groups of players—firms, their executives and their representatives—by drafting and enforcing standards of conduct.

The position of the AMF, as set out in the addendum, also offers some positive elements since, in keeping with the idea of integrated oversight, it considers the possibility of recognizing the New SRO in Québec for all investment and mutual fund dealers. At the same time, the AMF proposes that the CSF should retain its powers for the disciplinary supervision of the representatives of mutual fund dealers in Québec. Maintaining the powers of the CSF would be beneficial because of the expertise and experience that it has developed over the years in the mutual fund sector in Québec, and because of its multidisciplinary powers, which allow it to supervise representatives holding various kinds of registration based on their areas of expertise. However, maintaining the powers of the CSF will probably lead to overlapping between the CSF and the New SRO in the supervision of mutual fund representatives, which could generate administrative and financial complexity and increase investor confusion. To deal with these issues, we call on the authorities responsible for implementing the reform to analyze and assess various alternative solutions, taking into account the fundamental objective of advancing the public interest mandate that underlies the whole question of SRO oversight.

Overall, we consider that the reform undertaken to improve the regulatory framework for SROs has several positive elements that will help strengthen investor protection and increase regulatory efficiency and effectiveness.

UNIVERSITÉ LAVAL
Faculté de droit

Énoncé de position 25-404 des ACVM

Nouveau cadre réglementaire des organismes d'autoréglementation

Observations du Groupe de recherche en droit des services financiers

par

Raymonde CRÊTE*, *Ad. E.*
Professeure émérite
Avocate émérite
Codirectrice du Groupe de recherche
en droit des services financiers
Faculté de droit
Université Laval

Cinthia DUCLOS*
Professeure et avocate
Codirectrice du Groupe de recherche
en droit des services financiers
Faculté de droit
Université Laval

4 octobre 2021

TABLE DES MATIÈRES

Introduction

Le 3 août 2021, les Autorités canadiennes en valeurs mobilières (ACVM) ont publié l'*Énoncé de position – Nouveau cadre réglementaire des organismes d'autoréglementation* (« *Énoncé de position* »)[1]. Cet *Énoncé de position* s'inscrit dans le cadre des travaux entrepris par les ACVM depuis 2019 en vue d'examiner et d'évaluer le cadre réglementaire actuel de deux organismes d'autoréglementation (OAR), soit l'Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM), qui encadre les courtiers en placement, leurs dirigeants et leurs représentants, et l'Association canadienne des courtiers de fonds mutuels (ACFM), qui encadre les courtiers en épargne collective, leurs dirigeants et leurs représentants.

Dans le cadre de ces travaux, les ACVM ont publié, en juin 2020, le *Document de consultation 25-402 des ACVM - Consultation sur le cadre réglementaire des organismes d'autoréglementation* (*Document de consultation 25-402*)[2]. Dans ce processus de consultation, le Groupe de recherche en droit des services financiers de la Faculté de droit de l'Université Laval (GRDSF) a soumis un mémoire afin d'enrichir le débat sur certains enjeux présentés par les ACVM et d'évaluer des pistes de solution en vue d'améliorer l'encadrement juridique actuel (*Mémoire du GRDSF*)[3].

Dans une optique de réforme du cadre réglementaire des OAR, les solutions envisagées par les ACVM dans l'*Énoncé de position* présentent plusieurs éléments positifs qui contribueront à accroître la protection des épargnants, l'efficacité et l'efficience réglementaires. L'approche envisagée se rapproche de celle soumise par le GRDSF qui préconise la mise en place d'un

---

* Les auteures soumettront sous peu une version anglaise de ce texte et profitent de cette occasion pour remercier Benjamin Waterhouse pour ce travail de traduction.

1 AUTORITÉS CANADIENNES EN VALEURS MOBILIÈRES, *Énoncé de position – Nouveau cadre réglementaire des organismes d'autoréglementation*, 3 août 2021, [En ligne] : https://lautorite.qc.ca/fileadmin/lautorite/consultations/bourses-chambres-oar/2021-10-04/2021aout03-25-404-enonce-position-oar-fr.pdf.

2 AUTORITÉS CANADIENNES EN VALEURS MOBILIÈRES, *Document de consultation* 25-402 *des Autorités canadiennes valeurs mobilières – Consultation sur le cadre réglementaire des organismes d'autoréglementation*, 25 juin 2020, [En ligne] : https://lautorite.qc.ca/fileadmin/lautorite/consultations/valeurs-mobilieres/2020-10/2020juin25-25-402-doc-consultation-oar-fr.pdf.

3 Raymonde CRÊTE et Cinthia DUCLOS, *Mémoire du Groupe de recherche en droit des services financiers pour la Consultation des Autorités canadiennes en valeurs mobilières (ACVM) 25-402 sur le cadre réglementaire des organismes d'autoréglementation*, Québec, 23 octobre 2020 (*Mémoire du GRDSF*), [En ligne] : https://www.grdsf.ulaval.ca/memoire-du-grdsf-pour-la-consultation-25-402-des-autorites-canadiennes-en-valeurs-mobilieres-sur-le.

encadrement intégré, simplifié, spécialisé et flexible en vue d'assurer la protection des épargnants et de maintenir la confiance du public dans ce secteur névralgique de notre économie[4].

Dans les commentaires qui suivent, nous ferons ressortir plusieurs éléments positifs de la réforme envisagée, tout en soumettant des pistes de réflexion et de solution afin de bonifier ou de préciser certains éléments au regard de la mise en œuvre de la réforme.

En vue de permettre au lecteur de mieux comprendre le contexte dans lequel s'inscrit la réforme proposée par les ACVM, nous présenterons, dans la première partie, certaines caractéristiques du cadre réglementaire actuel des OAR. Dans la deuxième partie, nos observations porteront sur les principaux éléments de la réforme envisagée par les ACVM en vue de la création du nouvel OAR, pour ensuite nous concentrer, dans la troisième partie, sur la position de l'Autorité des marchés financiers (« Autorité ») au regard de la mise en place du nouveau cadre réglementaire proposé au Québec.

I. Principales caractéristiques du cadre réglementaire actuel des OAR

Au cours des quatre dernières décennies, l'industrie des services d'investissement, c'est-à-dire les services de conseils en placement, de gestion de portefeuille et de négociation de titres financiers qui sont offerts notamment par les courtiers en placement, les courtiers en épargne collective et leurs représentants (intermédiaires) a pris un essor considérable. Dans cet univers hautement complexe et en constante évolution, les autorités régulatrices reconnaissent la nécessité de mettre en place un encadrement rigoureux de ces services en vue de prévenir ou de minimiser les risques qui peuvent porter atteinte aux intérêts des épargnants dans leurs relations avec les intermédiaires (« relations clients-conseillers »).

Dans cette optique, l'encadrement spécialisé qui est mis en place par les autorités provinciales et territoriales en valeurs mobilières et par les OAR se traduit par un contrôle à l'entrée des entreprises de courtage, de certains membres de leur direction[5] et de leurs représentants, par l'imposition de normes strictes de conduite de nature légale et déontologique en vue d'assurer la

---

4 *Ibid.*, p. 18-21.

5 Aux fins de ces observations, les termes « membres de la direction » et « dirigeants » visent les membres du conseil d'administration (administrateurs), les hauts dirigeants (chef de la direction, vice-présidents aux ventes, aux finances, à l'exploitation, personne désignée responsable, etc.) et les autres personnes occupant un poste leur conférant un pouvoir important sur les activités quotidiennes ainsi que sur la surveillance et le contrôle de l'entreprise et de son personnel (chef de la conformité, dirigeant intermédiaire, directeur de succursale, autre surveillant, etc.).

compétence, l'intégrité, la loyauté, la transparence, la diligence et la solvabilité des intermédiaires, de même que par des mécanismes de surveillance et de contrôle disciplinaires des personnes assujetties (inspections, enquêtes, plaintes disciplinaires, poursuites et sanctions). Par la mise en place de cet encadrement rigoureux qui s'apparente à l'encadrement professionnalisé applicable aux membres des ordres professionnels, les autorités régulatrices visent ainsi à assurer la protection des épargnants et ultimement à préserver la confiance du public[6].

