CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice and Request for Comment 25-305
Application for Approval of the New Investor Protection Fund

May 12, 2022

1. Background

Following extensive public consultations, the Canadian Securities Administrators (**CSA**) published CSA Position Paper 25-404 – *New Self-Regulatory Organization Framework* (**CSA Position Paper**), recommending amalgamation of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**MFDA**) into a single self-regulatory organization (**SRO**) in order to provide a framework for efficient and effective regulation in the public interest, including an enhanced governance structure, improved investor protection and education, and strengthened industry proficiency. The CSA also recommended in the Position Paper to amalgamate the two current compensation / contingency funds, the Canadian Investor Protection Fund (**CIPF**) and the MFDA Investor Protection Corporation (**MFDA IPC**), into a single compensation / contingency fund, known at this time as New IPF, which will be independent from the new SRO. The SRO amalgamation and related request for comment are addressed in a separate notice (CSA Staff Notice and Request for Comment 25-304).

CIPF and MFDA IPC have been working collaboratively to amalgamate their operational activities into the New IPF and have made representations on behalf of the New IPF for its approval and acceptance as a compensation / contingency fund by the securities regulators in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon (**the Regulators**).

The Regulators are publishing for comment the following documents:

- **Appendix A** – Application for approval and acceptance of the New IPF (**Application**), which includes the below schedules:

  Schedule 1 – Draft By-Law Number 1 of the New IPF

  Schedule 2 – Draft Coverage Policy

  Schedule 3 – Draft Claims Procedures

  Schedule 4 – Draft Appeal Committee Guidelines

- **Appendix B** - Draft Approval Order for the New IPF setting out the terms and conditions of approval as well as reporting requirements for the New IPF. Following the comment process and resolution of any issues, each Regulator will issue a substantially similar order approving or accepting the New IPF.

- **Appendix C** – Draft Memorandum of Understanding (**MOU**) among the Regulators regarding oversight of the New IPF. The MOU includes detailed protocols for the review and approval of amendments to the New IPF by-laws, certain policies and the agreement with the New SRO, and procedures for performance of periodic oversight reviews of the New IPF.

The Autorité des marchés financiers (**AMF**) is publishing simultaneously for comments its proposed transition plan for mutual fund dealers registered in Québec (**Québec MFDs**) and their registered individuals. Québec MFDs will not be required to contribute to the New IPF's Mutual Fund Dealer Fund in respect of customer accounts located in Québec and those accounts will not be eligible for coverage by the New IPF. However, Québec MFDs will continue to contribute to the Québec financial services compensation fund, as required by law, and their clients will continue to be eligible for the payment of indemnities by this fund[1].

2. Approval of the New IPF

The Application, published below, outlines how the New IPF will comply with the terms and conditions of the draft Approval Order.

3. Comment Process

We are seeking comments on all aspects of the New IPF Application and related documents. Please submit your written comments on or before June 27, 2022. If you are not sending your written representations by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Please address your submission to all of the CSA as follows:

Alberta Securities Commission

Autorité des marchés financiers

British Columbia Securities Commission

Manitoba Securities Commission

Financial and Consumer Services Commission of New Brunswick

Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador

Office of the Superintendent of Securities, Northwest Territories

Nova Scotia Securities Commission

Office of the Superintendent of Securities, Nunavut

Ontario Securities Commission

Prince Edward Island Office of the Superintendent of Securities

[1] Please see the following for additional details: https://lautorite.qc.ca/en/general-public/compensation-and-deposit-protection/submit-a-claim-to-the-fonds-dindemnisation-des-services-financiers

Financial and Consumer Affairs Authority of Saskatchewan

Office of the Yukon Superintendent of Securities

Please send your written representations only to the addresses below. Your written representations will be forwarded to the other CSA member jurisdictions. Your comments relating to the schedules will also be shared with CIPF and MFDA IPC.

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

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

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Kenmar Associates

Sent Via email June 13, 2022

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

25-304 - Application for Recognition of New Self-Regulatory Organization [CSA Staff Notice and Request for Comment]
https://www.bcsc.bc.ca/securities-law/law-and-policy/instruments-and-policies/2-certain-capital-market-participants/current/25-304/25304-csa-staff-notice-and-request-for-comment-may-12-2022

Kenmar welcome the opportunity to provide comments on New SRO modus operandi (CSA Notice 25-304). We acknowledge the significant effort the CSA team is investing to make New SRO a success. We will be submitting comments only on select aspects of the consultation.

Kenmar Associates is an Ontario-based privately-funded volunteer organization focused on investor advocacy (www.canadianfundwatch.com).Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, investors and/or their counsel in filing investor complaints and restitution claims.

The By-Laws and other elements of the proposal attempt to clarify and reinforce the fact that New SRO has a Public interest mandate.

The proposed governance structure of New SRO appears to be improved in that a "reasonable" proportion of the 15 Directors must have relevant experience regarding investor protection issues. We expect that about one third of the Board Directors would constitute "reasonable". The Board skills matrix or other governance document should provide guidance of what constitutes *relevant investor protection experience* –hopefully more detail will be revealed. The biggest potential weakness in the new governance approach will be the screening method used to select seasoned Directors with relevant investor protection experience. Some of the selected Directors should have Main Street creds.

The 3 year cooling off period requirement constituting independence should also capture individuals with law firms and accounting firms representing Members.

A few years ago, SIPA examined the SRO Board composition and found it did not provide for the investor voice even if the Directors were *independent* (which they were not perceived to be) See SIPA Report *Investor Protection and IIROC Governance* http://sipa.ca/library/SIPAsubmissions/500_SIPA_REPORT_InvestorProtection_IIROCGovernance_20161009.pdf "Independent" Directors that have material Bay Street ties/ serve on numerous corporate boards may not effectively represent the public and may face conflicts- of-interest. An individual who has spent their career in financial services may still embrace that culture regardless of the length of cooling off period. We'd like to see a pro-active effort to recruit more independent Directors with no prior relationship with the financial services industry. Many qualified retail investor-sensitive individuals exist in Canada – they should not be unduly denied access to New SRO Board simply because they have not worked in financial services.

We wish to stress that the Recognition Order (RO) must go beyond "protecting investors from unfair, improper, or fraudulent practices by its Members". There must be an obligation by New SRO on its Members to ensure that registered representatives (a) are provided the tools, processes, IT and support systems necessary to deliver professional financial advice ;(b) have the necessary education and training to competently and ethically advise on the services and products marketed and (c) are effectively supervised to ensure compliance with applicable laws, regulations, policies and rules.

While New SRO has a Public interest mandate it really can't be assessed without knowing what metrics will be used to measure the "public interest" impacts of new rules, or the metrics that will be applied to link executive compensation to the fulfillment of New SRO's public interest mandate. We recommend that more information be contained in the RO as regards the public interest obligation.

The proposed integrated investor protection fund (IPF) plan appears to be well designed and properly governed. The fund remains independent which is a positive. The Board members of the New IPF will comprise of existing directors of CIPF and

MFDA IPC which ensures continuity. All of the appointments are scheduled to take effect Jan.1, 2023, concurrent with the amalgamation of IIROC and the MFDA.

The $1M compensation cap has been in place for a long time and its value materially eroded due to inflation. At the same time, average account sizes have grown. We recommend that there be a periodic review of the cap to ensure it continues to fulfill its intended purpose.

We assume Quebec- only registered Dealers are required to be OBSI Participating Firms.

We expect the evaluation of Directed Commissions policy will consider the investor protection perspective.

Interim Rules

The New SRO intends to adopt and administer interim rules incorporating the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-laws, rules and policies of the MFDA (Interim Rules). The Interim Rules include.

- A proposal to permit mutual fund dealers to introduce business to investment dealers through an introducing/carrying broker arrangement, resulting in greater access to lower cost ETF for mutual fund clients is a positive (depending upon fees and commissions that will be imposed)
- An amendment to current IIROC proficiency requirements to permit Dealers with dual registration as both an investment dealer and a mutual fund dealer to employ mutual funds only licensed individuals. (no upgrade requirement) is OK as an interim step: longer term, individuals with product restrictions like selling a single product with an embedded sales commission shouldn't really be permitted to be titled "financial advisor". It remains to be seen how provincial titling laws will play out.

MEMORANDUM OF UNDERSTANDING REGARDING OVERSIGHT OF [{New SRO]

https://www.bcsc.bc.ca/-/media/PWS/New-Resources/Securities-Law/Instruments-and-Policies/Policy-2/25304-Draft-MOU-among-Recognizing-Regulators-regarding-oversight-of-the-New-SRO-May-12-2022.pdf [25 pages]

Statutory regulators have decided, after consultation and due consideration, to subcontract, via a RO, the regulation of some of their duties to a non-statutory regulator, [New SRO]. In order to ensure the subcontract is effective, the statutory regulators have established an Oversight Program. The purpose of the Oversight Program is to ensure that [New SRO] is acting in accordance with its public interest mandate, and complying with the terms and conditions of the [New SRO] Recognition Order. Implicit in this approach is the obligation to ensure that the RO is periodically reviewed and updated to reflect prevailing securities and other laws, that any gaps/deficiencies are promptly rectified and to identify action(s) that the statutory regulators must take to fulfill their own investor protection mandate.

It is our understanding that the Oversight program does not prevent New SRO from proposing policies, rules and procedures that exceed minimum regulatory requirements and/or the terms and conditions of the RO, if deemed to be in the Public interest and subject to Oversight Committee approval or non-objection.

In our view, the historical CSA oversight of the MFDA and IIROC has been deficient. Key issues that should have been flagged for affirmative action were left unattended. We need not repeat them here. The new Oversight Program covered by the MOU should be designed such that deficiencies in New SRO performance, structure or behaviour are identified for action in a timely, effective and public manner. Transparency is essential.

Like the previous oversight committee for the MFDA/IIROC, the scope of the New SRO review will be determined by utilizing a risk-based methodology established and agreed upon by staff of the RRs. We remain concerned with this approach because it failed to result in reporting serious and fundamental governance, compliance review, enforcement and ineffective rule issues (e.g. complaint handling). Investor protection issues were one of the factors leading to a New SRO with enhanced governance, structure, investor engagement and Public interest mandates. In our opinion, a risk-based approach may be necessary, but it is not a sufficient oversight model.

Kenmar recommend that the CSA oversight committee have a defined process to receive and use stakeholder (including New SRO IAP and investors) input in its New SRO oversight Program. Such grassroots information often points to deep underlying issues. A good example here would be the systematic harvesting of DIY investor accounts because IIROC did not take timely action to sanction Discount brokers charging for advice they did not and could not provide. The faster systemic issues are detected and resolved, the better for all stakeholders. **The requirement for this process should be delineated in the MOU.**

We also recommend that the New SRO Oversight committee liaise with OBSI when effecting its coordinated review work plan. OBSI has a real-time pulse on matters impacting the retail investor experience. Client complaints are a powerful indicator of systemic issues related to deficient rules (and enforcement of rules), poor complaint handling and Dealer supervision breakdowns.

We are not comfortable with the MOU in that the word "strive "is part of its formulation. **The New SRO is a creation of the CSA Members; there must be an unwavering commitment for the CSA to act as a unified entity in its oversight**. The New SRO's success depends on it being able to count on prompt, decisive and consistent CSA positions on key issues. Is it responsible regulation that each RR can, at any time, withdraw from the MOU with as little as 90 days' written notice to the Coordinators and to each RR? What are possible consequences? Oversight stability is, in our opinion, critical for successful New SRO functioning. From our perspective, this provision constitutes a potential failure mechanism for New SRO.

Per the proposed MOU, the Oversight Committee is to provide to the Chairs of the RRs an annual written report that will include a summary of all oversight activities conducted during the period and publish it. For greater clarity, we recommend that the MOU language state that the availability of the report be publicly disclosed via a News Release promptly after completion and posted on New SRO website.

RECOGNITION ORDER

(Section 24 of the Securities Act, RSBC 1996, c. 418
25304-Draft-Recognition-Order-for-New-SRO-May-12-2022.pdf (bcsc.bc.ca)

The New SRO Recognition Order should address the following:

1. **Governance 10**. RO criteria should contain language that would prevent the dominance of the Board by industry and ex-industry members. There should be say, a minimum of 5 Directors, that have had (a) no affiliation with the financial services industry and/or (b) have an established track record of supporting investor protection. As written, it would be possible for the entire New SRO Board to consist of 100% industry and ex-industry Directors, which would defeat the purpose of New SRO. Perhaps ex-industry Directors should have a cap, say, two. In our view the ideal composition would be that the independent Directors have unique skill sets such as empirical research, behavioural finance, economics, consumer advocacy , dispute resolution , RegTech, IT/cybersecurity, 6-Sigma/ root cause analysis , Plain language ,HR and socially responsible regulation.