Actuellement, la responsabilité de cet encadrement de nature administrative, déontologique et disciplinaire est assumée par les autorités membres des ACVM pour l'inscription des intermédiaires offrant des services d'investissement, de même que par les OAR pour l'encadrement déontologique et disciplinaire de ceux-ci[7]. Plus spécifiquement, dans le secteur du courtage en placement, l'OCRCVM est reconnu comme OAR par les ACVM à l'échelle canadienne pour l'encadrement des courtiers en placement, de leurs dirigeants et de leurs représentants menant des activités au Québec et ailleurs au Canada. Dans le secteur de l'épargne collective, l'ACFM est reconnue comme OAR par les ACVM, sauf au Québec, pour l'encadrement des courtiers en épargne collective, de leurs dirigeants et de leurs représentants menant leurs activités hors Québec. Dans le secteur de l'épargne collective au Québec, l'encadrement de ces acteurs est assumé par trois organismes, soit l'Autorité, le Tribunal administratif des marchés financiers (« TMF ») et la Chambre de la sécurité financière (« CSF »). Plus particulièrement, dans ce secteur, l'Autorité et le TMF sont responsables de l'encadrement des courtiers en épargne collective et de certains de leurs dirigeants menant des activités au Québec. Dans ce même secteur de l'épargne collective, la CSF, reconnue comme OAR par une habilitation législative, est

---

6 Au sujet de la reconnaissance de la nature professionnelle des services d'investissement et des rapprochements entre l'encadrement juridique des intermédiaires (courtiers, certains dirigeants et représentants) et celui des professionnels soumis au *Code des professions* (avocats, comptables, médecins, etc.), voir entre autres Raymonde CRÊTE, Cinthia DUCLOS et Marc LACOURSIÈRE, « La rationalité du particularisme juridique des rapports de confiance dans les services de placement », dans R. CRÊTE, 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, à la page 229, p. 252-271.

7 Ce portrait comprend quelques exceptions, notamment au Québec. Dans le cadre actuel, l'Autorité délègue à l'OCRCVM l'inscription des représentants de courtier en placement. De plus, puisqu'aucun OAR n'encadre actuellement les courtiers en épargne collective et leurs dirigeants exerçant au Québec, ces intermédiaires sont assujettis à l'encadrement déontologique et disciplinaire de l'Autorité et du TMF. Pour la délégation de l'inscription des personnes physiques à l'OCRCVM, voir Autorité des marchés financiers, *Délégation de fonctions et pouvoirs à l'Organisme canadien de réglementation du commerce des valeurs mobilières*, c. A-33.2, r.2.1, décision No 2009-PDG-0100, [En ligne]: https://lautorite.qc.ca/fileadmin/lautorite/bulletin/2009/vol6no38/vol6no38_7-5.pdf .

responsable de l'encadrement disciplinaire des représentants de courtiers en épargne collective (personnes physiques) poursuivant leurs activités au Québec.

Dans l'ensemble, comme souligné par les ACVM dans le *Document de consultation 25-402,* de même que par plusieurs autres observateurs, l'encadrement actuel des services d'investissement est conçu selon une approche fragmentée qui est axée sur les produits, plutôt que sur les activités menées par les intermédiaires. Cet encadrement compartimenté se traduit concrètement par une multiplicité d'autorités de contrôle qui établissent différentes catégories d'inscription et différents corpus de normes applicables à ces intermédiaires offrant des services similaires de même que par une variabilité des différents régimes de protection des épargnants en cas d'insolvabilité et de fraude des intermédiaires. Parmi les conséquences négatives de cet encadrement fragmenté, celui-ci entraîne des chevauchements, des redondances et des lourdeurs administratives et financières de même qu'un risque d'atteinte aux intérêts des épargnants. La prise en compte de ces enjeux fait ressortir ainsi la nécessité de revoir la structure et le contenu du cadre réglementaire des OAR de même que les différents éléments à prendre en considération dans le cadre de cette réforme.

II. Principaux éléments de la réforme envisagée

Dans l'*Énoncé de position,* les ACVM reconnaissent plusieurs de ces enjeux et proposent la mise en place d'un nouvel encadrement des OAR en vue d'accroître la protection des épargnants, l'efficacité et l'efficience réglementaires.

- **Principes directeurs et objectifs généraux de la réforme**

L'*Énoncé de position* identifie les principes directeurs adoptés par le groupe de travail des ACVM afin de l'aiguiller dans la recherche de solutions pour résoudre les enjeux relevés dans le *Document de consultation 25-402*[8]. L'adoption de ces principes directeurs devrait permettre d'atteindre les objectifs généraux de la réforme que le groupe de travail définit comme suit :

> Chaque principe directeur a été adopté dans le but de soutenir l'élaboration d'un cadre réglementaire qui réponde à un mandat d'intérêt public clair et qui favorise l'équité et l'efficience des marchés des capitaux. En conséquence, le cadre réglementaire s'articulera autour de la protection des investisseurs afin de raffermir la confiance du public et accueillera l'innovation et le changement.[9]

[8] *Énoncé de position*, préc., note 1, p. 2 et 3.
[9] *Ibid.*, p. 2. Voir aussi la référence au mandat d'intérêt public à la p. 10 de l'*Énoncé de position.*

L'identification de principes directeurs et des objectifs généraux qui les sous-tendent pourront servir de points de repère dans l'élaboration et la mise en œuvre du nouveau cadre réglementaire. Par ailleurs, afin de bien aiguiller les autorités dans ce processus de réforme, il conviendrait de définir les concepts fondamentaux auxquels le groupe de travail fait référence, notamment les concepts suivants : « intérêt public », « protection des investisseurs » et « efficience des marchés des capitaux ».

À notre avis, le « mandat d'intérêt public » dans le secteur des services financiers est un concept englobant qui recouvre les objectifs de protection des épargnants et d'efficience des marchés. En d'autres termes, le mandat d'intérêt public devrait constituer la pierre angulaire de la réforme sur la base de laquelle s'articulent les objectifs de protection des épargnants et de promotion de l'efficience des marchés.

- **Intégration et harmonisation**

Dans une première phase, les ACVM proposent la création d'un nouvel OAR unique pour l'encadrement des acteurs du courtage en placement et du courtage en épargne collective au Canada. Elles envisagent également de regrouper les deux fonds pancanadiens de protection des épargnants (Fonds canadien de protection des épargnants ou FCPE et la Corporation de protection des investisseurs de l'ACFM ou CPI de l'ACFM) en un seul fonds de protection qui serait indépendant du nouvel OAR[10]. Dans cette première phase, le processus de restructuration impliquera une harmonisation des règles, des politiques, des processus de conformité et de mise en application pour les acteurs du courtage en placement et du courtage en épargne collective offrant des services similaires[11]. Dans une seconde phase, les ACVM considèrent la possibilité d'élargir la compétence du nouvel OAR afin que celui-ci soit aussi responsable de l'encadrement d'autres catégories d'intermédiaires, tels les gestionnaires de portefeuille et les courtiers sur le marché dispensé[12]. Cette seconde phase sera aussi l'occasion de poursuivre les efforts pour harmoniser la réglementation du secteur des valeurs mobilières avec celle du secteur de l'assurance[13].

---

10 *Énoncé de position*, préc., note 1, p. 6-8.
11 *Ibid.*
12 *Ibid.*, p. 7-9.
13 *Ibid.*, p. 9, 23, 24.

Plusieurs éléments positifs se dégagent de ce projet de réforme qui, dans l'ensemble, fait écho aux principes directeurs que nous préconisions dans le *Mémoire du GRDSF* soumis aux ACVM en octobre 2020 dans le cadre de la consultation 25-402 sur le cadre réglementaire des OAR[14].

Premièrement, la restructuration envisagée par la création d'un nouvel OAR s'avérera bénéfique dans la mesure où elle propose **un encadrement intégré**, soit un encadrement conçu non pas de manière cloisonnée ou fragmentée, mais plutôt selon une approche holistique et cohérente qui couvre plusieurs intermédiaires offrant des services d'investissement, tels les courtiers en placement, les courtiers en épargne collective, leurs dirigeants et leurs représentants. Dans une seconde phase, les ACVM envisagent d'inclure d'autres catégories d'intermédiaires et de poursuivre la réflexion sur l'harmonisation de cette réglementation en valeurs mobilières avec l'encadrement des intermédiaires du secteur de l'assurance.

Deuxièmement, les effets bénéfiques de la réforme envisagée se traduiront vraisemblablement par une coordination accrue entre les autorités d'encadrement (OAR et ACVM), de même que par une harmonisation des politiques, des règles, des processus de conformité et de mise en application de la réglementation.

Troisièmement, la réforme envisagée favorisera la prise en compte par l'OAR des aspects tant individuels qu'organisationnels dans la prestation de services par les intermédiaires, puisque l'OAR pourra encadrer les trois groupes d'acteurs, soit les entreprises, leurs dirigeants et leurs représentants dans l'élaboration des normes de conduite et dans la mise en application de celles-ci. Partant, en cas de manquements professionnels de la part d'un représentant d'un courtier en placement ou d'un courtier en épargne collective, l'OAR pourra évaluer, du même coup, l'ensemble des comportements (de nature individuelle et organisationnelle) qui sont potentiellement préjudiciables à l'égard des épargnants. Par exemple, l'OAR pourra vérifier si le manquement professionnel du représentant fait ressortir, par la même occasion, des manquements de nature organisationnelle ou systémique, notamment dans la surveillance exercée par les dirigeants au sein de l'entreprise de courtage où le représentant exerce ses activités. Dans ces circonstances, l'OAR pourra intervenir auprès de l'entreprise de courtage et, possiblement de certains membres de la direction de celle-ci, s'il constate l'existence de failles dans les mécanismes de surveillance et de conformité mis en place au sein de l'entreprise.

[14] *Mémoire du GRDSF*, préc. note 3, p. 18 et suiv.

En somme, la création du nouvel OAR entraînera des effets bénéfiques sur les structures, les contenus réglementaires et la mise en application de la réglementation en minimisant les chevauchements, les redondances et les lourdeurs administratives et financières de même que les risques d'atteinte aux intérêts des épargnants qui découlent de la multiplicité des autorités d'encadrement et des normes applicables aux intermédiaires offrant des services similaires de même que de la variabilité des régimes de protection.

- **Gouvernance du nouvel OAR**

Parmi les solutions spécifiques envisagées en vue de résoudre les enjeux relevés dans le *Document de consultation 25-402*, les ACVM proposent des améliorations intéressantes portant sur la gouvernance du nouvel OAR, notamment concernant la communication claire du mandat d'intérêt public, l'indépendance des membres du conseil d'administration du nouvel OAR, l'adoption de pratiques exemplaires en matière de gouvernance, les mécanismes de défense des investisseurs, la formation des administrateurs et la surveillance exercée par les ACVM[15]. Tout en reconnaissant le caractère opportun des améliorations envisagées, il convient de faire part de nos réflexions en vue de bonifier certaines des solutions proposées.

  - **Mécanismes officiels de défense des investisseurs**

Les ACVM proposent la création par le nouvel OAR d'un « comité consultatif d'investisseurs chargé de réaliser une recherche indépendante ou de formuler des commentaires sur des questions d'ordre réglementaire ou d'intérêt public […] ».[16]

À notre avis, il y a lieu de faire la distinction entre un « comité d'investisseurs », c'est-à-dire un comité formé d'épargnants qui ne sont pas des spécialistes du domaine des services d'investissement, et un « comité d'experts », c'est-à-dire un comité formé de personnes qui ont une bonne connaissance des produits et des services d'investissement de même que de la réglementation qui encadre cette industrie. Les attentes à l'égard des membres de ces deux types de comité ne sont pas les mêmes, tout comme les objectifs poursuivis.

Dans ces circonstances, le nouvel OAR pourrait envisager la création de deux comités consultatifs distincts, l'un réunissant des épargnants, afin d'être à l'écoute des besoins et des enjeux qui

[15] *Énoncé de position*, préc., note 1, p. 9-13.
[16] *Ibid.*, p. 13.

préoccupent ceux-ci, et l'autre formé d'experts ou de personnes averties, notamment des spécialistes dans les domaines du droit, de l'administration, de la finance et d'autres experts qui pourraient contribuer à enrichir les réflexions sur les politiques, les règles, les lignes directrices et les autres activités réglementaires destinées à améliorer la protection des investisseurs[17].

- **Fonctions décisionnelles au sein du nouvel OAR**

Le conseil d'administration et le personnel du nouvel OAR seront appelés à exercer l'ensemble des fonctions décisionnelles de l'organisme à l'échelle nationale[18]. Tout en reconnaissant les avantages associés à une centralisation des pouvoirs décisionnels au sein du nouvel OAR, il convient de se demander si les personnes appelées à exercer ces fonctions décisionnelles posséderont l'expertise et l'expérience nécessaires pour tenir compte des différences et des spécificités propres à un environnement donné, telles les spécificités liées au système juridique de tradition civiliste et à la valorisation de la langue française qui caractérisent la société québécoise.

En vue de répondre à cette préoccupation, la composition du conseil d'administration et le personnel du nouvel OAR devraient favoriser la prise en compte des spécificités juridiques, sociales et économiques d'un environnement donné, telles les spécificités liées au système juridique québécois. Dans la même lignée, de manière similaire au déploiement actuel de la section du Québec de l'OCRCVM, nous invitons les autorités à envisager la possibilité de maintenir ou d'intégrer des structures sectorielles exerçant des fonctions à la fois décisionnelles et consultatives dans chacune des provinces[19].

- **Formation continue et renforcement des compétences**

Les ACVM reconnaissent l'importance pour le nouvel OAR de promouvoir des programmes de formation continue pour les courtiers en placement et pour les courtiers en épargne collective[20]. Dans cette optique de formation continue, il sera important, à notre avis, de mettre l'accent notamment sur le perfectionnement des compétences des représentants de courtiers en épargne

---

[17] Voir à ce sujet le projet de création par l'OCRCVM d'un groupe d'experts responsable des questions touchant les investisseurs, [En ligne] : https://www.ocrcvm.ca/nouvelles-et-publications/avis-et-notes-dorientation/appel-commentaires-groupe-dexperts-responsable.

[18] *Énoncé de position*, préc., note 1, p. 15.

[19] AUTORITÉ DES MARCHÉS FINANCIERS, *Reconnaissance de l'Organisme canadien de réglementation du commerce des valeurs mobilières à titre d'organisme d'autoréglementation en vertu de la Loi sur l'autorité des marchés financiers, L.R.Q., c. A-33.2*, Décision N° 2008-PDG-0126, [En ligne] : https://lautorite.qc.ca/professionnels/structures-de-marche/organismes-dautoreglementation.

[20] *Énoncé de position*, préc., note 1, p. 15 et 16.

collective afin que ces derniers puissent offrir une gamme plus étendue de produits et de services financiers en tenant compte des besoins évolutifs de leurs clients. De même, il sera opportun de prévoir des programmes de formation visant les dirigeants qui exercent des fonctions de gestion, de direction et de surveillance au sein de ces entreprises (courtiers en placement, courtiers en épargne collective). Cette formation pourrait porter notamment sur la nature professionnelle des services offerts, sur la réglementation, et plus largement, sur les enjeux juridiques et organisationnels liés à la protection des épargnants.