Cooling off periods do not compensate for the lack of an authentic investor perspective. The Director skills matrix must include criteria that include demonstrated actions related to investor protection.

2. **Governance 10.** We recommend adding a requirement in the skills matrix that at least one New SRO Board Director have professional financial advice credentials /experience since the provision of personalized financial advice is a primary deliverable of the New SRO Members.

3. Replace **Rules** 10.1 (iv) with: The **establishment, maintenance and enforcement of professional competency, ethical and conduct standards for registrants authorized to provide personalized financial advice to investors.** There will be in excess of 100,000 persons providing such advice to Canadians within the New SRO. The suggested wording makes it clearer what the CSA expects of New SRO.

4. In those jurisdictions where insurance and investments are separately regulated, the chance for regulatory arbitrage is real, especially as regards Segregated funds. The Recognition Order should contain a provision encouraging New SRO to have an agreement with the applicable provincial insurance regulator(s) (and other regulators such as the FCAC) to share information on individuals and Firms in an attempt to reduce product and conduct arbitrage and improve fine collection. Many,

if not most, MFDA registered fund salespersons are dually-licensed as insurance agents.

Improved deterrence could be accomplished through automatic reciprocal enforcement of disciplinary orders between regulators. Regulatory fragmentation will cause far less trouble if all financial services regulators, including New SRO adopt each other's findings that a registrant is dishonest, unethical or ungovernable. The should be effective because an "advisor" tempted to stray from regulatory compliance in one financial sphere would know they'd have no ability to simply carry on business under an alternate licence. We believe such a regime will be at least as effective deterrence than imposing fines and trying to collect them.

An insurance regulator could, for instance, deny registration if an applicant has unpaid fines with another financial regulator. It would also add credibility to regulators and financial consumer protection. **The New SRO RO should include a provision requiring the New SRO to work collaboratively with insurance regulators on a "Best Efforts" basis.**

5. As regards **Appendix A Terms and Conditions**, Commission Oversight. The text reads : *"7.(1) [New SRO] must seek input from the Commission before finalizing its strategic and business plans, annual statements of priorities and budgets."* . Should there not be an obligation to use or at least **consider** Commission input? New SRO strategic plans and annual priorities must be consistent with, and supportive of CSA/Commission strategic plans and priorities, as applicable.

6. We recommend amending Schedule 1 Criteria for Recognition Rules *10. (1) [New SRO] must establish and maintain Rules that…* to Rules 10.(1) [New SRO] must establish, maintain **and apply Rules that** … One of the main shortcomings of the old regime was that it had plenty of rules but compliance oversight and enforcement were not at a level that adequately protected retail investors.

Schedule 1 (1) (b) (ix) New SRO must move *beyond "promoting the protection of investors*". Investors are not looking for promotion or cheerleading. Investors need and deserve meaningful protection of their savings related to the financial advice they receive and pay for. **We recommend changing this to: *protection of investors***

7. **We recommend that Schedule 1, 11. (c)**) imposing sanctions **be changed to** ***…imposing sanctions consistent with IOSCO Credible Deterrence In The Enforcement Of Securities Regulation***
https://www.iosco.org/library/pubdocs/pdf/IOSCOPD490.pdf The generic language used in the proposed RO is too general and provides no basis for accountability.

All CSA jurisdictions must take steps to ensure that New SRO has the legal right to collect on monetary sanctions imposed and to flow disgorgement cash received to harmed investors.

Disgorgement of ill-gotten gains should be an explicit sanction, distinctly separate from fines imposed. When disgorgement is applicable, it should apply to all unjust profits related to the infraction, not just those of the registered representative. As a general principle, Dealers should be held accountable for the actions and inactions of their representatives.

We wish to reiterate the point that investor restitution is a high priority for retail investors that have been harmed by Member wrongdoing. We expect New SRO to place an emphasis on making harmed clients whole as integral to its culture. New SRO sanction guidelines should prioritize investor restitution, considering such restitution as a powerful mitigating factor in assessing sanctions and the amount of monetary fines. Investor losses should be based on the opportunity-loss calculation methodology, consistent with OBSI's approach. The U.S. counterpart of New SRO, FINRA, has already done this as have IIROC to an extent. See FINRA *Supplements Prior Guidance on Credit for Extraordinary Cooperation* https://www.finra.org/rules-guidance/notices/19-23 Conversely, aggravating factors would include failure to cooperate, exploitation of seniors and vulnerable clients, fraudulent activity and refusal to accept accountability.

The new SRO has to play a bigger role in white collar crimes. When terms like "document changes without client approval", "signature falsification" and "misappropriation of assets" instead of fraud, forgery and theft are used it gives the impression to the public that regulators are unwilling or unable to deal with white collar criminals. The RO should contain a requirement for New SRO to refer ALL cases of illegal activity and suspected fraud to law enforcement. This will help dispel the public perception that self-regulators go easy on their Members.

8. We recommend amending Appendix A TERMS AND CONDITIONS 12. (1)(b) Investor engagement and protection "*establish a separate investor office within the [New SRO] to support Rule development and provide investor education or outreach. The investor office must be prominently positioned, easily identifiable and accessible to investors* "by changing "rule development "to "policy development" and "or" to *and* in the text.

9. The RO should require New SRO to allow Victim Impact Statements at Proceedings [APPENDIX A 17. (b)]

10 Schedule 1. **Add a requirement to establish a modern, effective Dealer client complaint handling system.** This is so important that we believe it should be explicitly and separately delineated in the RO under Schedule 1. We need not repeat all the deficiencies and low-ball settlements associated with existing SRO complaint handling rules and practices. These have been well articulated in our numerous reports on complaint handling. The client complaint handling system should be accessible, fair, expeditious and empathetic to retail investors .The complaint handling process must be based upon root cause analysis methodology in order to eliminate the root causes of wrongdoing/rule breaches and client dissatisfaction. We acknowledge that IIROC has taken initial steps in developing

such a system. Abusive complaint handling reflects poorly on the CSA and the industry, in addition to adding to investor grief and financial distress.

All material changes to complaint handling rules should be subject to public consultation and formal CSA approval.
NOTE: Kenmar urge the CSA to provide more detail and a much higher level explanation of core principles and standards that they expect of the new SRO/industry as regards complaint handling. See for example, ASIC RG 271 Internal Dispute Resolution (57 pages).
https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf
The New SRO deserves this as a foundation to design its Dealer complaint handling process. The provisions of NI31-103 are wholly inadequate as a baseline.

11. The OBSI interface: **The development of an effective working relationship with OBSI with the goal of improving rules, processes and products and preventing recurrence of harmful systemic issues should be added to SCHEDULE 1 CRITERIA FOR RECOGNITION 12. (2) or listed separately.** This provision will be extremely important when OBSI is provided mandates for binding decisions and systemic issue investigation. It is essential that the loss calculation methodology (making complainants whole) used by OBSI and New SRO are congruent. We're not sure what role New SRO will play in nominating OBSI Directors or as members on the OBSI JRC. In our opinion, New SRO should not have the duty to nominate OBSI Directors , Directors should not represent entities or groups. Director selection should be based on a skills matrix , a governance best practice. If New SRO remains on the JRC, it should be as an equal partner. These issues should be clarified as soon as possible.

12. Appendix A 12 (d) Maintain a whistleblower program. Should the RO not specify that the program must protect the privacy of individuals? Must the program contain financial awards for whistleblowers? Can registrants utilize the OSC program? More specificity is required.

13. The Recognition Order should require New SRO to have in place qualitative and quantitative performance benchmarks that can be used to assess performance. For example, there could be metrics related to cycle time reduction, investor complaint frequency/trends, recurrence controls, monetary sanction collection and the results of a mandatory scheduled investor satisfaction survey. As former GE CEO Jack Welch used to say *"What gets measured gets done".*

We suggest that the RO require New SRO to conduct an annual or bi-annual investor satisfaction survey as it will provide New SRO management (and indirectly the CSA) with valuable insights on how the public perceives the New SRO.

14. The RO should define the minimum frequency of independent third-party reviews [APPENDIX A 7. (2)]. The report of the independent third-party review should be made public for transparency.

New SRO Investor Advisory Panel

|https://mfda.ca/new-iap-faq/ Schedule 3

Generally speaking, the proposed IAP mandate appears to be adequate in order for it to become a meaningful voice for Main Street. The IAP is independent and able to examine any matters within its mandate that its members collectively wish to study. Upon reasonable request, the IAP should be briefed about those matters from New SRO staff/executives. For greater clarity, OBSI issues should be considered as relevant to the mandate of the IAP.

The composition of the IAP includes *representation from across Canada.* Geography is rarely a factor in investor protection. Panel member demographics, on the other hand, often are. These include but are not limited to seniors, indigenous peoples, the handicapped, people of colour, language and the like. An undue emphasis on geographic locale could unduly limit the composition and capability of the IAP.

Panel size: **We recommend a minimum size of seven members rather than five (a quorum would constitute at least 4 members).**

The IAP must be appropriately resourced to be effective. It should have an adequate budget including funding for investor research projects/polling. With respect to "*The IAP may engage in independent research projects as needed to assist the New SRO in the fulfillment of its public interest mandate*. " we suggest adding that the funding of such research will be via New SRO. All research reports shall be publicly posted in the section of New SRO website dedicated to the IAP.

We recommend that New SRO Board must meet with the IAP Chair at least semi-annually. This interaction is vitally important to bring the investor experience into the Board room, especially in the first few years of New SRO.

The liaison between the IAP and the Investor Office makes sense. Resources should be provided by the Office that include the recording of IAP meting minutes and other administrative tasks such as the scheduling of meetings and web-posting.

It should be expected that New SRO IAP will communicate with the CSA IAP and the OSC IAP. New SRO should dedicate a section of its website to the IAP for publication of meeting agendas, research, comment letters and the Annual Report.

The honorarium provided to IAP Members should be commensurate with the level of effort expected and sufficient to attract high caliber participants. Expenses incurred to attend meetings should be reimbursed.

We recommend that the draft IAP text be amended to expand on the above mentioned points.

Other ideas for CSA consideration

Titles/ credentialing

The Title Protection Act passed by the Ontario government could add to investor confusion, at least in Ontario .In effect, a new SRO is being created in that Credentialing Bodies (CB) will be recognized by a statutory regulator, the FSRA. These bodies will be setting rules, Codes of conduct and minimum standards, conferring FP and FA title usage to build financial consumer trust. They are also required to have an enforcement arm. There will be multiple CB's all with slightly different approaches. If the chosen standards conflict with New SRO rules or are of a lesser standard, this could cause confusion for retail investors who will trust Reps with the FA or FP title (designation). Will New SRO apply to be approved as a FSRA (or other applicable provincial regulator) FA CB? This need not be decided right now but it should be part of Year 1 planning.

We note that the CSA CFR's provide robust rules regarding misleading titles and designations for securities industry registrants.**In any event , the CSA ought to attempt to harmonize the efforts of the provinces regarding the FA title to prevent investor confusion** .A central national database of approved FA and FP title holders is likely necessary as well.

Complaint brochure and related

Because client complaints are a major emotional and high profile client touch point, we recommend that an integrated New SRO complaints brochure be available for clients on Day One. The last thing New SRO and the CSA needs at the outset is a lot of confused complainants unclear about the way to resolve their complaints. Ideally, a consultation on a new modern complaints handling rule could be released in early 2023 for implementation by summer 2023.Hopefully by then, the fate of OBSI's mandate will have been decided. If Finance grant OBSI banking ECB exclusivity, workload at OBSI will be challenging. Overall, the Dealer client complaint process must be well planned and defined upon New SRO launch to prevent investor confusion. [the substantive feedback obtained from the IIROC consultation, Proposed *Amendments respecting Reporting, Internal Investigation and Client Complaint Requirements* can form the basis for the new rule]

Continuous improvement commitment

We strongly recommend that the RO contain a discrete provision for continuous improvement of regulatory effectiveness, efficiency and cycle times (productivity).

Non-permitted activities

Kenmar strongly recommend retaining the existing MFDA rules prohibiting dealing Reps from acting as executors or trustees (except immediate family members). The CSA RO (or other means) should make it clear that an SRO has the right to prohibit such activities by its Members (despite the CSA CFR's permitting this relationship).