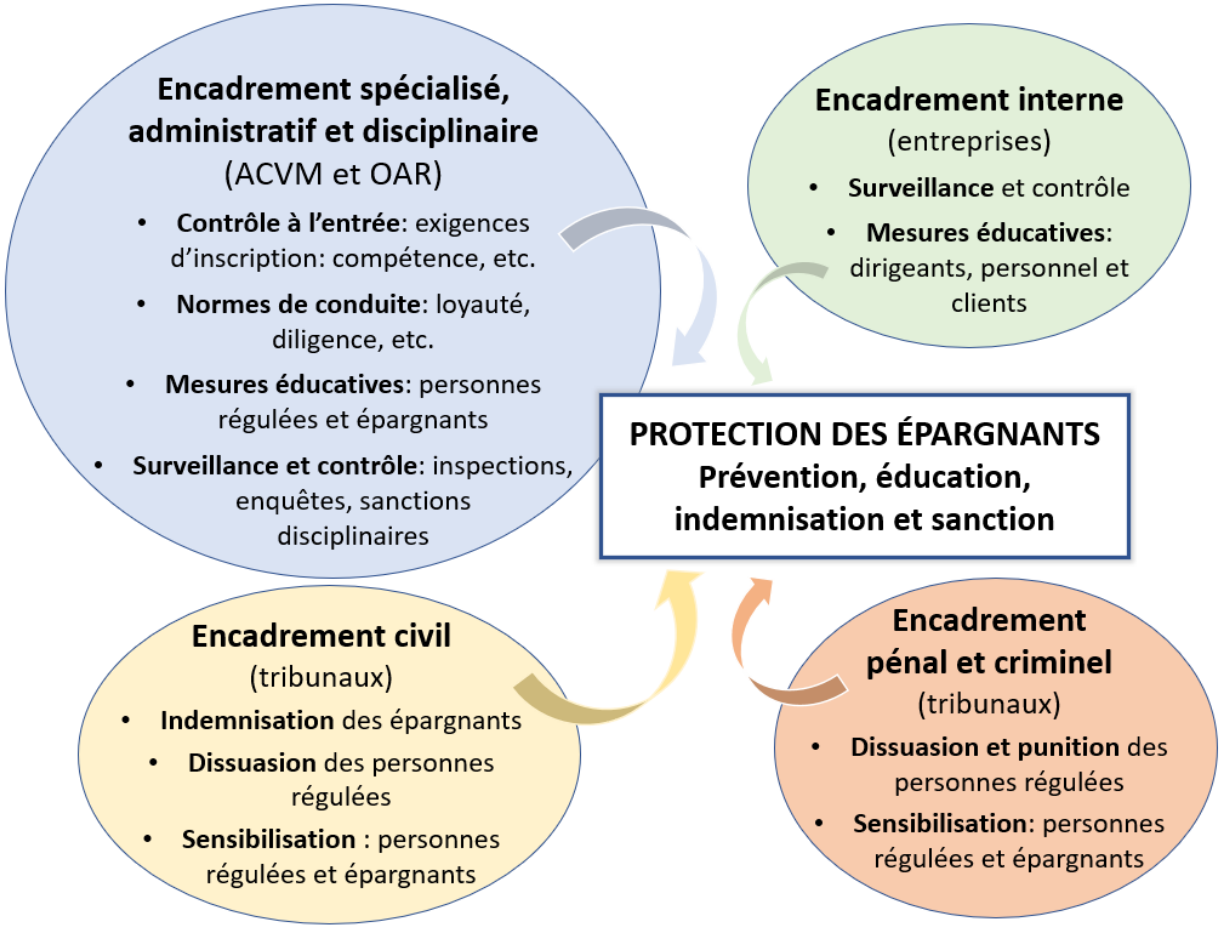
Sous l'angle de la gouvernance du nouvel OAR, les ACVM suggèrent également de promouvoir la formation des membres du conseil d'administration de l'OAR afin de favoriser l'exécution de leur mandat d'intérêt public[21]. À cet égard, il conviendrait d'étendre ces programmes de formation à l'intention des membres de la haute direction et des cadres intermédiaires qui exercent des fonctions de gestion au sein de l'OAR.

- **Accroissement de la sensibilisation des investisseurs et indemnisation**

Les ACVM soulignent que « [l]a sensibilisation des investisseurs est le meilleur moyen d'assurer leur protection ».[22] Sans nier l'utilité de ce moyen de protection, on doit reconnaître que celui-ci ne constitue qu'un élément parmi plusieurs autres dans l'éventail étendu des mesures de protection des épargnants. Comme illustré dans le schéma 1 ci-dessous (**Schéma 1 : Éventail des mesures de protection des épargnants**), la protection des épargnants doit être appréhendée de manière holistique en tenant compte de l'ensemble des mesures de prévention, d'éducation, d'indemnisation et de sanction qui visent tous les acteurs intéressés, soit les entreprises, les dirigeants, les représentants et les épargnants de même que des autorités responsables de l'encadrement de l'industrie.

[21] *Énoncé de position*, préc., note 1, p. 15.
[22] *Ibid.*, p. 17.

Schéma 1 : Éventail des mesures de protection des épargnants



Au regard du regroupement des deux fonds de protection pancanadiens, les ACVM proposent d'étudier, dans la deuxième phase, la possibilité « d'harmoniser le fonds de protection regroupé avec le Fonds d'indemnisation des services financiers au Québec » (FISF)[23]. Le fonds regroupé et le FISF n'offrant pas une protection de même nature aux épargnants, le premier prévu en cas d'insolvabilité et le deuxième applicable en cas de fraude, de manœuvres dolosives et de détournement de fonds, cette harmonisation constitue une piste de solution intéressante dans la mesure où elle vise un accroissement de la protection offerte pour les Canadiens et non une diminution de celle pour les consommateurs de produits et services financiers québécois.

Dans la même lignée, nous saluons la réflexion sur l'inclusion et la prise en compte dans le processus disciplinaire du nouvel OAR du versement d'une indemnité aux clients lésés par une

[23] *Énoncé de position*, préc., note 1, p. 25.

inconduite comme un facteur atténuant (ou facteur aggravant si l'indemnité est jugée insuffisante) dans la détermination des sanctions appropriées[24]. Nous invitons les autorités à examiner la possibilité d'élargir les pouvoirs des comités de discipline et des formations d'instruction afin de leur permettre, selon les circonstances, de procéder à la détermination du montant à verser pour indemniser les clients lésés et à l'ajout du versement de cette indemnité dans la sanction imposée aux intermédiaires fautifs, à l'instar des pouvoirs conférés au tribunal dans le cadre d'un procès de nature criminelle[25].

III. La position de l'Autorité des marchés financiers

Dans cette section, notre attention porte sur la position de l'Autorité au regard de la mise en place du nouveau cadre réglementaire proposé au Québec. À cette fin, nous présentons un aperçu de l'encadrement actuel pour ensuite présenter et commenter la position de l'Autorité.

1. Aperçu de l'encadrement actuel des OAR au Québec

Comme mentionné dans la première partie de ce texte, l'encadrement des courtiers en placement, de leurs dirigeants et de leurs représentants est assumé actuellement par l'OCRCVM qui est reconnu par l'ensemble des ACVM, incluant l'Autorité. Dans le secteur de l'épargne collective, l'ACFM est reconnue comme OAR par les ACVM, sauf au Québec, pour l'encadrement des courtiers en épargne collective, de leurs dirigeants et de leurs représentants menant leurs activités hors Québec. Dans ce même secteur au Québec, l'encadrement des courtiers en épargne collective et de certains de leurs dirigeants est assumé par l'Autorité et par le TMF, alors que l'encadrement disciplinaire des représentants de courtiers en épargne collective (personnes physiques) est assumé par la CSF.

Notons que les courtiers en épargne collective qui mènent des activités au Québec et ailleurs au Canada sont assujettis à l'encadrement de trois autorités, soit l'Autorité et le TMF, pour leurs activités menées au Québec, et l'ACFM (l'OAR pancanadien), pour leurs activités menées à l'extérieur du Québec. Ce double encadrement peut soulever des problèmes de nature réglementaire, administrative et financière pour les personnes assujetties et un risque pour la

[24] *Ibid.*, p. 17.

[25] Selon les circonstances, le tribunal peut imposer une ordonnance de dédommagement de la victime, permettant par exemple le remboursement de sommes d'argent volé. Voir les articles 737.1 et suivants sur *Code criminel*. Voir aussi l'art. 262.1, 9[0] de la *Loi sur les valeurs mobilières* qui confère au TMF le pouvoir d'ordonner au contrevenant de remettre à l'Autorité les montants obtenus par suite d'un manquement à une obligation prévue dans la législation en valeurs mobilières.

protection des consommateurs. La compétence restreinte de la CSF dans ce secteur soulève également des préoccupations dans la mesure où cet OAR québécois ne peut intervenir en matière disciplinaire qu'à l'égard des représentants en épargne collective, ce qui ne lui permet pas d'intervenir à l'égard des courtiers en épargne collective et de leurs dirigeants en cas de manquements de nature organisationnelle. En comparaison, la compétence actuelle de l'ACFM est plus large, car celle-ci peut intervenir en matière déontologique et disciplinaire à l'égard des trois groupes d'acteurs, soit les courtiers en épargne collective, leurs dirigeants et leurs représentants.

En somme, pour l'encadrement des services d'investissement offerts par les intermédiaires poursuivant leurs activités au Québec et ailleurs au Canada, l'attribution de pouvoirs à différents organismes, soit à l'OCRCVM, l'ACFM, l'Autorité, le TMF et la CSF, peut être une source de confusion et de lourdeurs administratives et financières. En vue de minimiser ces risques, la position de l'Autorité sur la réforme proposée présente des éléments positifs que nous ferons ressortir dans les lignes qui suivent, tout en soulevant certains questionnements.

2. Reconnaissance du nouvel OAR au Québec

L'addendum joint à l'*Énoncé de position* souligne que l'Autorité reconnaîtra le nouvel OAR pour l'encadrement des courtiers en placement, des courtiers en épargne collective et de leurs représentants au Québec.

À ce sujet, voici un extrait de l'addendum sur la position de l'Autorité :

> En conséquence, l'Autorité reconnaîtra le nouvel OAR au même titre que les autres membres des ACVM pour assurer l'harmonisation de l'encadrement des sociétés inscrites à titre de courtier en placement et de courtier en épargne collective ainsi que les personnes physiques inscrites dans les catégories de représentant de courtier en placement et de représentant de courtier en épargne collective agissant pour leur compte.[26]

Comme mentionné plus haut, la reconnaissance du nouvel OAR par les ACVM, incluant l'Autorité des marchés financiers, pourra s'avérer bénéfique dans la mesure où elle favorisera la mise en place d'un **encadrement intégré** qui couvre l'ensemble des acteurs du courtage en placement et du courtage en épargne collective à l'échelle canadienne. Cet encadrement intégré favorisera également l'harmonisation des politiques, des règles, les processus de conformité et la mise en application de la réglementation. Enfin, cet encadrement favorisera la prise en compte par l'OAR

[26] *Énoncé de position*, préc., note 1, p. 2 de l'addendum.

des aspects tant individuels qu'organisationnels dans la prestation de services par les intermédiaires, puisque l'OAR sera appelé à encadrer à la fois les trois groupes d'acteurs, soit les entreprises, leurs dirigeants et leurs représentants dans l'élaboration des normes de conduite et dans la mise en application de celles-ci.

Tout en présentant des éléments positifs, la position de l'Autorité soulève des interrogations quant au maintien de la compétence de la CSF.

3. Maintien de la compétence de la Chambre de la sécurité financière

Actuellement, la CSF, à titre d'OAR reconnu en vertu d'une habilitation législative, est responsable de l'encadrement disciplinaire de différents types de représentants, incluant les représentants de courtiers en épargne collective au Québec.

Bien que l'Autorité envisage de reconnaître le nouvel OAR pancanadien pour l'encadrement des courtiers en placement, des courtiers en épargne collective et de leurs représentants respectifs, celle-ci mentionne que « [c]ette reconnaissance du nouvel OAR par l'Autorité ne modifiera pas le mandat ainsi que les fonctions et pouvoirs de la CSF. » L'Autorité ajoute que, par l'exercice de son pouvoir d'approbation des règles du nouvel OAR, elle s'assurera d'éviter les « effets duplicatifs [de ces règles] lorsque des dispositions équivalentes s'appliquent aux représentants de courtiers en épargne collective en vertu de la réglementation du Québec. »[27]

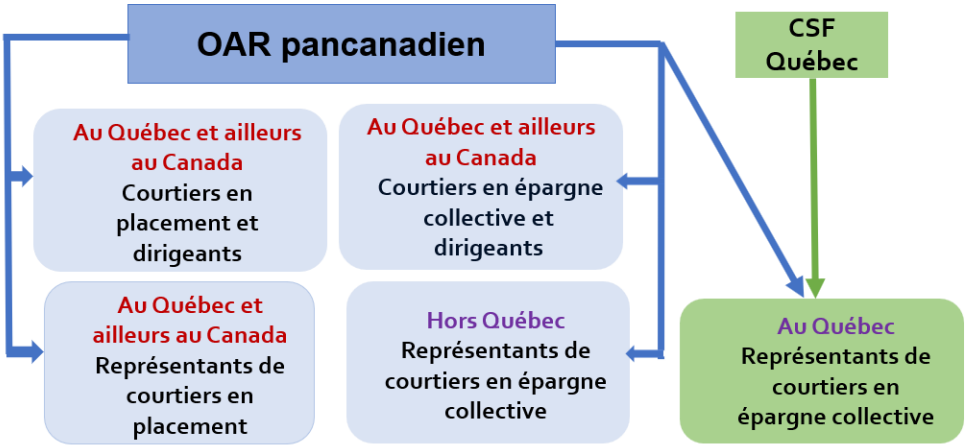
Dans l'hypothèse où l'Autorité reconnaît le nouvel OAR pancanadien pour l'encadrement de l'ensemble des acteurs du courtage en placement et en épargne collective au Québec, incluant les représentants de courtiers en épargne collective, tout en maintenant la compétence actuelle de la CSF à l'égard de ces mêmes représentants, il y a lieu de s'interroger sur les impacts potentiels de ce nouveau cadre réglementaire.

Une des questions est de savoir si le scénario envisagé par l'Autorité entraînera un chevauchement de fonctions entre ces deux OAR. Comme l'illustre le schéma ci-dessous (**Scénario 1**), les représentants en épargne collective pourraient être assujettis à deux OAR différents, soit le nouvel OAR pancanadien et la CSF qui seront appelés à exercer leur compétence respective en matière disciplinaire à l'égard des mêmes représentants, notamment la surveillance (procédures

[27] *Ibid.*

d'inspection) et le contrôle disciplinaire (enquêtes, traitement des plaintes, sanctions disciplinaires).

Scénario 1 – La reconnaissance du nouvel OAR par l'Autorité et maintien de la compétence de la CSF au Québec : chevauchement potentiel



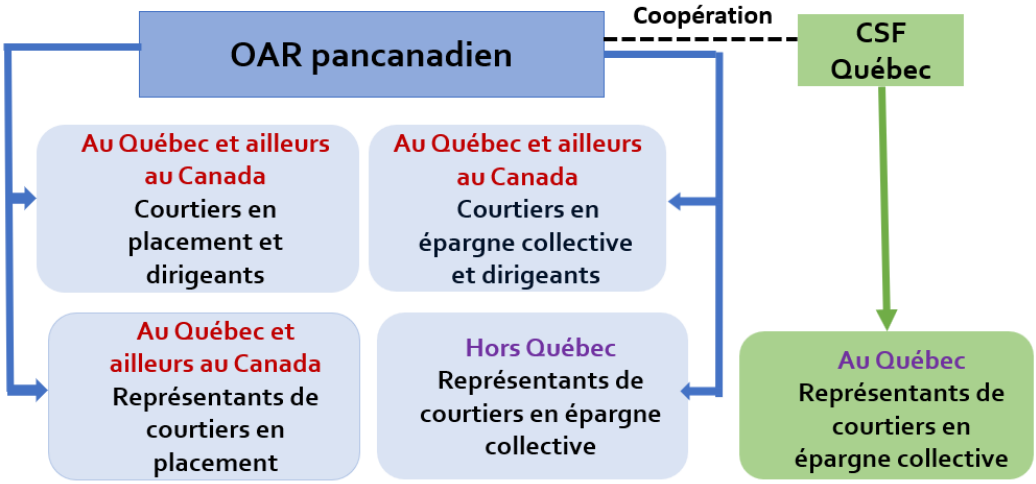
Dans ce contexte, bien que cette avenue ne soit pas mentionnée dans l'addendum, les OAR seront sans doute appelés à conclure une entente de coopération afin d'éviter ce chevauchement dans l'encadrement des représentants et les conséquences négatives qui en découlent. Notons qu'en 2004, l'Agence nationale d'encadrement du secteur financier (devenue depuis lors l'Autorité), de même que la CSF et l'ACFM ont conclu une entente de coopération entre eux pour l'encadrement des courtiers en épargne collective qui sont membres de l'ACFM et qui poursuivent des activités au Québec et ailleurs au Canada[28]. Cette entente qui est toujours en vigueur prévoit entre autres des dispositions sur le partage d'information, le processus d'inspection, les textes réglementaires, la mise en application de la réglementation et le traitement des plaintes.

Comme illustré dans le schéma ci-dessous (**Scénario 2**), si une entente similaire était conclue, celle-ci pourrait reconnaître que le nouvel OAR est responsable de l'encadrement des entreprises de courtage en épargne collective (les courtiers) et de leurs dirigeants exerçant au Québec et ailleurs au Canada, de même que des représentants de courtiers en épargne collective exerçant hors

[28] *Entente de coopération conclue le 15 décembre 2004 entre l'Agence nationale d'encadrement du secteur financier (« Autorité »), Chambre de la sécurité financière (« Chambre ») et Association canadienne des courtiers de fonds mutuels (« ACCFM »)*, [En ligne] : https://lautorite.qc.ca/fileadmin/lautorite/reglementation/distribution/ententes/2004dec15-entente-csf-amf-accfm.pdf.

Québec, alors que la CSF demeurerait responsable de l'encadrement des représentants en épargne collective exerçant au Québec. Le cas échéant, il convient d'évoquer ici certains avantages et faiblesses qui pourraient résulter de ce partage de compétences entre ces deux OAR.