Regulation of Robo-advisors for mass market retail clients

It is our understanding that so-called Robo- advisors are regulated by statutory regulators and by IIROC. Given advances in technology and constraints on access to full-service Firms, we expect there will be high retail investor demand for lower

cost digital advice. As we understand the situation ,the difference between the IIROC and Securities Commission regulation relates largely to the level of supervisory touch, frequency of inspections and governance by explicit rules (IIROC) vs high level principles (statutory CSA Commissions).The client base is common-DIY investors. Kenmar believe that it would be wise to locate the regulation of Robos under a single entity to ensure consistency of regulation of this important retail advisory channel. A single regulator would also help reduce investor confusion and provide investor protection fund coverage. **Accordingly, we recommend that all robo-advisors should fall under the New SRO mandate subject to a CSA National Instrument governing digital advice and robust CSA oversight as deemed necessary.**

IIROC arbitration program

This little used program merits a full rethink and update including its governance, regulation, oversight, transparency and utility. As it stands, administrative and arbitrator fees are usually divided equally between the investor and the IIROC Member Firm. The New SRO should consider different measures that could allow for a subsidization of complainant fees related to arbitration through the use of collected fines (restricted funds). An alternative option might be to increase the OBSI compensation cap to $500K and eliminate arbitration. If arbitration is retained, it should apply to all New SRO Member Firms and be formally highlighted in the RO.

Use of Guidance Notices

Regulatory guidance is given to clarify or resolve an issue or confusion based on an existing set of rules and laws. Guidance is not a replacement of those rules or laws. A guidance notice is the place to help support the industry in clarifying information not to re-write the rule book. Example: In the OEO consultation, IIROC introduced a new regulatory definition ("recommendation"), and supervisory requirement (appropriateness). In effect, IIROC used the guidance process in replacement of a rule making one. **Kenmar recommend that New SRO RO require discussion of proposed guidance with the CSA Oversight team to ensure appropriate use of Guidance.**

SRO Regulatory exemptions

Rules and regulations are developed after deep thought and an extensive public consultation process. When these rules and regulations are approved, investors expect them to be followed .What most retail investors do not know is that in the investment industry, mechanisms exist to exempt Firms and individuals from the published rules. In our view, when a published standard/rule can be exempted without public consultation, there are in effect no rules. Exemptions to rules are overwhelmingly in favour of industry participants. Should the CSA permit New SRO to grant exemptions to rules it may have previously approved? We urge the CSA to clarify its policy regarding what rights New SRO would have in granting exemptions to rules and how they are granted. We appreciate that New SRO must provide a summary of all discretionary exemptions granted to individuals, Dealer Members, and marketplace participants during the previous quarter

Conclusion

The foundation of a dramatically improved SRO appear to have been laid. Kenmar stand ready to support the healthy development of this new regulator. As with any undertaking of this complexity, there will be mis-steps. The key to success is to quickly resolve issues in real time and listen to the voice of the retail investor.

Kenmar will use the following indicators to assess the effectiveness of New SRO:

- Board governance that places, and is perceived to place, investor protection and the Public interest as top priorities
- High professional standards for advice givers
- Enforcement culture and activity is focussed on corrective action/ improvement , not just deterrence - *Don't just fix the problem, fix the process*
- Enhanced enforcement and transparency on Member Firms / increased accountability of Member Firms
- Improved retail investor engagement
- Expanded protection of seniors and vulnerable clients
- Implementation of a world class Dealer complaint handling rule
- An increased emphasis on investor restitution including disgorgement
- An improved KYC system (including enhanced client risk profiling)
- Sanctions and fines designed to provide credible deterrence , resolve systemic issues/root causes and provide restitution to harmed investors
- A demonstrably serious approach re addressing investment fraud, forgery and theft.

Investors should be kept well informed of the regulatory changes taking place and how the changes will affect their relationship with New SRO dealers.

CSA Registration check should continue to reliably function without interruption as it is an important investor protection tool.

Permission is granted for public posting of this Comment letter.

We sincerely hope this feedback proves useful to CSA policy and decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President
Kenmar Associates

Wealthsimple

400 - 80 Spadina Avenue
Toronto, ON M5V 2J4

DELIVERED BY EMAIL

June 23, 2022

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

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Corporate Secretary and Executive Director, Legal Affairs
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Dear Sirs/Mesdames:

Re: CSA Staff Notice and Request for Comment 25-305 - *Application for Approval of the New Investor Protection Fund*

Wealthsimple is pleased to provide comments to the Canadian Securities Administrators (CSA) on their application for approval of the New Investor Protection Fund. We support the CSA's efforts to amalgamate the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) into a single self-regulatory organization (the New SRO) and to amalgamate the Canadian Investor Protection Fund (CIPF) and the MFDA Investor Protection Corporation (MFDA IPC) into a single compensation / contingency fund (the New IPF).

Our mission is to help everyone achieve financial freedom, no matter who they are or how much they have. We started by providing smart, simple investing, without the high fees and account minimums associated with traditional managed-investment accounts. Since then, our platform has evolved to offer investment services for people who want a professionally managed portfolio, trading and crypto services for people who want to do it themselves, tax-filing software, and simple ways to save and send money. Wealthsimple now serves more than 2.5 million Canadians, three quarters of whom are aged 40 or under, with AUA topping $15B.

Feedback on draft New IPF Coverage Policy

We strongly support providing the protection of the New IPF to clients of all participating organizations of the New SRO. We are committed to making investing more accessible, safer and less intimidating for Canadians.

This commitment extends to crypto investing and we are concerned both about the exclusion of crypto assets, crypto contracts and other crypto-related property (collectively Crypto Property) from the draft New IPF Coverage Policy and the way in which such a material amendment to the current CIPF and MFDA IPC coverage policies was introduced.

The New IPF Draft Coverage Policy states:

> *Property received, acquired or held by, or in the control of, a New SRO Member that consists of crypto assets, crypto contracts, or other crypto-related property is not eligible for New IPF coverage. For greater certainty, Property consisting of securities of a mutual fund or exchange traded fund that invests in or holds crypto assets, crypto contracts or other crypto-related property is, however, eligible for New IPF Coverage.*

While other changes within the draft New IPF Coverage Policy are largely housekeeping in nature and required to bring CIPF and MFDA IPC coverage into a single policy, this Crypto Property specific carve out is not found in either of the existing policies. Absent this carve out, Crypto Property that members of the New SRO are entitled to deal and hold on behalf of clients would be covered under the draft New IPF Coverage Policy as well as the current CIPF and the MFDA IPC coverage policies.

Why Crypto Property should be covered

In 2019, a large number of the 52 commenters that responded to Joint CSA-IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms* indicated that there should be member funded insurance such as CIPF or CDIC for Crypto Trading Platforms (CTPs), noting that they would expect CTPs that became IIROC registered platforms to be CIPF members. In 2021, in response to these comments the CSA confirmed that CTPs would be CIPF members and that coverage would be offered by CIPF on a case by case basis. Generally, we support this approach, and believe that member funded insurance for Crypto Property would offer very real investor protection to Canadians that use regulated CTPs.

The language in the draft New IPF Coverage Policy instead includes a blanket exclusion for all Crypto Property, an approach which contradicts these previous statements, fails to address the large number of comments received and offers no investor protection.

In addition, the exclusion raises a number of points that are not addressed in the notice including the following:

- New SRO members dealing only in Crypto Property would effectively be exempt from their regulatory requirement to participate in a compensation fund.
- This does not square with the approach taken at the time the MFDA IPC was created where, in response to commenters suggesting that there was no need for an investor protection fund given the low risk of mutual funds, the commissions confirmed that having no fund at all would not be acceptable.
- Client disclosures will be difficult and confusing. For New SRO Members that only offer Crypto Property, they will be members but not actually be participating in the New IPF. New SRO Members that offer both Crypto Property and non-Crypto Property will have to differentiate coverage, possibly within the same account, between different types of investments a single client holds.
- In the event of a bankruptcy, clients of New SRO Members that deal in both Crypto Property and non-Crypto Property will have to deal with the New IPF for their non-Crypto Property claims and then participate in the bankruptcy proceedings personally for their Crypto Property. This would effectively unwind the simplification and cost-savings that IPFs provide to investors and to participants in the bankruptcy proceedings.
- No rationale or analysis for the exclusion of Crypto Products has been provided for comment or consideration (see below for further details).

Overall, the language in the draft New IPF Coverage Policy runs contrary to previous statements of the CSA and public comments they received, it will weaken investor protection and confidence in New SRO Members while creating confusion.

Such a material amendment deserves significant consultation

We support the CSA's ongoing efforts to strengthen the oversight of crypto asset trading platforms and believe that there is a need for broad and transparent consultation among policymakers and regulators to achieve the appropriate balance to regulating crypto asset platforms that protects investors and promotes responsible innovation.

If CIPF were to amend their coverage policy today to add the above Crypto Property carve out, or if the New IPF were to do so after being established, such an amendment would be classified as a public comment amendment under either fund's respective Memorandum of Understanding. To carry out a public comment amendment the relevant IPF has to take certain steps to support the amendment and engage the public. These steps include proving the following:

- a letter to the CSA outlining how it has taken the public interest into account in developing the amendment and why the amendment is in the public interest;
- a notice for public comment including:
    - written analysis detailing the nature, purpose and effect of the amendment;

- the possible effects of the amendment on investors, issuers, registrants, other market participants, the SRO and the capital markets generally;
- Context and relevant issues considered and any alternative approaches considered; and
- a request for public comment.

Following this, the CSA would normally consider if it was in the public interest and if the relevant IPF had provided sufficient analysis to support the amendment.

The above amendment process provides transparency and sufficient information to engage in meaningful consultation. We are concerned that this amendment is being proposed without comprehensive analysis of its nature, purpose and effect or the benefit of consultation on these points.

We hope that our comments will be considered positively by the CSA and helpful in establishing the New Investor Protection Fund. We welcome the opportunity to discuss our comments with you.

Yours very truly,

"Blair Wiley"

Blair Wiley
Chief Legal Officer

cc: Evan Thomas, *Wealthsimple*

NATIONAL BANK

June 23rd, 2022

VIA ELECTRONIC MAIL

The Secretary
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Re: CSA Staff Notices and Requests for Comment 25-304 – Application for Recognition of New Self-Regulatory Organization and 25-305 – Application for Approval of New Investor Protection Fund

Dear Sirs/Mesdames,

National Bank of Canada appreciates this opportunity to comment on the proposed framework described in CSA Staff Notices and Requests for Comment 25-304 and 25-305 (the "**Proposals**"). We commend the Canadian Securities Administrators' initiative to enhance self-regulatory alignment and harmonization throughout Canada, by fostering fair and efficient capital markets with the ability to innovate and adapt, while maintaining strong investor protection and public confidence.

We note that despite being in full agreement with the necessity for a short timeline to implementation of the Proposals, the brevity of the comment period allotted for such broad and far-reaching changes has forced us to focus on a handful of high-level issues only. We respectfully submit that the CSA should provide adequate timeframes allowing stakeholders to consider the impacts and discuss the repercussions of proposals, to enable them to provide useful and informed comments. Having been active participants in efforts of the *Conseil des fonds d'investissement du Québec* (CFIQ), the Investment Funds Institute of Canada (IFIC) and the Investment Industry Association of Canada (IIAC) to analyze and comment the Proposals, we have seen how many practical questions the Proposals raise.

While we agree with many aspects of the Proposals, we have the following comments aimed essentially at promoting a harmonized self-regulatory environment and a level playing field for industry participants and investors.

Self-Regulation

We first wish to express serious concern in respect of the lessening of the industry's role, which has been relegated to a minority and advisory-only participation in all significant instances within the framework set forth in the Proposals. We are of the view that an integral component of self-regulation has been removed as a result. Industry participants recognize how crucial market integrity and public confidence are to their success and remain firmly engaged to these ends. Their familiarity with day-to-day issues and challenges, their inherent understanding of the issues at play and their agility to evolve render them best suited to build, enforce and adapt the rules that regulate them. Their unique perspective cannot and should not be discounted.

We caution the CSA against veering into regulation, as opposed to self-regulation, in the implementation of the Proposals; transparency in the decisional processes will be key. With a minority of industry representatives composing the new entity's board of directors and its committees, and regional councils being stripped of the decisional roles formerly exercised by district councils, it will be essential that industry participants' voices be heard nonetheless. Ultimately, National Bank will continue to be a committed and active participant in the industry, but cannot consider the new organisation as a self-regulatory one and will refer thereto as "New RO" for the purposes hereof.

No Duplication of Forums

We salute the investor education and outreach mandates of the new Investor Office and Investor Advisory Panel that are described as part of the Proposals. These goals are a cornerstone of Canadians' financial success and we are strong proponents of financial literacy and investor education. We do wish to express our reluctance at seeing additional forums be created that would appear to be duplicative of certain already in existence[1], and would urge the CSA to ensure the respective mandates of all such forums are either mutually exclusive or carefully coordinated, to avoid creating investor confusion through competing messages or excessive "noise", all funded by regulatory fees ultimately borne by investors.