Scénario 2- La reconnaissance du nouvel OAR et maintien de la compétence de la CSF au Québec avec entente de coopération entre les OAR



Parmi les avantages, il y a lieu de souligner que le maintien de la compétence de la CSF à l'égard des représentants de courtiers en épargne collective serait bénéfique en raison de l'expertise et de l'expérience que cet OAR a acquises au fil des ans dans le secteur de l'épargne collective au Québec. Notons aussi que la CSF, en raison de sa proximité avec le milieu régulé, lui permet de bien connaître et d'intervenir en tenant compte des spécificités de l'environnement juridique québécois dans lequel les représentants évoluent. Les fonctions exercées par la CSF présentent également un avantage en raison de sa compétence multidisciplinaire qui lui permet d'encadrer des représentants qui cumulent différents titres d'inscription selon leurs champs d'expertise, comme l'épargne collective, l'assurance et la planification financière.

Par ailleurs, le partage éventuel des compétences entre le nouvel OAR pancanadien et la CSF qui pourrait être établi dans une entente de coopération comporte, à notre avis, certaines faiblesses. L'une de celles-ci résulte de la compétence restreinte de la CSF qui serait vraisemblablement maintenue. En effet, selon les pouvoirs qui sont dévolus à la CSF en vertu de la loi actuelle, cette dernière ne peut intervenir dans le secteur de l'épargne collective qu'à l'égard des représentants[29].

[29] Voir la *Loi sur la distribution des produits et services financiers*, RLRQ, c. D-9.2.

En raison de cette compétence restreinte qui est axée sur les aspects individuels de la prestation de services, la CSF ne peut pas intervenir à l'égard des dirigeants et de l'entreprise en cas de manquements de nature organisationnelle ou systémique. À titre d'exemple, dans l'hypothèse où les manquements d'un représentant font ressortir, du même coup, des failles dans les mécanismes de conformité au sein de l'entreprise, la CSF ne peut imposer de sanctions ni à l'entreprise de courtage ni aux dirigeants qui auraient manqué à leurs obligations de surveillance à l'égard d'un représentant.

Dans le cadre d'une entente de coopération éventuelle entre les deux OAR, la compétence pour évaluer les aspects organisationnels sera sans doute attribuée au nouvel OAR pancanadien qui pourra mener des inspections, des enquêtes et imposer des sanctions en cas de manquements de la part d'un courtier ou de certains de ses dirigeants, alors que la CSF ne pourra agir qu'à l'égard des représentants. Si ce scénario est retenu, il conviendrait de mettre en place un mécanisme d'inspection ou d'enquête automatique au sein des deux OAR qui s'enclencherait lorsque la CSF enquête ou sanctionne un représentant[30]. À titre d'exemple, si la CSF impose une sanction disciplinaire à un représentant en épargne collective en raison d'un manquement professionnel, le nouvel OAR devrait, du même coup, entamer une enquête auprès de l'entreprise de courtage où ce représentant exerce ses activités. Le partage d'information et la synchronisation des activités de surveillance et de contrôle entre les deux OAR permettront notamment à ces derniers d'identifier les enjeux de nature systémique qui peuvent influer de manière négative sur le comportement d'autres représentants exerçant leur profession au sein de la même entreprise de courtage.

En somme, si une entente de coopération est conclue entre la CSF et le nouvel OAR pour encadrer le secteur de l'épargne collective au Québec, les deux OAR pourront vraisemblablement intervenir au sein d'une même entreprise de courtage. Bien que présentant des éléments positifs, le choix de ce scénario pourra entraîner des lourdeurs administratives et financières de même que la confusion des épargnants.

En comparaison, la situation sera différente pour l'encadrement des acteurs du courtage en placement qui exercent leurs activités au Québec et ailleurs au Canada. En effet, la mise en place

[30] Il convient de mettre en place un mécanisme plus contraignant et de nature systématique qui va au-delà de la transmission d'informations à l'égard de plaintes reçues à l'endroit d'un représentant ou d'un cabinet ou de la possibilité de demander une enquête à l'égard de ceux-ci dans « des circonstances spéciales », comme prévu actuellement dans l'Entente de coopération. Voir *Entente de coopération,* préc., note 28, p. 6-8.

du nouvel OAR pancanadien permettra à celui-ci d'intervenir, du même coup, auprès des trois groupes d'acteurs (courtiers en placement, dirigeants et représentants). La mise en place de cet encadrement intégré permettra ainsi à l'OAR d'évaluer, au sein d'une même entreprise, les comportements de nature individuelle et organisationnelle qui sont potentiellement préjudiciables à l'égard des épargnants[31]. En outre, cet encadrement intégré qui sera assumé par un OAR unique contribuera à minimiser les lourdeurs administratives et financières et la confusion des épargnants.

En tenant compte de ces avantages, l'Autorité pourrait envisager une piste de solution similaire en reconnaissant le nouvel OAR pancanadien comme étant seul responsable de l'encadrement des courtiers en épargne collective, de leurs dirigeants et de leurs représentants exerçant au Québec. La reconnaissance de cette responsabilité unique pour le nouvel OAR pancanadien impliquerait toutefois l'adoption d'une modification législative afin de retirer à la CSF sa compétence en matière disciplinaire à l'égard des représentants de courtiers en épargne collective exerçant au Québec. Cette avenue de même que les autres pistes de solution que nous avons déjà évoquées dans des écrits antérieurs comportent des avantages et des inconvénients qui mériteraient d'être pris en considération par les instances chargées de la mise en place de la réforme[32].

Conclusion

Comme souligné par différents observateurs, l'encadrement actuel des services d'investissement est conçu selon une approche fragmentée qui est axée sur les produits, plutôt que sur les activités menées par les intermédiaires. Cet encadrement compartimenté se traduit concrètement par une multiplicité d'autorités de contrôle qui établissent différentes catégories d'inscription et différents corpus de normes applicables à ces intermédiaires offrant des services similaires de même que par

---

31 Pour plus de détails à ce sujet, voir notamment Cinthia DUCLOS, *La protection des épargnants dans l'industrie des services d'investissement : une analyse de l'influence des défaillances organisationnelles sous l'angle du Swiss Cheese Model*, coll. CÉDÉ, Éditions Yvon Blais, Montréal, 2021, p. 419 et suiv.

32 Raymonde CRÊTE et Cinthia 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, p. 28-35, [En ligne] : http://www.finances.gouv.qc.ca/documents/ministere/fr/MINFR_LDPSF_Raymonde_Crete-Cinthia_Duclos.pdf; Raymonde CRÊTE et Cinthia DUCLOS, *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*, Mémoire du Groupe de recherche en droit des services financiers soumis à la Commission des finances publiques, 18 janvier 2018, p. 34, 35, [En ligne] : http://www.grdsf.ulaval.ca/sites/grdsf.ulaval.ca/files/grdsf-memoire-projet_de_loi_14118-01-2018.pdf. Voir aussi C. DUCLOS, préc., note 31, p. 419 et suiv.

une variabilité des différents régimes de protection des épargnants en cas d'insolvabilité et de fraude des intermédiaires. Parmi les conséquences négatives de cet encadrement fragmenté, celui-ci entraîne des chevauchements, des redondances et des lourdeurs administratives et financières de même qu'un risque d'atteinte aux intérêts des épargnants.

Par le projet de réforme du cadre réglementaire présenté dans l'*Énoncé de position*, les ACVM envisagent la création d'un nouvel OAR pour l'encadrement des courtiers en placement, des courtiers en épargne collective, leurs dirigeants et leurs représentants et, éventuellement dans une seconde phase, d'autres catégories d'intermédiaires. À notre avis, la restructuration envisagée par la création d'un nouvel OAR s'avérera bénéfique dans la mesure où elle propose un encadrement intégré, soit un encadrement conçu non pas de manière fragmentée, mais plutôt selon une approche holistique et cohérente qui couvre l'ensemble des intermédiaires offrant des services d'investissement. Cet encadrement intégré favorisera ainsi l'harmonisation des politiques, des règles, les processus de conformité et la mise en application de la réglementation. Ce projet de réforme favorisera la prise en compte par l'OAR des aspects tant individuels qu'organisationnels dans la prestation de services par les intermédiaires, puisque l'OAR sera appelé à encadrer à la fois les trois groupes d'acteurs, soit les entreprises, leurs dirigeants et leurs représentants dans l'élaboration des normes de conduite et dans la mise en application de celles-ci.

La position de l'Autorité, telle qu'explicitée dans l'addendum, présente également des éléments positifs puisque, dans une perspective d'encadrement intégré, elle envisage de reconnaître le nouvel OAR au Québec pour l'ensemble des acteurs du courtage en placement et en épargne collective. L'Autorité propose, par la même occasion, de maintenir la compétence de la CSF pour l'encadrement disciplinaire des représentants de courtiers en épargne collective au Québec. Le maintien de la compétence de la CSF pourra s'avérer bénéfique en raison de l'expertise et de l'expérience que cette dernière a acquises au fil des ans dans le secteur de l'épargne collective au Québec de même qu'en raison de sa compétence multidisciplinaire pour l'encadrement de représentants qui cumulent plusieurs titres d'inscription selon leurs champs d'expertise. Par ailleurs, le maintien de la compétence de la CSF donnera lieu vraisemblablement à un chevauchement entre la CSF et le nouvel OAR pour l'encadrement des représentants de courtiers en épargne collective, ce qui pourra entraîner des lourdeurs administratives et financières de même que la confusion des épargnants. En vue de répondre à ces enjeux, nous invitons les autorités chargées de la mise en place de la réforme d'analyser et d'évaluer diverses pistes de solutions

alternatives en tenant compte de l'objectif fondamental de valorisation de l'intérêt public qui sous-tend l'encadrement des OAR.

Dans l'ensemble, nous considérons que la réforme entreprise en vue d'améliorer le cadre réglementaire des OAR présente plusieurs éléments positifs qui contribueront à assurer une meilleure protection des épargnants et à accroître l'efficience et l'efficacité réglementaires.

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

October 6, 2021

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,
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel,
Corporate Secretary and Executive Director, Legal Affairs
2640, boulevard Laurier,
bureau 400 Québec
(Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: The Canadian Securities Administrators Position Paper 25-404 – New Self-Regulatory Organization Framework

We are pleased to provide comments in response to the Canadian Securities Administrators Position Paper 25-404 – *New Self-Regulatory Organization Framework* (the "New SRO Framework "). This letter is being submitted on behalf of TD Waterhouse Canada Inc., TD Waterhouse Private Investment Counsel Inc., TD Asset Management Inc., and TD Investment Services Inc. (collectively "TD" or "we").

TD supports the CSA's introduction of a framework to consolidate the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**). Further to our previous submission on October 23, 2020, we would like to reinforce the importance of:

- principles-based approach to the new SRO rules to enable scalability for different business models and to support innovation and growth while promoting consistency in regulatory approach,
- reasonable effective date for implementation including transition periods, considering the recent pace of regulatory change, and
- further consultation on the inclusion of additional registration categories.

We further support the October 4, 2021 comment letter submitted by the Investment Industry Association of Canada.

Rule consolidation should be scalable

The businesses that IIROC and the MFDA regulate remain diverse and that diversity warrants appropriate differentiation in regulation. Such differentiation is important to preserving small retail investors' access to cost-effective investment products and services.

While some firms may anticipate consolidating their MFDA and IIROC dealers in response to the SRO consolidation, it is premature to conclude this is the case, and this should not be assumed for all. TD as well as others may find value in preserving both a simpler, lower cost mutual fund channel and a more sophisticated full-service brokerage channel. These distinct business models and their related value propositions are designed to best serve different clients' needs and objectives at different price points.

We encourage the CSA to maintain flexibility in the new SRO regime, accommodating business models that align to both the current MFDA and IIROC frameworks as well as new business models and offerings:

- Principles-based approach to the new rulebook and policies to support different business models, including scaling requirements to the complexity and risk of the products and services offered.
- Where organized as separate lines of business within a single registrant, the new SRO framework may consider areas of flexibility to allow registrants to treat each line differently, according to the specific products and services offered in each business line.

Reasonable implementation timelines

We recognize the importance of consolidating the SROs in an efficient and expeditious manner. However, firms are currently in the process of implementing a number of significant regulatory changes such as the Client Focused Reforms, IIROC plain language rules, rules to protect older and vulnerable clients, Consumer Protection Framework (which impacts bank-affiliated securities registrants), as well as various financial titling reform initiatives. While many of these changes take effect December 31, 2021, there is still considerable work during the post-

implementation period to ensure effective adoption and sustainability of the changes. Accordingly, we ask that the CSA consider the operational complexity associated with implementing these regulatory change initiatives concurrently and give careful thought to having reasonable implementation timelines and transition periods that will support a seamless transition for firms and their clients.

Additional consultation on registrants directly regulated by the CSA

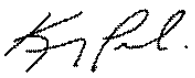
Given the significant complexities and potential capital implications of moving other registration categories into the SRO model, TD supports further consultation at a later date on the inclusion of additional registration categories. We recommend that this consultation take place once the new SRO has been fully operationalized for IIROC dealers and MFDA members.

Thank you for the opportunity to provide our views and recommendations regarding the New SRO Framework. 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

October 6, 2021

VIA EMAIL

Canadian Securities Administrators (**"CSA"**)
% The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: 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
E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames.

Re: CSA Consultation Paper 25-404 *Consultation on the Self-Regulatory Organization Framework*

TMX Group Limited (**"TMX"** or **"we"**) welcomes the opportunity to comment on the CSA's Position Paper 25-404 - *New Self Regulatory Organization Framework* that was published on August 3, 2021 ("**Position Paper**"). Capitalized terms used in this letter and not otherwise defined have the meaning given to them in the Position Paper.

We appreciate the efforts taken by the CSA to present a solution for a New SRO that reflects the evolution of how 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 the specific solutions outlined in Section 4(a)-*Improving Governance* and in Section 4(h)-*Maintaining Strong Market Surveillance* of the Position Paper.

Section 4(a): Improving Governance

New SRO Board Composition

As we noted in our 2020 Comment Letter in response to CSA Consultation Paper 25-402 - *Consultation on the Self-Regulatory Organization Framework*, we believe that the CSA has already struck the proper balance between its need for regulatory oversight and a self-regulatory organization's (SRO's) need for commercial and operational flexibility when the CSA set out in the applicable recognition orders detailed criteria for IIROC's board composition.

We therefore believe that a similar approach to board composition would continue to be appropriate for the board of the New SRO. Mirroring IIROC's current recognition order, we believe that board composition requirements should form part of the by-laws of the SRO and reviewable by the CSA at its request, rather than forming part of the New SRO's recognition order. As demonstrated by the sophisticated matrices that IIROC currently uses to identify candidates for its board, we believe that the New SRO's board and management will also be well placed to determine its own future board composition requirements. Further, as outlined in the Position Paper, the CSA's intention to include a non-objection mechanism for the CSA to review the initial matrices for board member appointments and any subsequent changes to them, including the inclusion of a reporting requirement in the recognition order for material changes to the matrices, will provide the CSA with sufficient oversight and insight into the board selection process without impacting the New SRO's commercial and operational flexibility.

Independence Criteria

We are concerned that the outlined intent to limit non-independent, or industry, nominations to a minority of the board, may undermine the ability of the New SRO to effectively manage its mandate. While the objective of independence from industry is laudable, effective regulation requires that independence to be balanced by sufficient industry knowledge and experience. We believe that expanding the number of seats available to industry experts

would better ensure a fair, meaningful, and diverse representation on the New SRO's Board and its committees and a proper balance among the interests of the differing persons and entities that are currently regulated by IIROC and the Mutual Fund Dealers Association of Canada ("**MFDA**").

CSA Involvement in New SRO Corporate Governance

As we noted in our 2020 Comment Letter, we were concerned with the possible impact of granting the CSA veto powers over the SRO Board selection process. In our view, granting the CSA non-objection powers, rather than veto powers, with regards to, among other matters, the SRO Board selection process will still result in a process that will be burdensome and time consuming to manage. We continue to be concerned that creating a new process that requires the New SRO's thirteen regulators to review and provide their non-objection to the appointment of each New SRO Board member could add significant delay to the SRO's director onboarding process, with no commensurate benefit. We therefore strongly urge the CSA to ensure that any sub-matrix of criteria that is developed to inform the non-objection process includes reasonable timelines and the requirement to provide the rationale for any objection made.

In conclusion on this topic, as we expressed in our 2020 Comment Letter, we continue to 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 the New SRO would be able to fulfil its public mandate efficiently and effectively under the currently established corporate governance framework for SROs.