Mutual Fund Dealing Representatives

We enthusiastically welcome the establishment of a new category of mutual funds only "registered representatives" within investment dealer firms, although we question why such representatives will be subject to a higher regulatory burden in order to engage in the same activities as mutual fund dealer representatives. Indeed, if a Canadian mutual fund dealing representative moves from a mutual fund dealer to an investment dealer and remains limited to

[1] By way of example : https://www.osc.ca/en/investors/investor-protection; https://www.osc.ca/en/investors/investor-advisory-panel; https://lautorite.qc.ca/en/general-public/about-the-amf/financial-products-and-services-consumer-advisory-council.

dealing in mutual funds only, we fail to see any distinction in the resulting proficiency and supervisory needs. We do not understand the relevance of requiring such a representative to complete the Conduct and Practices Handbook course and be subject to six months' supervision and supervisory reporting in such contexts. This creates two classes of mutual fund dealing representatives, which appears misaligned with the overall goals of the Proposals.

At a minimum, we would urge the CSA to ensure grandfathering to avoid additional requirements be applied to any registered representative moving from a mutual fund dealer firm to an identical role in an investment dealer firm.

Finally, we question whether subjecting mutual fund dealing operations of a dually licensed dealer firm to investment dealer rules would add undue complexity from a financial operations perspective for reporting purposes. We would encourage more in-depth investigation to be conducted on this level to ensure the existing requirements are feasible to comply with.

Introducing / Carrying Arrangements

We salute permitting mutual fund dealers to introduce business to investment dealers, as this will enable mutual fund dealers of all sizes to access exchange-traded funds, as well as seamless technology, regulatory and business upgrades. We question the addition of new section 2430 to the Draft Interim Rules of the New RO, as we believe this creates an irrelevant distinction that disadvantages mutual fund dealers introducing to carrying investment dealers. Requiring them to comply with a set of comprehensive rules that are not tailored to their business appears nonsensical. By way of illustration, we highlight the discrepancy in the rules applicable to directed commissions: the Proposal should not place a mutual fund dealer in a position to have to choose between (a) an enhanced platform offered by a carrying investment dealer and (b) maintaining its existing directed commissions. There are a host of other such impacts that, altogether, may prove prohibitive should a mutual fund dealer be contemplating introducing to a carrying investment dealer.

Further, we emphasize the impact this rule would have on a mutual fund dealer choosing to move to an investment dealer's platform in the near future. First, it will have to adapt its business to meet the requirements under Investment Dealer and Partially Consolidated Rules as of 2023, and then, it will be required to adapt again to meet the requirements of the New RO Rules once those have been finalized. In a rapid-paced, heavily regulated environment where change is constant, signing up for additional rule changes may be enough to discourage any mutual fund dealer firm from considering this option.

Quebec-Specific Harmonization Matters

We praise the *Autorité des marchés financiers*, the CSA and IIROC Quebec for the Québec Requirements that were included in the Proposals. As a Quebec-based institution, we know and understand the importance of maintaining many of these essential Quebec-specific elements. We do, however, have a strong bias for level playing fields and are disappointed with certain fundamental distinctions that were retained as part of the Proposals, with no added value to the investing public, in our view.

While we appreciate that the role of the *Chambre de la sécurité financière* is not within the CSA's purview, we submit that the Quebec government should reflect on the future role of the *Chambre*. Both IIROC and the MFDA have proven track records in terms of discipline and continuing education; New RO will be well equipped to take on the mandate for Quebec representatives. Having double accountability to separate regulators in Quebec – with the added costs ultimately borne by Quebec investors – is not aligned with the best interests of Quebec's investors and financial industry. If Quebec is to recognize New RO, it should adhere to it fully, without creating a two-pronged regulatory system that cannot be fully aligned and coordinated despite everyone's best intentions or efforts.

The same is true with respect to investor protection fund coverage in Quebec. Again, while authority lies outside of the CSA's purview in this regard, we invite the Quebec government to foster alignment on the coverage granted investors throughout the country, in discussion with its counterparts, rather than maintain different indemnification funds. If protection against fraud is a desirable and necessary goal in Quebec, we do not believe it should be any different outside Quebec, and vice versa in respect of insolvency protection.

Further, subjecting complaints and disputes of Quebec investors to a separate regulatory framework is counter-productive and confusing. Based on our experience, complaints and disputes of Quebec investors are very similar in nature when compared to those of investors outside Quebec. Therefore, we strongly support full harmonization on these matters. In our view, the protections necessary to ensure Quebec investors continue to thrive are otherwise well accounted for in the Quebec Requirements.

Logistics of Transition

The Proposal is silent with respect to any transitional grace periods pertaining to amending client facing disclosures, documents and signage to reflect the names and logos of the yet-to-be-named New RO and New IPF. We emphasize the expansive efforts that will be required in this regard and respectfully submit, in line with our ESG commitments and values, that transition periods in this matter should not lead to wasting precious resources, whether financial, human or material.

We also note that while New RO's rulebook will apply as of the end of a transition period of at least one year, there is no outside date or deadline built into the Proposals to ensure momentum is maintained to reach consensus on a new rulebook once New RO is in existence. As such, the uncertainty arising out of the ensuing transition period could last indefinitely.

We believe clear timeframes should be set out to ensure orderly transitions, with no duplication of efforts or costs, that would ultimately be confusing to all stakeholders.

That said, we wish to commend the CSA for providing a streamlined transition process with current registrations being automatically transposed into New RO, avoiding huge administrative burdens for all involved.

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We thank you for your consideration of the foregoing comments in regard to the Proposals. Should you require any further information or have any concerns with respect thereto, please do not hesitate to contact us.

Yours truly,

NATIONAL BANK OF CANADA

Per: 

Martin Gagnon
Executive Vice-President
Wealth Management

BANQUE NATIONALE

23 juin 2022

PAR COURRIER ÉLECTRONIQUE

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Objet: Avis de consultation du personnel des ACVM 25-304 – Demande de reconnaissance du nouvel organisme d'autoréglementation et 25-305 – Demande d'acceptation du nouveau fonds de garantie

Mesdames/Messieurs,

La Banque Nationale du Canada apprécie cette occasion de commenter le cadre proposé décrit dans les avis de consultation du personnel des ACVM 25-304 et 25-305 (les « **propositions** »). Nous saluons l'initiative des Autorités canadiennes en valeurs mobilières visant à améliorer l'alignement et l'harmonisation de l'autoréglementation dans l'ensemble du Canada, en favorisant des marchés financiers justes et efficaces, en mesure d'innover et de s'adapter, tout en maintenant une solide protection des investisseurs et la confiance du public.

Nous notons que, même si nous sommes entièrement d'accord avec la nécessité d'un court délai pour la mise en œuvre des propositions, la brièveté de la période de commentaires prévue pour des changements aussi vastes et profonds nous a obligés à nous concentrer seulement sur quelques questions de haut niveau. Nous soumettons respectueusement que les ACVM devraient prévoir des délais suffisants pour permettre aux intervenants d'examiner les répercussions des propositions et d'en discuter, afin de leur permettre de formuler des commentaires utiles et éclairés. Ayant participé activement aux efforts d'analyse et de commentaires à l'égard des propositions qu'ont entrepris le Conseil des fonds d'investissement du Québec (CFIQ), l'Institut des fonds d'investissement du Canada (IFIC) et l'Association canadienne du commerce des valeurs

mobilières (ACCVM), nous constatons les nombreuses questions concrètes que les propositions suscitent.

Bien que nous soyons d'accord avec de nombreux aspects des propositions, nous avons formulé les commentaires suivants qui visent essentiellement à promouvoir un environnement d'autoréglementation harmonisé et des règles équitables pour les participants du secteur et les investisseurs.

Autoréglementation

Nous tenons d'abord à exprimer notre sérieuse préoccupation quant à la diminution du rôle de l'industrie, qui a été reléguée à une participation minoritaire et consultative seulement dans toutes les instances importantes dans le cadre établi par les propositions. Nous sommes d'avis qu'une partie intégrante de l'autoréglementation a dès lors été retranchée. Les intervenants du secteur reconnaissent l'importance cruciale de l'intégrité du marché et de la confiance du public pour leur succès et demeurent fermement engagés à cet égard. Leur connaissance des enjeux et des défis quotidiens, leur compréhension inhérente des questions en jeu et leur agilité à évoluer les rendent les mieux placés pour élaborer, appliquer et adapter les règles qui les régissent. Leur point de vue unique ne peut et ne doit pas être écarté.

Nous suggérons aux ACVM d'être vigilants quant à ce virage vers la réglementation, plutôt que l'autoréglementation, dans la mise en œuvre des propositions; la transparence des processus décisionnels sera essentielle. Avec une minorité de représentants de l'industrie composant le conseil d'administration et les comités de la nouvelle entité, ainsi que les conseils régionaux dépouillés des rôles décisionnels autrefois exercés par les conseils de district, il sera néanmoins essentiel que la voix des acteurs de l'industrie se fasse entendre. Ultimement, la Banque Nationale continuera d'être un acteur engagé et actif de l'industrie, mais ne pourra considérer le nouvel organisme comme étant d'autoréglementation, et y fera référence comme étant un « Nouvel OR » aux fins des présentes.

Éviter la duplication de forums

Nous saluons les mandats d'éducation et de sensibilisation des investisseurs du nouveau comité consultatif des investisseurs et du bureau des investisseurs qui sont décrits dans les propositions. Ces objectifs sont la pierre angulaire de la réussite financière des Canadiens et nous sommes de fervents promoteurs de la littératie financière et de l'éducation des investisseurs. Nous tenons à exprimer notre réticence à voir se créer des forums supplémentaires qui sembleraient faire double emploi avec certains déjà existants[1], et exhorteraient les ACVM à s'assurer que les mandats respectifs de tous ces forums soient mutuellement exclusifs ou soigneusement coordonnés, afin d'éviter de créer de la confusion chez les investisseurs par des messages concurrents ou du « bruit » excessif, le tout financé par des frais réglementaires ultimement supportés par les investisseurs.

[1] A titre d'exemple :https://www.osc.ca/en/investors/investor-protection; https://www.osc.ca/en/investors/investor-advisory-panel;https://lautorite.qc.ca/fr/grand-public/a-propos-de-l-amf/produits-et-services-financiers-conseil-conseil-a-la-consommation.

Représentants en épargne collective

Nous accueillons avec enthousiasme la création d'une nouvelle catégorie de « représentants inscrits » en fonds d'investissement au sein des sociétés de courtage en valeurs mobilières, bien que nous nous demandions pourquoi ces représentants seront assujettis à un fardeau réglementaire plus élevé afin d'exercer les mêmes activités que les représentants de courtiers en épargne collective. En effet, si un représentant canadien en épargne collective passe d'un courtier en épargne collective à un courtier en valeurs mobilières et qu'il demeure limité à la négociation d'OPC seulement, nous ne voyons aucune distinction à faire entre les exigences de compétence et de surveillance qui en découlent. Nous ne comprenons pas la pertinence d'exiger d'un tel représentant qu'il suive le cours relatif au Manuel sur les normes de conduite et qu'il fasse l'objet d'une surveillance de six mois et d'un rapport de surveillance dans de tels contextes. Cela crée deux catégories de représentants en épargne collective, ce qui ne semble pas correspondre aux objectifs généraux des propositions.

À tout le moins, nous recommandons vivement aux ACVM de « grandpériser » la situation de tout représentant inscrit qui passe d'une société de courtage en épargne collective à une société de courtage en valeurs mobilières occupant un rôle identique, pour éviter l'application d'obligations supplémentaires à son égard.

Enfin, nous nous questionnons sur l'impact d'imposer, pour les firmes qui auront la double inscription, les obligations d'un courtier en valeurs mobilières aux activités de courtage en épargne collective en ce qui concerne les opérations financières et la reddition de compte assortie. Nous encourageons l'étude plus en profondeur de ces questions pour s'assurer que les exigences applicables puissent être respectées.

Courtiers remisiers et chargés de compte

Nous saluons le fait de permettre aux courtiers en épargne collective d'introduire leurs services aux courtiers en valeurs mobilières, car cela facilitera leur accès aux fonds négociés en bourse, ainsi qu'à des mises à niveau aisées à l'égard des technologies, de la réglementation et des affaires. Nous remettons en question l'ajout du nouvel article 2430 aux projets de règles provisoires du Nouvel OR, car nous estimons que cela crée une distinction inadéquate qui désavantage les courtiers en épargne collective qui font appel à des courtiers chargés de comptes. Exiger d'eux qu'ils se conforment à un ensemble de règles globales qui ne sont pas adaptées à leurs activités semble insensé. À titre d'exemple, nous soulignons l'écart entre les règles applicables aux commissions dirigées : la proposition ne devrait pas placer le courtier en épargne collective dans une position le forçant à choisir entre (a) une plateforme améliorée offerte par un courtier en valeurs mobilières chargé de comptes et (b) le maintien de ses commissions dirigées existantes. Il existe une foule d'autres répercussions qui, dans l'ensemble, pourraient se révéler prohibitives si un courtier en épargne collective envisage de faire appel à un courtier en valeurs mobilières chargé de comptes.