Section 4(h): Maintaining Strong Market Surveillance

TMX strongly supports the CSA's conclusion that the surveillance of Canadian equity and debt marketplaces should remain with the New SRO. TMX also commends the intent to establish a new CSA Market Information Coordinating Working Group that will focus on identifying and resolving gaps or inefficiencies in information sharing between the New SRO and the CSA.

We believe that the outcomes of this Working Group would be enhanced by industry participation and we urge the CSA to include industry members in this Working Group at its inception and on an ongoing basis. TMX would be pleased to work with the CSA on initiatives in this area and share our expertise, stemming from our deep knowledge of market surveillance, with the CSA.

As we expressed in our 2020 Comment Letter, we continue to believe that "monitoring systemic risk" should not form part of any solutions outlined in Category H. As we wrote in 2020, an SRO regulates the operations and the standards of practice and business conduct of its members or participants. CSA regulators then oversee these SRO activities. The

statutory regulators are not using the SROs to monitor systemic risk which, 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. While we fully agree 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 again submit that references to systemic risk should be removed from this category of solutions.

Conclusion

We thank the CSA for providing us with the opportunity to comment on the Position Paper. As staff reviews the comment letters and as the CSA prepares to establish the New SRO, we urge the CSA to be vigilant in protecting the efficiencies that the existing SROs can bring to the governance and operations of the New SRO. We would be pleased to discuss our comments with you.

Sincerely,

'Rizwan Awan'

Rizwan Awan
President, Equities Trading and Head of TMX Markets, Products & Services
TMX Group

T: (416) 456-9635
E: Rizwan.Awan@tmx.com

CFA Societies Canada

Canadian Advocacy Council
120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1
+1 (416) 366 3658 tel
www.cfacanada.org

October 8, 2021

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 3S8
Email: 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
Email: consultation-en-cours@lautorite.qc.ca

Re: CSA Position Paper 25-404 – New Self-Regulatory Organization Framework (the "Position Paper")

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

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 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

Paper. We are supportive of the CSA's intent to establish a new enhanced SRO and consolidate the two current investor protection funds into a single, independent fund as part of a new SRO framework (the "**New SRO**"). Our comments relate to areas within the Position Paper where we are keen to engage and provide further input as they progress throughout Phase One, including governance matters, investor interests and representation, proficiency requirements and conduct and enforcement matters.

Governance

In our initial 2020 response to CSA Consultation Paper 25-402, *Consultation on the Self-Regulatory Organization Framework*, we focused on potential governance improvements that could be made to support an SRO's public interest mandate. Throughout the design of the governance structure for the New SRO, it is imperative that the public interest be the primary focus of the core design principle. We believe this begins with considerations such as a majority of independent directors, an independent Chair and the other suggestions set out in the Position Paper. We are particularly supportive of the suggestion that the New SRO would be required to develop diversity and inclusion policies to increase underrepresented groups on the board. It is important, however, that similar structural requirements be set for significant decision-making committees as well as the overall board of the New SRO. Some of these concerns may be remedied to the extent the proposal transfers proceed of current district council regulatory decision-making functions to the board and staff of the New SRO.

Investor Representation and Integration of Investor Interests

We are supportive of the proposed formal investor advocacy mechanisms for the New SRO, in order to help ingrain the consideration of investor concerns into its fabric, including through a new investor advisory panel. It is important that consideration of investor perspectives and benefits form an integral part of all regulatory initiatives and are reasonably weighed in economic cost-benefit analysis. Too often, concepts like public trust and investor protection are underweighted against more easily quantifiable industry implementation costs in regulatory analysis. This demands thoughtful counterweights in governance design to ensure a lack of systemic bias against useful but costly regulatory initiatives.

It is important that the New SRO and any committees/functions with significant decision-making authority be held to transparency standards that serve both the CSA and stakeholders such as industry and the public. Investors and other stakeholders must have confidence that decisions by the New SRO are made in the absence of undue influence of industry or specific stakeholder constituencies. The New SRO should be subject to similar transparency and public reporting principles imposed on statutory

---

where investors' interests come first, markets function at their best, and economies grow. There are more than 178,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

00303526-1

regulators, and complaints and concerns about the New SRO should be handled within the CSA framework.

Proficiency

As we first raised in our 2020 letter, it remains critical for the New SRO to be a driver of professionalism in the investment industry and robust continuing education standards. Individuals registered with members of the New SRO should be subject to meaningful (and uniform) continuing education requirements that focus not on the specifics of a product or revenue generation/practice management, but rather the skills needed to deliver professional, competent, ethical and effective investment and financial advice to all Canadians. We would also like to see continuing education reframed across the New SRO with influence from ongoing policy work on competency frameworks, focused on skills, specific competencies and professionalism, de-emphasizing specific products sold by a particular registrant.

Without further detail and consultation, we would not necessarily support a proposal for more nuanced proficiency-based registration categories, as adding additional registration categories might only add to existing investor confusion on licensing and the scope of financial advice. We agree with the statement in the Position Paper that individual registrants could be better equipped to provide more holistic advice to their clients, but believe that increased baseline proficiency standards for all registrants is the path to progress.

Conduct and Enforcement

It is proposed that the new Recognition Order would require, where possible, transparency in enforcement notices with respect to the processes for assessing firm supervision and reasons for disciplinary decisions. As we have suggested in the past, additional transparency with respect to enforcement proceedings is sorely needed, particularly with respect to the impact of past decisions (i.e., precedential value) and mitigating circumstances. The root causes of systemic compliance issues within specific firms, relating to specific recidivist individuals, and those that are prevalent across industry and/or segments thereof must be investigated and addressed, rather than addressing one-off issues symptomatically on a reactive basis.

Additional Comments

With respect to the market surveillance mandate of the New SRO, we believe the current functions performed by IIROC work well, and that the transition of this team and its expertise to the New SRO should yield a positive regulatory outcome. We continue to encourage strategic and operational cooperation and integration (ostensibly led by and operationalized by the New SRO) between the current market surveillance regulatory functions and related functions at the CSA, particularly to address systemic risk concerns. We believe there remains some room for incremental improvement as

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1
+1 (416) 366 3658 tel
www.cfacanada.org

regulation and rules of the New SRO are designed and implemented, particularly with respect to the need to broaden powers across Canada to examine records of additional market participants.

We have previously commented extensively on the various dispute resolution mechanisms in the financial industry. Investors, particularly retail investors, are confused about their rights and how to escalate complaints made about their advisors. We believe the industry demands a single, empowered dispute resolution body, with clear guidelines for registrants on how complaints are dealt with. In the event it is not possible to consolidate the dispute resolution mechanisms throughout the financial services industry into one body, it is important that the various complaint handling and dispute resolution services/ombudsmen be mandated to share data with one another so that there is a complete picture of where issues are arising and where there are misunderstandings between advisors and their clients. Such data could be broadened to include information about complaints that are dealt with solely within a firm for further analysis, and regulatory action on systemic issues. The process should be the same for all investors, regardless of the category of registrant with whom the public interacts. Any ombudsperson should be empowered to investigate and opine on potential solutions to systemic issues that have been identified through complaints and disputes.

While we appreciate that the potential consolidation of other registrant categories into the regulatory purview of the New SRO will be examined as part of Phase II of the framework, we continue to question whether integration of such categories has any clear benefit to any stakeholder. Such a move would be disruptive to business operations without any clear public benefit, and the CSA's principles-based framework functions well in practice for these registrant categories in our view. Absent a clear and present need, we question whether the (to date) rules-based approach of an SRO to the variety of business models that exist for portfolio managers and exempt market dealers is appropriate or feasible. There are already very high conduct standards imposed directly by the CSA on the portfolio manager (and investment fund manager) category, and we believe similar standards should be first examined for application in the context of Phase I of the New SRO, before consideration is made of expanding its registrant category coverage in a Phase II.

Concluding Remarks

We fully support efforts to create a new SRO framework that has a clear public interest mandate and focuses on investor protection and the promotion of public confidence in capital markets. As noted above, it is important that the governance structure, avenues for investor input, professionalism and investor redress mechanisms for the New SRO all have at their core the common goals of accountability and the public interest. We would welcome direct and ongoing engagement to the greatest extent that it's useful and productive with the IWC and applicable CSA working groups as they tackle the various elements of organizational and regulatory design and implementation of the New SRO.

CFA Societies Canada

Canadian Advocacy Council

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1

+1 (416) 366 3658 tel
www.cfacanada.org

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. 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

00303526-1