De plus, nous insistons sur l'incidence que cette règle aurait sur le courtier en épargne collective qui choisirait de passer à la plateforme d'un courtier en valeurs mobilières dans un avenir rapproché. Premièrement, la firme devra adapter ses activités pour répondre aux exigences des règles visant les courtiers en placement et des règles partiellement consolidées du Nouvel OR à

compter de 2023, puis elle devra s'adapter de nouveau pour satisfaire aux exigences des règles définitives du Nouvel OR une fois celles-ci finalisées. Dans un contexte fortement réglementé où les changements sont constants et où l'évolution est rapide, le fait d'avoir à faire face à des modifications réglementaires supplémentaires pourrait suffire à dissuader les courtiers en épargne collective d'envisager cette option.

Questions d'harmonisation propres au Québec

Nous félicitons l'Autorité des marchés financiers, les ACVM et l'OCRCVM Québec pour les exigences québécoises incluses dans les propositions. En tant qu'institution du Québec, nous savons et comprenons l'importance de maintenir bon nombre de ces éléments essentiels propres au Québec. Toutefois, nous avons un fort parti pris pour les règles équitables et sommes très préoccupés par certaines distinctions fondamentales qui ont été conservées dans le cadre des propositions, sans valeur ajoutée, à notre avis, pour le public investisseur.

Bien que nous comprenions que le rôle de la Chambre de la sécurité financière ne soit pas du ressort des ACVM, nous soumettons que le gouvernement du Québec devrait réfléchir au rôle futur de la Chambre. Tant l'OCRCVM que l'ACFM ont fait leurs preuves en matière de discipline et de formation continue; le Nouvel OR sera bien outillé pour assumer le mandat pour les représentants du Québec. Le fait d'avoir un double assujettissement à des organismes de réglementation distincts au Québec – avec les coûts supplémentaires ultimement assumés par les investisseurs québécois – ne cadre pas avec les intérêts des investisseurs et de l'industrie financière du Québec. Si le Québec veut reconnaître le Nouvel OR, il doit y adhérer pleinement, sans créer un système de réglementation à deux volets qui ne peut être pleinement harmonisé et coordonné, malgré les meilleures intentions et les meilleurs efforts de tous.

Il en va de même pour la couverture offerte par les fonds de protection des investisseurs au Québec. Encore une fois, bien que cette question ne soit pas du ressort des ACVM, nous invitons le gouvernement du Québec à favoriser l'harmonisation de la couverture accordée aux investisseurs du pays, dans ses échanges avec ses homologues, plutôt que de maintenir des fonds d'indemnisation différents. Si la protection contre la fraude est un objectif souhaitable et nécessaire au Québec, nous ne croyons pas qu'elle devrait être différente à l'extérieur du Québec, et vice versa, en ce qui concerne la protection contre l'insolvabilité.

De plus, à notre avis, soumettre les plaintes et les différends des investisseurs québécois à un cadre réglementaire distinct est contre-productif et déroutant. Selon notre expérience, les plaintes et les différends des investisseurs québécois sont de nature très semblable à ceux des investisseurs hors Québec. Par conséquent, nous appuyons fortement l'harmonisation complète de ces questions. Nous sommes d'avis que les protections nécessaires pour assurer la prospérité des investisseurs québécois sont par ailleurs bien prises en compte dans les exigences prévues pour le Québec.

Logistique de transition

La proposition est muette quant aux éventuels délais de grâce ou transitoires relatifs à la modification des affiches, communications et documents clients pour refléter les noms et logos du Nouvel OR et du nouveau fonds de garantie, qui n'ont pas encore été nommés. Nous insistons

sur les efforts considérables qui seront nécessaires à cet égard et soumettons respectueusement, conformément à nos valeurs et à nos engagements en matière d'ESG, que ces périodes de transition ne devraient pas entraîner le gaspillage de ressources précieuses, qu'elles soient humaines, matérielles ou financières.

Nous notons également que, même s'il les prévu que le manuel des règles du Nouvel OR s'appliquera à la fin d'une période transitoire d'au moins un an, aucune date ou échéance ultime n'est prévue dans les propositions pour assurer le maintien de l'élan nécessaire pour parvenir à un consensus sur un nouveau manuel de règles une fois que le Nouvel OR aura été créé. Par conséquent, l'incertitude découlant de la période de transition qui s'ensuivra pourrait durer indéfiniment.

Nous croyons qu'il faudrait établir des échéanciers clairs pour assurer une transition ordonnée, sans dédoublement d'efforts ou de coûts, ce qui, au bout du compte, créerait de la confusion chez toutes les parties prenantes.

Cela dit, nous tenons à féliciter les ACVM d'avoir simplifié le processus de transition en ayant prévu le transfert automatique des inscriptions actuelles dans le Nouvel OR, évitant ainsi d'énormes fardeaux administratifs pour toutes les parties concernées.

***

Nous vous remercions de l'attention que vous porterez aux commentaires qui précèdent concernant les propositions. Si vous avez besoin d'autres renseignements ou si vous avez des préoccupations à cet égard, n'hésitez pas à communiquer avec nous.

Veuillez agréer, Monsieur, l'expression de mes sentiments distingués.

BANQUE NATIONALE DU CANADA

Par : 

Martin Gagnon
Premier vice-président à la direction,
Gestion de patrimoine

IIAC ACCVM
Investment Industry Association of Canada Association Canadienne Du Commerce Des Valeurs Mobilières

June 24, 2022

Submitted via Email

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

Attention:

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comments@osc.gov.on.ca

Me Philippe Lebel, Corporate Secretary
and Executive Director, Legal Affairs
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Re: CSA Staff Notice and Request for Comment 25-304 *Application for Recognition of New Self-Regulatory Organization* (the "New SRO Consultation") and CSA Staff Notice and Request for Comment 25-305 *Application for Approval of the New Investor Protection Fund* (the "New Investor Protection Fund")

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the "IIAC") is the leading national association representing investment firms that provide both products and services to Canadian retail and institutional investors.

Our members manufacture and distribute a variety of securities including mutual funds and other investment funds. They provide a diverse array of portfolio management, advisory and non-advisory services.

Our members provide carrying broker services and include introducing brokers.

The IIAC is committed to the service of the investing public. As a representative of the dealers providing the majority of the wealth distribution, trading and underwriting services in Canada, the IIAC is able to provide a knowledgeable and considered contribution to the development of a single, enhanced pan-Canadian self-regulatory organization ("SRO").

We greatly value the opportunity to comment on the proposed frameworks in CSA Staff Notices and Requests for Comments 25-304 and 25-305. We also appreciate and respect the importance of continuing to positively contribute to the development of the new SRO beyond this very brief comment period which does not permit a comprehensive analysis of all considerations surrounding a successful new SRO.

EXECUTIVE SUMMARY

The IIAC continues to support the development of a single, enhanced new SRO and the CSA's efforts to date in this regard.

Some key recommendations include the following:

Operational Considerations

i) All activity approved by the Mutual Fund Dealers Association (the "MFDA") at the time interim rules come into effect should be deemed approved by the New SRO without requiring further proficiency upgrades for those who work at dealers choosing to integrate platforms.

ii) A mutual fund only dealer or distribution channel addresses the needs of many Canadian investors. It should not be subject to disruption including avoidable cost.

iii) For dealers who choose to integrate platforms while continuing the same or substantially similar activities, an application or exemptive relief process should not be required.

iv) Prompt harmonization within and for the province of Québec through a consolidation of functions currently conducted by Chambre de la Sécurité Financière ("la Chambre") and the AMF to the New SRO and a consolidation of investor protection fund coverage

New SRO Governance

i) In order to effectively set industry standards and regulations, the New SRO must remain informed by industry, who has a keen, front line and deep understanding of the investor needs it services.

ii) Every effort should be made to ensure that industry board members are a realistic reflection of the market:

- The Articles and Draft By-Laws may have further flexibility and refer to a minimum and maximum number of directors, rather than being fixed at 15.

- A skills matrix for proposed Directors should include Member input.

- A final skills matrix should be available to the Governance Committee and to the public and be updated regularly to reflect evolving market and investor needs.

- Governance Committee members should include Industry Directors.

- The meaning of independence should be expanded beyond individuals who have no material relationship to the Corporation or Member and include a requirement for individuals to have independence from securities regulators and securities related advocacy associations.

Industry Advisory Councils/Committees

i) With respect to powers previously exercised by District/Regional Councils, the particulars regarding how Members may seek and obtain approval from the Corporation or Senior Staff and appropriate escalation and appeal procedures remain to be determined and need be subject to fulsome member consultation.

ii) A clear advisory mandate for Regional Councils need be formulated through further member consultation. The proposed National Council should also have formal standing before the Board.

iii) Advisory Committee(s) reflective of executive leadership at various dealer models should be formed as a valuable resource for the New SRO Board.

Public Interest Mandate

i) The New SRO mandate should be expanded to include capital growth, minimizing regulatory inefficiencies and proportionate regulation. The New SRO should be required to conduct and produce a meaningful needs analysis and cost benefit analysis for its proposed or amended rules, policies and guidance.

CSA Oversight

i) The CSA previously rejected a CSA-led regulatory organization. The proposed overarching and prescriptive non-objection framework functionally removes all decision-making autonomy from the New SRO. The New SRO requires sufficient discretion, authority, and deference to enact its mandate.

Transition Considerations

i) Reasonable timelines for both implementation and member consultation should be a priority. With respect to the latter, ongoing, meaningful but efficient member dialogue is necessary to move from interim to final rules within a defined time period.

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I. OPERATIONAL CONSIDERATIONS

a) Proficiency Requirements: MFDA approved registered representatives

Recommendation: MFDA qualifications and oversight fully and properly addressed investor protection concerns. No additional proficiency requirements need be imposed on individuals who are currently Approved Persons by the MFDA, including for those who work for dealers who choose to combine operations or platforms, without changing their permitted activity.

The interim rules have added or maintained unneeded barriers for those dealers' considering integration of their mutual fund and investment dealer platforms. Registered Representatives dealing exclusively with mutual funds at a firm registered as both an Investment Dealer and a Mutual Fund Dealer would now need to complete the CSC/CIF/IFIC course and the CPH course and be subject to a 90-day training program in advance of approval. The Registered Representative will then be subject to 6 months of supervision post-approval (Investment Dealer Rule 2602(3) (vii)) (the "Proficiency Upgrade").

For those firms who wish to simply migrate their MFDA qualified advisors to an IIROC platform, there has been no change in the proficiency requirements for Registered Representatives or Investment Representatives approved to deal exclusively with mutual funds at an investment dealer (Investment Dealer Rule 2553(4)). These proficiency requirements include the completion of the Canadian Securities Course ("CSI") and the Conduct and Practices Handbook Course ("CPH") within 270-days of initial approval (the "270-day Rule"). There has been acknowledgment in the *CSA Position Paper 25-404 - New Self-Regulatory Organization Framework* ("2021 CSA Position Paper 25-404*")* that the 270-day Rule was likely no longer fulfilling its policy objective.

Proficiency requirements should be based solely on the proven competency for the activity conducted by the individual. The corporate structure or platform of a dealer should not play any role. The interim rules place the focus on the corporate structure of the dealer's platform, rather than proven competencies. They also have the unintended consequence of creating two classes of registrants licensed to sell mutual funds: those who are registered through a standalone MFDA platform and those who have had to upgrade their mutual fund proficiency merely because they are part of a combined dealer platform – ie. because of the corporate structure of their dealer.

The Proficiency Upgrade and the 270-day Rule imply the MFDA's current proficiency requirements for individuals selling mutual funds is deficient. It also does not recognize the CE requirements that have been incorporated to enhance proficiency of MFDA registrants and the ongoing MFDA oversight to which they have been subject.

An established and trusted approved person dealing in mutual funds only may also need to step away from servicing clients in order to address the Proficiency Upgrade or 270-day Rule requirements to the detriment of the investor. It also raises considerations of cost and many administrative challenges. With respect to the latter, dealers may need to re-register individuals under the proposed new category of "Investment Representative dealing in mutual funds only who is an employee of a firm registered both an investment dealer and mutual fund dealer" on the National Registration Database, to perform the same activities they have been approved to undertake by the MFDA. This is an unnecessary administrative burden.

Finally, the Proficiency Upgrade is inconsistent with proposed Investment Dealer Rule 2603, Permitted Activities of mutual funds only Registered Representatives and Investment Representatives, which permits individuals approved by the MFDA to trade in exchange-traded funds and exempt market products within 90 days of this Rule coming into effect without a proficiency upgrade.

We recommend that all activity approved by the MFDA at the time interim rules are effective remain approved by the New SRO without further question of a proficiency upgrade.

b) Combining Platforms

Recommendation: It is unnecessary for dealers to undertake an extensive application and exemptive relief process to combine operations/platforms within their currently registered dealers where there is no significant change in activity.

The proposed category of dual-registered firm is counter to the objectives of creating a single, national SRO. Dealer integration should be as seamless and cost effective as possible.

A mutual fund only dealer or distribution channel has shown that it has addressed and continues to address the needs of many Canadian investors. It should not be subject to disruption including avoidable cost.

For dealers who wish to integrate platforms, the IIAC appreciates the need for the New SRO to receive plans from dealers outlining how they intend to achieve the integration. As dealers have been properly registered through either Investment Industry Regulatory Organization of Canada ("IIROC"), MFDA or both, an application process is unnecessary. For dealers who choose to integrate platforms while continuing the same or substantially similar activities, an exemptive relief process should not be required.

c) Introducer/Carrier Broker Arrangements

Recommendation: Investment Dealer Rule 2430 should be removed.

Proposed Investment Dealer Rule 2430 will serve as an inappropriate impediment to both mutual fund dealers and carrying brokers entering into introducer/carrier arrangements The registerable activity conducted by a mutual fund dealer does not change based upon the amount of business it introduces to a carrying broker. The carrying broker is performing well defined back-office functions for the mutual fund dealer.

The significant consequences to the mutual fund dealer of having their business model shift to new capital requirements, compensation models, etc. may render pointless the positive revisions to Investment Dealer Rule 2400.

d) Quebec Harmonization

Recommendation: Full and timely harmonization to the New SRO of functions performed by the AMF and La Chambre, and investor protection fund coverage.

In the 2021 *CSA Position Paper 25-404*, the AMF stated, "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." We appreciate the support of the AMF in recognizing the New SRO and urge a consolidation of functions currently conducted by La Chambre and the AMF to the New SRO and of investor protection fund coverage at the earliest opportunity.

The IIAC strongly disagrees with the proposed requirements in Draft By-Law Number 1, section 2.9 and Schedule 4 Item 12(j), which would require the New SRO to defer its complaint process to the *Act respecting the regulation of the financial sector*, CQLR c. E-6.1 ("LESF") and the *Québec Securities Act*, CQLR, c. V-1.1 ("LVM"). A harmonized, pan-Canadian approach is required. The IIAC also outlined significant concerns specific to LESF/LVM in its 2021 Comment Letter[1].

e) Registration Responsibility

Recommendation: The New SRO should register all individuals it oversees.

It is proposed that the CSA retain responsibility for registering individuals seeking registration as "dealing representative, mutual fund dealer", while the New SRO has responsibility for registering investment dealer dealing representatives. The New SRO should have the registration responsibility for all individuals to improve efficiencies.

II. New SRO Governance

Recommendation: In order to effectively set industry standards and regulations, the New SRO must remain informed by industry, who has a keen, front line and deep understanding of the investor needs it services.

a) Board of Directors:

i) Industry Directors:

Recommendation: Every effort should be made to ensure that Industry Directors on the New SRO Board are a realistic reflection of the investment industry.

In order to effectively set industry standards and regulations, the New SRO must remain informed by industry.

With only six Industry Directors, it will not be possible for the board to have direct representation across business models including scale of business operations. We suggest the Articles and Draft By-Laws have further flexibility and refer to a minimum and maximum number of directors, rather than being fixed at 15.

We note that section 5.3 of Draft By-law Number 1 states:

[1] See https://iiac.ca/wp-content/uploads/IIAC-comments-on-AMF-Complaint-handling.pdf

The Governance Committee will evaluate individual candidates based on their ability to contribute a range of knowledge, skills and experience and having regard for the required composition of the Board and the fact that the Board, as a whole, should be representative of the Corporation's various stakeholders

We encourage the CSA to consult with Members on a skills matrix to be made available to its Governance Committee and to the public and to be updated regularly to reflect evolving market and investor needs.

We note that s. 12.3 of Draft By-law Number 1 requires all members of the Governance Committee to be Independent Directors. Industry board members may also bring value to the Governance Committee, the membership of which should reflect the composition of the Board.

ii) Independent Directors

Recommendation: The meaning of independence should be expanded beyond the reference to individuals who have no material relationship to the Corporation or Member and include a requirement for individuals to have independence from securities regulators and securities related advocacy associations. In addition, the cooling-off period should be reduced to 2-years.

An expanded definition of independence provides both greater assurances and appearances that board members are set apart from past influences and that the New SRO will deliver fair process.

While we appreciate that the CSA modelled the definition of independent on National Instrument 52-110 *Audit Committees*, meaningful distinctions can be made between the objectives of an audit committee for a single issuer and the role of Independent Directors on the Board of Directors of the New SRO.

The meaning of independence outlined in section 1.3 of Draft By-Law Number 1 should be expanded beyond the reference to individuals who have no material relationship to the Corporation or Member to include a requirement for individuals to have independence from securities regulators, federal or provincial agencies responsible for financial sector policy or consumer policy or regulation and securities related advocacy associations.

For example, the By-Laws for the Ombudsman for Banking Services And Investments ("OBSI") note the following categories as requiring a cooling-off period to qualify as independent:

(i) current director, executive committee member, officer or employee of a Self-Regulatory and Industry Entity or have been a director, executive committee member, officer or employee of a Self-Regulatory and Industry Entity in the two (2) years prior to election as a Community Director.
(ii) be a current employee of a federal, provincial or territorial government working in a department or agency responsible for financial sector policy or regulation or consumer policy or regulation or have been an employee of a federal, provincial or territorial government working in a department or agency responsible for financial sector policy or regulation or consumer policy or regulation if the employee or former employee is or is perceived to be insufficiently independent and impartial as determined by the Board having regard to such factors as the Board considers relevant, including the nature of the employment or former employment, the employee's or former employee's skills, experience, and reputation, and in the case of former employees, the length of time that has passed since the relevant employment ended

The OBSI requires a 2-year cooling off period, which the IIAC believes is appropriate.

b) Industry Advisory Committees and Councils

Recommendation: Further consideration need be given to the most effectual Industry Advisory Committees/Councils who require clear mandates and Board access.

i) District/Regional Council

In general, the Draft By-Law Number 1 and Interim Investment Dealer/Mutual Fund Dealer Rules remove formal responsibilities from District/Regional Councils and assign the responsibility to the Corporation or New SRO Staff, including for proficiency exemptions, business plan considerations, and the nomination of hearing committees. The particulars regarding how Members may seek and obtain approval from the Corporation or Senior Staff and appropriate escalation and appeal procedures remain to be determined and should be subject to fulsome member consultation.

Section 10.2(2) of By-Law Number 1 provides that the Board may appoint one or more ex-officio members of District/Regional Council. As these councils are advisory in nature, the appointment of or invitation to ex-officio members may be at the election of the Regional Council.

A clear advisory mandate for Regional Councils should be formulated through further member consultation.

ii) National Council

The IIAC supports the creation of a National Council as described in the CSA's FAQs respecting the New SRO's Interim Rules as follows:

> The National Council will be comprised of the Chairs and Vice-Chairs of each Regional Council and will act as a forum for cooperation and consultation among the Regional Councils and provide recommendations on regulatory policy matters.

To assist with effective, efficient industry regulation, the National Council should have formal standing before the Board at each meeting.

iii) Other Advisory Committees

The IIAC supports section 12.7 of By-Law Number 1, which empowers the Board to appoint such advisory bodies as it may deem advisable and may delegate power of appointment to a director, officer, committee or employee of the Corporation.

We appreciate the New SRO will be reviewing its Advisory Committees and wishes to do so in consultation with its Members.

In continued efforts to ensure valuable and operational regulation, we suggest an Advisory Committee(s) reflective of executive leadership at various dealer models as a valuable resource for the New SRO Board.

c) New SRO Public Interest Mandate

Recommendation: The New SRO mandate should be expanded to include capital growth, minimizing regulatory inefficiencies and proportionate regulation.

The IIAC supports the public interest mandate set out in section 2.1 of Draft By-Law Number 1. It should be expanded to include:

(i) encouraging capital formation and growth.
(ii) fostering fair, efficient and competitive capital markets and confidence in those markets.
(iii) eliminating duplicative costs and minimizing regulatory inefficiencies.
(iv) advancing proportionate regulation.

In order to meet its public interest mandate, the New SRO should be required to conduct and produce a meaningful needs analysis and cost benefit analysis for its proposed or amended rules, policies and guidance. Reference to a needs analysis and cost benefit analysis should also be included in its mandate.

Similarly, with respect to CSA Oversight (which will be addressed in additional respects further in this letter), at Appendix C of the proposed Memoranda of Understanding (the "MOU"), Joint Review Protocol, paragraph 3(c): filings for public comment Rule Changes, we note that the New SRO is now to file '*data*' for each proposed public rule change and "the Board resolution, including the date that the proposed Rule Change was approved, and *a reasonable explanation of why* the Board has determined that the proposed Rule Change is in the public interest" (subparagraph (ii)). It should be stipulated that the data and 'reasonable explanation of why" include a needs analysis and cost/benefit analysis which is also available for public comment.

d) District Hearing Committees and Appointment

Recommendation: There should be additional consultation on the Appointments Committee which will be evaluating Members to be appointed to the District Hearing Committees.

Section 12.5 of the Draft By-Law Number 1 does not provide any details as to the criteria that the Appointments Committee will consider when determining nominees to appoint to the District Hearing Committees. Given the important role District Hearings currently have in proceedings, nomination criteria should be subject to further input and, when finalized, be made publicly available.

e) Amendment of By-Laws

Recommendation: In order to achieve a harmonious, pan-Canadian, self regulatory framework, securities regulatory authorities and securities commissions should consider, rather than, supersede the rights of Members and be subject to the New SRO's By-laws.

According to s. 18. 1(2) of Bylaw No. 1:

> The right of Members to vote to confirm, reject or amend a By-law, or exercise other rights granted to Members under the Act, is subject to the authority, pursuant to applicable securities laws and the Recognition Orders, of the securities commissions and securities regulatory authorities to make any decisions relating to the By-laws of Corporation.
>
> In the event of an inconsistency between the By-laws and any direction provided by a securities commission or securities regulatory authority to the Corporation, the direction provided by the securities commission or securities regulatory authority will govern.

We suggest that s. 18(1) of By-law Number 1 be removed.

III. CSA OVERSIGHT

Recommendation: Proposed CSA Oversight should be amended to allow the New SRO sufficient discretion, authority, and deference to enact its mandate.

The CSA explained in its 2021 *CSA Position Paper 25-404* that:

ii) They took a fact and data-based approach to the assessment of options, and after careful consideration and analysis, rejected a CSA-led regulatory organization (among the various options) in favour of the creation of a New SRO to address the concerns noted with the current two SRO system.
iii) The New SRO "will continue to provide the industry with the inherent benefits of self-regulation by maintaining a self-regulatory model".

The IIAC supported the above position.

The New SRO requires sufficient discretion, authority, and deference to enact its mandate.

As a result of the proposed enhancements to the governance structure of the New SRO, including the requirement for a majority of independent directors, a comprehensive public interest mandate, and the creation of an investment advisory panel, we believe the level of CSA oversight proposed is excessive and will hinder the New SRO's necessary ability to function as a self-regulatory organization.

Appendix A of proposed MOU states:

> **Non-Objection Process:**
>
> **1. Purposes of non-objection process**
>
> The RRs agree and hereby adopt a non-objection process for the following purposes:
>
> (a) nomination of each candidate for an Independent Director position.
> (b) appointment of the Chief Executive Officer (**CEO**).
> (c) changes to the Board skills matrices.
> (d) changes to the CEO skills sub-matrix; and
> (e) approval of a Board exemption, or an amendment or extension to a Board exemption, from a Rule that could have a significant impact on:
> (i) Members and others subject to [New SRO]'s jurisdiction; or
> (ii) the capital markets generally, including, for greater clarity, particular stakeholders or sectors.
>
> **2. Non-objection criteria**
>
> Without limiting the discretion of each RR, the RRs agree to consider these factors when following the non-objection process:
>
> (a) whether the proposed action subject to the non-objection process is in the public interest.

(b) whether [New SRO] has provided sufficient analysis; and
(c) whether there are conflicts with applicable laws or the terms and conditions of [New SRO]'s recognition.

The non-objection process and criteria is unwarranted. The New SRO has a public interest mandate, an obligation to conduct a sufficient analysis and should not be acting in conflict with applicable laws or the terms and conditions of its recognition. It also has its own enhanced governance structure, including a Board of Directors, comprised mainly of independent directors, to ensure oversight.

The proposed overarching and prescriptive non-objection framework outlined in the MOU functionally removes all decision-making autonomy from the New SRO. For example, the New SRO Board is fettered by the level of CSA oversight, as all exemption requests, extensions or amendments granted by the New SRO Board are subject to CSA non-objection. The Board may not grant the exemption unless it has been vetted by the CSA in advance. Effectively this means that all exemption request decisions are made by the CSA (or principal regulator) rather than the New SRO. If the CSA is directly overseeing all exemptions, any appeal mechanism to the Board of the New SRO is essentially mute.

We recommend that Appendix A of the MOU be removed.

IV. Other Considerations

a) Consolidation Costs

The IIAC recommends the costs of SRO consolidation be paid for by the current SROs Monetary Sanctions funds.

The creation of the New SRO is in the public interest. We therefore recommend that the New SRO use funds collected from Monetary Sanctions to offset all costs associated with its development and implementation.

For further clarity, section 16(1) of the Recognition Order, which permits for monetary sanctions collected by IIROC and MFDA, to be used directly and indirectly in the public interest, should specifically refer to the recovery of these costs.

b) New SRO Transition Considerations

Reasonable timelines for implementation, related costs considerations and member consultation should be a priority. For example, the new name for the New SRO will requires widescale changes across all channels of client communications.

Ongoing, meaningful but efficient member dialogue is necessary to move from interim for final rules within a defined time-period.

c) CSA 25-305 the New Investor Protection Fund

The IIAC appreciates the important roles of the Canadian Investor Protection Fund ("CIPF") and the MFDA Investor Protection Corporation ("MFDA IPC") have. At this time, IIAC members do not have comments on the Draft Coverage Policy, Claims Procedures or Appeal Committee Guidelines.

We suggest that continued use of the name “CIPF” to minimize client and dealer operational disruption.

The IIAC wishes to support the CSA in its consideration of these recommendations. We would be pleased to discuss them with you and answer any questions that you may have in respect of our comments. We encourage you to reach out to us in these regards.

Yours sincerely,

Laura Paglia	*Tim Currie*	*Adrian Walrath*
President & CEO	Managing Director	Managing Director

UNIVERSITÉ LAVAL
Faculté de droit

Groupe de recherche en droit des services financiers

June 27, 2022

Mtre. Philippe Lebel
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RE: CSA Requests for Comment 25-304 and 25-305 – *Application for Recognition of New Self-Regulatory Organization* and *Application for Approval of the New Investor Protection Fund*

Dear Madam,

Dear Sir,

The Groupe de recherche en droit des services financiers ("GRDSF") presents below its comments on Requests for Comment 25-304 and 25-305 issued by the Canadian Securities Administrators ("CSA"), respectively concerning the application for recognition of a new self-regulatory organization ("New SRO") and the application for approval of the new investor protection fund ("New IPF"). We also comment on the transition plan for Québec mutual fund dealers presented by the Autorité des marchés financiers ("AMF") concurrently with the two requests for comment.

Introduction

In June 2020, the CSA released its *CSA Consultation Paper 25-402 - Consultation on the Self-Regulatory Organization Framework* (the "*Consultation Paper 25-402*") to gather comments about relevant issues and the review of the regulatory framework for two self-regulatory organizations, the Investment Industry Regulatory Organization of Canada ("IIROC**"**), which regulates investment dealers, their managers and representatives, and the Mutual Fund Dealers Association of Canada ("MFDA") which regulates mutual fund dealers, their managers and representatives. Following the consultation, on August 3, 2021, the CSA released its *Position Paper 25-404 – New Self-Regulatory Organization Framework* (the "*Position Paper*"), which set out the project to merge the two SROs and create a New SRO, to be deployed in two phases. In May 2022, the CSA gave a more concrete shape to the reform project when it released *Staff Notice and Request for Comment 25-304, Application for Recognition of New Self-Regulatory Organization* and *Staff Notice and Request for Comment 25-305, Application for Approval of the New Investor Protection Fund*. At the same time, the AMF released its transition plan for Québec mutual fund dealers.

In this letter, we set out our comments and observations on the latter notices, based on the briefs we previously submitted during the consultations and on research work completed by the GRDSF since 2007.[1]

Overall, we consider that the changes proposed as part of the reform, and the creation of the New SRO, offer several positive elements that will help increase investor protection. In the comments below we will highlight these positive elements, while at the same time suggesting some areas for further study and possible solutions in order to improve or fine-tune some elements for the implementation of the reform.

An integrated, simplified, specialized and flexible framework

The creation of the New SRO constitutes a step forward and a response to some of the issues raised by the current framework, concerning in particular the risk of investor confusion, the convergence of investment services and the fragmented framework for the providers of such services (including multiple regulatory authorities, the overlapping of their functions, and the variability of investor protection plans), all points raised by the GRDSF research and by other industry stakeholders. This is because the reform will make it possible to simplify and further harmonize the regulation of investment dealers and mutual fund dealers in Canada by placing them under the responsibility of a single, pan-Canadian SRO. However, it should be added that the benefits will be less obvious in

[1] Appendix A lists the main GRDSF publications in recent years that form the basis for the comments and observations made in this letter.

Québec, since mutual fund dealers' representatives will not be directly subject to regulation by the new body.

More specifically, through the creation of the New SRO, the reform will be beneficial because it will offer an **integrated framework**, in other words a framework, designed in a holistic and coherent approach, that is not based on products, but rather on the activities pursued by intermediaries and covers actors offering similar investment services: investment dealers, mutual fund dealers, and their managers and representatives. The approach will also help meet the expectations of investors, who want easy, low-cost access to a broad range of investment products and services to grow their savings, along with consistent legal protection to ensure that their assets are safe. From this standpoint, it would be advantageous, as mentioned in the consultation documents, that the CSA consider eventually submitting other categories of intermediaries offering similar services to the regulation of the New SRO (other dealers, advisors, their respective managers and representatives, etc.) and to continue reflecting on ways to harmonize securities regulation with the regulation of intermediaries in the life insurance sector who provide advice and trade insurance investment products.

In addition, the reform will make it possible for the New SRO to cover both the individual and organizational aspects of investment service provision by intermediaries. Except for mutual fund dealers in Québec, the SRO will regulate and oversee the professional conduct of three groups of players with a central role in service provision: firms, their managers (directors, senior managers, ultimate designated persons, chief compliance officers, branch managers, supervisors, etc.), and their representatives. In the event of a failure by the representative of an investment dealer to act professionally with respect to an investor, the SRO will be able to assess, at the same time, whether the professional failure points to shortcomings in the direction and management of the firm by its managers, and in the supervisory and compliance mechanisms it has put in place. In these circumstances, the New SRO will be able to send a clear message concerning the professional conduct expected in dealings with investors to all the players involved in service provision, and sanction them appropriately if required.[2]

The creation of the New SRO will also help simplify the regulation of the investment services industry throughout the country. However, in Québec, the gains will be less apparent, as we will explain later. A **simplified framework** refers to a framework that simplifies regulatory structures and content in order to avoid or minimize duplication, redundancy and administrative or financial burdens, as well as the risk of confusion

[2] See the monograph on this topic: 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.

arising from the existence of numerous regulatory authorities, intermediary categories and sets of rules. A simplified framework will help promote efficiency by ensuring that implementation costs do not exceed the anticipated benefits while facilitating understanding of the framework by industry players and the general public and minimizing investor confusion. As part of the reform, the merging of two SROs and of the investor protection funds will assist simplification by reducing the number of regulatory authorities and other bodies responsible for overseeing financial intermediaries and investor protection. The creation of the New SRO will, over time, lead to the harmonization of the rules, policies, and compliance and enforcement processes governing investment dealers and mutual fund dealers in Canada, with the exception of the representatives of mutual fund dealers in Québec.

In Québec, the reform will make it possible to gradually make a new group of players subject to the **specialized and flexible oversight** by an SRO, to complement the more general supervision offered by the AMF. This is because mutual fund dealers in Québec and their managers will, following the transition period, also be subject to oversight by the New SRO. We are pleased to see that these players will be subject to an SRO, because it will provide a specific, adapted form of supervision and control for their activities. In addition, the change will make it possible to exercise, in this sector, direct and more extensive control over managers working for mutual fund dealers in Québec. Supervision from the New SRO will not be limited to the chief compliance officer or the ultimate designated person, as currently provided for in *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, but will extend to all directors, senior managers, branch managers, substitute brand managers, etc., who are currently regulated by the MFDA. In this way, all the players involved in the delivery of investment services and investor protection, including managers, will be subject to the professional supervision of an SRO.

In short, we consider that the proposed reform will promote 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.

The public interest mandate of the New SRO

In the *Draft By-Law Number 1 of the New SRO* (the "Draft By-Law"), the CSA highlights the importance of the public interest and sets out a clear mandate for the New SRO. We are pleased to see that this "public interest mandate" is a cornerstone for the creation of the New SRO and will act as the foundation for the central objectives of protecting investors, fostering fair and efficient capital markets and strengthening market integrity

and confidence in an increasingly complex and dynamic environment.[3] Without specifically defining the notion of public interest, the Draft By-Law lists the related functions of the New SRO.

To gain a better understanding of the public interest mandate as it relates to the objective of investor protection, which is our main focus in this letter, it is necessary to define that objective. According to our research, the goal of investor protection is: (1) to ensure the competence, integrity, loyalty, transparency and diligence of member dealers and their managers and representatives so that they act in the best interest of investors;[4] (2) to prevent and minimize the risk of professional failures and breaches by financial intermediaries (firms, managers and representatives) that may lead to financial losses and other harm for investors; (3) to minimize the harm suffered by investors because of such practices and behaviours, if any; and (4) to maintain public trust and ensure the proper operation of the financial sector.

To achieve the objective of investor protection, the regulatory authorities must put in place a series of legal and organizational measures based on prevention, education, assistance, compensation and sanctions for various financial intermediaries. For this purpose, it is important for the public interest mandate planned as part of the reform to include a holistic approach to investor protection.

In the reform currently under way, the Draft By-Law includes several elements of investor protection, and states that the New SRO must act in the public interest in particular by protecting investors from unfair, improper, or fraudulent practices by its members, fostering public confidence in capital markets, facilitating investor education, and so on. We consider, however, that other elements connected with investor protection should be mentioned explicitly, including protecting investors not only against fraud and breach of trust, but also against negligent and incompetent behaviour by financial intermediaries. The prevention of these types of behaviour is an integral part of investor protection, since it relates to the prudence, diligence and competence of financial intermediaries and to the need to guarantee the quality of the services provided. These

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[3] A formula based on a statement by the CSA, in CSA, "Canadian securities regulators highlight CSA 2019-2022 Business Plan achievements", press release dated June 16, 2022, [online]: https://www.securities-administrators.ca/news/canadian-securities-regulators-highlight-csa-2019-2022-business-plan-achievements/(retrieved June 16, 2022).

[4] For more details on the duty of loyalty and acting in the client's best interest, see Raymonde Crête, Martin Côté and Cinthia Duclos, with M-J. Normand-Heisler, "Un devoir légal, uniforme et modulable d'agir au mieux des intérêts du client de détail", Brief submitted for CSA Consultation Paper 33-403 - *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*, Faculté de droit, Université Laval, March 18. 2013, online]: https://www.grdsf.ulaval.ca/system/files/un_devoir_legal_uniforme_et_modulable_dagir_au_mieux_des_interets_du_client_de_detail.pdf (retrieved June 16, 2022).

elements are at the heart of the duty to act as an informed professional that is incumbent on financial intermediaries in order to ensure investor protection, as mentioned above.

The list should also specify the duty of the New SRO to ensure that investor interests play a preponderant role in the supervision of dealers and their managers and representatives. The primacy of the client's interests should be reflected in the prevention, education and sanction measures for financial intermediaries to be adopted by the New SRO. In addition, it is important, as part of its public interest mandate, to state clearly the general duty of member dealers and their managers and representatives to act not only with fairness, honesty and good faith, but also, and above all, with loyalty and diligence in the best interest of their clients.

Under this holistic approach to investor protection, and to complement the disciplinary powers of New SRO, which allow it to set rules, conduct investigations, hold hearings and impose sanctions, it would also be advisable for the New SRO to play a role in compensation, within its public interest mandate. Here, we can only reiterate our proposal that the persons responsible for the disciplinary process at the New SRO should be able to determine the amount paid to compensate clients who have suffered harm, and to add an amount of compensation to the penalty imposed on the intermediaries at fault, similar to the powers given to the courts in administrative and criminal trials.[5] We invite the regulatory authorities to review and assess the possibility of giving the New SRO this power to promote and facilitate compensation for consumers, a core element in the mission of the CSA and AMF.

Maintaining decision-making powers in Québec

As part of the reform, the centralization of powers within the board of directors of the New SRO, and the reduction of the regional councils to an advisory role raises fears, first, concerning the exercise of decision-making functions by persons with the expertise and experience needed to take Québec's differences and specific features into account, including the legal system based on civil-law tradition and the promotion of the French language, two characteristics of Québec society. However, we believe that the requirements as regards Québec in the application for recognition, along with the decision by the AMF to recognize the New SRO, have reduced the concerns in this area.

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[5] See s. 262.1(9) of the *Securities Act*, which gives the Financial Markets Administrative Tribunal ("MAT") the power to issue an order requiring the person to disgorge to the Authority amounts obtained as a result of the non-compliance with securities legislation. In criminal cases, the court may, depending on the circumstances, issue an order to compensate the victim, for example reimbursing the money stolen. See ss. 737.1 and following the *Criminal Code*.

Among the measures planned by the AMF, the power to make decisions about the regulation and supervision of dealer activities in Québec will be exercised, within the New SRO, mainly by people living in Québec. The Québec district of the New SRO will have "clearly defined responsibilities in the matter of regulation, membership, sales compliance, financial compliance"[6] and for the application of rules established for investment dealers and mutual fund dealers. It is also important to note that the "most senior officer responsible for the Québec district shall report directly to the CEO" of the New SRO,[7] a requirement that does not seem to be found within the current hierarchy of the IIROC.

Overall, it appears that, within the New SRO, the decision-making powers and representation of Québec staff members will be at least similar to those currently found at the IIROC. In this way, and despite the recognition of a pan-Canadian SRO, its operations in Québec will maintain the advantages of local regulation by including, in the decision-making mechanism, human resources that have developed relevant expertise and experience in the specific features of this province.

Maintaining the mandate, role and responsibilities of the Chambre de la sécurité financière (the "CSF")

The New SRO will be responsible, ultimately, for supervising the conduct and discipline of all investment dealers and mutual fund dealers in Canada, except the representatives of mutual fund dealers in Québec, who will remain subject to the oversight of the CSF. In addition, firms of mutual fund dealers in Québec will be subject, for the delivery of investment services, to the supervision of the New SRO at the same time as that of the CSF. It is important to note that, during the transition period, the supervision of mutual fund dealers and their managers in Québec will continue to be a responsibility of two organizations, the AMF and the Financial Markets Administrative Tribunal ("MAT").

This specific situation in Québec will allow the CSF to maintain its mission, functions and powers with respect to mutual fund dealers' representatives. Maintaining the powers of the CSF will provide some advantages because of the expertise and experience it has acquired over the years in the field of mutual funds in Québec and its multidisciplinary powers, which allow it to provide supervision for representatives registered in various categories based on their areas of expertise, including mutual funds, insurance and financial planning.

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6 CSA, *CSA Staff Notice and Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization, Appendix A – Application for recognition of the New SRO, Schedule 4 – Québec Requirements*, s. 21(a), [online]: https://www.osc.ca/sites/default/files/2022-05/csa_20220512_25-304.pdf (Retrieved June 14, 2022).

7 *Ibid*., s. 21(c).

However, concomitant supervision by two SROs of mutual fund dealers in Québec represents a breach in the idea of integrated, simplified regulation and the major contribution it can make to investor protection, as discussed above. On this point, we should mention that our studies, based on a systemic approach to investor protection, suggest that the concentration of the power to regulate the conduct and discipline of firms and their managers and representatives in a single organization helps reduce the risk of harm for investors by allowing the adoption of a holistic vision of the rules of conduct applicable, potential and actual deficiencies in the behaviour of the players, and the sanctions applied within firms.[8] In addition, concomitant supervision by two SROs for Québec players in the field of mutual funds significantly reduces the scope of possible responses to the issues of investor confusion, the overlapping powers of the regulatory authorities providing supervision, and variations in investor protection, as discussed above.

Variation in the continuing education requirements for managers is one example of the problems caused by the dual-authority approach to professional supervision in the mutual fund sector in Québec. At the New SRO, it is expected that the continuing education requirements established under the current rules of the IIROC and MFDA will continue to apply to dealers and their managers and representatives in Canada until other unified rules are introduced. However, according to the information presented in the application for recognition of the New SRO, mutual fund dealers in Québec "will continue to be exempted from the New SRO's continuing education requirements for their activities in Québec, considering that the Chambre de la sécurité financière (CSF) is responsible for regulating the continuing education of mutual fund dealers' representatives in Québec".[9]

As a result of this exemption, the managers of mutual fund dealers in Québec (directors, senior managers, branch managers, supervisors, etc.) will not, ultimately, be subject to any rules on continuing education.[10] However, the advantage of them being subjected to the dedicated, specialized supervision of the New SRO derives, in particular, from the application to them of the current continuing education requirements imposed on managers by the MFDA.[11] To remedy this shortcoming, it would be advisable to not

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8 See in particular C. Duclos, supra, note 2, p. 417 and following.

9 CSA, *CSA Staff Notice and Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization, Appendix A – Application for recognition of the New SRO,* p. 11, 12,[online]: https://www.securities-administrators.ca/wp-content/uploads/2022/05/02.-Appendix-A-Application-for-recognition-of-the-New-SRO.pdf (retrieved June 14, 2022).

10 In the current situation, the managers of mutual fund dealers in Québec are not subject to any continuing education requirements. This is one of the gaps in supervision revealed by a comparison of the managers of mutual fund dealers in Québec with those elsewhere in Canada.

11 These are the continuing education rules applicable to authorized persons other than representatives. See Rule 900 of the *Mutual Fund Dealer Rules* (CSA, *CSA Staff Notice and Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization, Appendix A – Application for*

exempt Québec mutual fund dealers from the continuing education requirements of the New SRO that are applicable to persons (directors, senior managers, branch managers, supervisors, etc.), other than representatives, working for such dealers.

In this context, we welcome the stated goal of establishing an agreement on cooperation between the various regulatory authorities, including the AMF, the New SRO and the CSF, that could limit the deleterious effects of the overlapping supervision exercised by two SROs over mutual fund dealers in Québec. The current project, however, contains little information on the nature and form of coordination between these regulatory authorities, and on efforts and actions to draft and implement regulatory provisions in this sector. It is hard for us to assess the actual benefits of cooperation with respect to the issues raised.

In addition to cooperation and regulatory harmonization, it is essential for the regulatory authorities to establish a rigorous mechanism for inspection and investigation that is both reciprocal and automatic. The sharing of information and synchronization of supervisory and control activities between the two SROs would, in particular, enable them to identify issues of a systemic nature that may have a negative impact on the behaviour of other representatives exercising the profession at the same dealer firm.

As a comparison, the situation will be different concerning the supervision of investment dealers pursuing their activities in Québec and elsewhere in Canada. The creation of the New SRO will allow it to intervene, at the same time, with three groups (investment dealers, managers and representatives). The new integrated framework will enable the SRO to assess, within the same firm, the individual and organizational behaviour that is potentially harmful for investors. In addition, integrated supervision under the responsibility of a single SRO will help to reduce administrative and financial complexity and investor confusion, as noted above.

Taking these advantages into account, the AMF could envisage a similar approach by recognizing the pan-Canadian New SRO as the sole authority responsible for the supervision of mutual fund dealers and their managers and representatives exercising in Québec. Recognizing the sole responsibility of the pan-Canadian New SRO would, however, involve a legislative amendment to withdraw the CSF's disciplinary powers over the representatives of mutual fund dealers exercising in Québec. This possibility,

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recognition of the New SRO, Schedule 2, iii Mutual Fund Dealer Rules, [online]: https://www.securities-administrators.ca/wp-content/uploads/2022/05/06.-iii.-Mutual-Fund-Dealer-Rules.pdf (retrieved June 14, 2022). See also Rule 1 for the definition of "approved person".

and the other potential solutions mentioned in our previous briefs, offers both advantages and disadvantages that should be taken into consideration by the authorities concerned.[12]

Creation of an investor advisory panel

We welcome the creation, as part of the New SRO, of an investor advisory panel. As mentioned in the Draft Terms of Reference for the panel, its role will be to "advise the New SRO on regulatory issues and other matters of public interest in order to assist the New SRO in the effective fulfillment of its public interest mandate and to convey issues of concern to investors for consideration by the New SRO."[13] For this purpose, the panel must, in particular, provide "input and advice on investor protection and access to advice initiatives."[14] It may also "raise current and emerging policy issues" connected with the regulatory policies and standards that the New SRO will put in place and engage in "independent research projects as needed to assist the New SRO in the fulfillment of its public interest mandate".[15] To fulfill its mandate and functions, the terms of reference for the panel specify that it its members must have relevant expertise with respect, in particular, to investment services, the regulatory framework and investor protection.

However, in light of the panel's mandate, functions and membership, as presented in the terms of reference, we consider that it is more like an expert panel in the field of investment dealing and mutual fund dealing, with a focus on investor protection, than an investor advisory panel. 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. We suggest that the CSA should reflect on the panel's title and consider the possibility of renaming it to match its mission and the expectations as to its work.

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12 Raymonde Crête and Cinthia Duclos, *Réflexions sur l'encadrement des services de courtage en épargne collective*, brief submitted for 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 (retrieved June 14, 2022); 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*, brief by the Groupe de recherche en droit des services financiers submitted to the 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 (retrieved June 14, 2022). See also C. Duclos, supra, note 2, p. 419 and following.

13 CSA, *CSA Staff Notice and Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization, Appendix A – Application for recognition of the New SRO, Schedule 3 - Draft Terms of Reference for New SRO's Investor Advisory Panel*, s. 1 [online]: https://www.securities-administrators.ca/wp-content/uploads/2022/05/09.-Schedule-3-Draft-Terms-of-Reference-for-New-SROs-Advisory-Panel.pdf (retrieved June 14, 2022).

14 *Ibid.*

15 *Ibid.*

It is also important to mention that the rules governing the selection of the panel's members and its work, while mentioning that its members will be selected on the basis, not just of their expertise, but also of diversity, geographic location, and a broad and diverse representation of investors' views, contain no requirements and express no explicit expectations concerning the use of the two official languages in its activities. However, a requirement or willingness to tend towards functional bilingualism in the panel's work would, in addition to taking into account an important and sensitive issue for French speakers throughout Canada, appear to be essential if the New SRO is to benefit, in compliance with the principles of fairness and diversity, from the expertise of members from across Canada, as stated in the terms of reference. Accessorily, we should point out that the same comments apply, adapted as required, to the New SRO's board of directors, and also of its committees and senior management.

Overall, an improvement in this area would match the AMF's requirements for the New SRO concerning the use of French during its activities. The requirements include those that apply to the publication of documents (rules, standards, information documents, etc.) and the provision of services to financial intermediaries and investors in French.[16]

Status quo for protection funds in Québec

The CSA proposes the creation of the New IPF as a merger of the Canadian Investor Protection Fund ("CIPF") and the MFDA Investor Protection Corporation ("MFDA IPC"). In this way, all clients of the country's investment dealers and mutual fund dealers, except clients of mutual fund dealers in Québec, will benefit from protection against insolvency risks from the same fund. In contrast, the clients of mutual fund dealers in Québec will continue to benefit from the protection offered by the Fonds d'indemnisation des services financiers ("FISF") in Québec in cases of fraud, fraudulent tactics or embezzlement in connection with financial products or services.

While welcoming the fact that the FISF will continue to cover the clients of mutual fund dealers in Québec, we must point out that this situation perpetuates the variation in the

[16] We should also mention the requirements for the use of French in the disciplinary process (hearings) for intermediaries, and in the communications with the AMF as a responsible regulatory authority. See *Application for the recognition of the New SRO, Schedule 4 - Québec Requirements*, supra, note 6, ss. 21(d) and (e); CSA, *CSA Staff Notice and Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization, Appendix B – Draft Recognition Order for the New SRO*, ss. 15 and 21, [online]: https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2022/25-304/2022mai12-new-sro-decision-reconnaissance-fr.pdf (retrieved June 16, 2022); CSA, *CSA Staff Notice and Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization, Appendix A – Application for recognition of the New SRO, Schedule 2, ii. Investment Dealer and Partially Consolidated Rules*, rule 8411, [online]: https://www.autorites-valeurs-mobilieres.ca/wp-content/uploads/2022/05/05-Appendice-2.ii_.-Regles-visant-les-courtiers-en-placement-et-regles-partiellement-consolidees.pdf (retrieved June 14, 2022).

elements put in place to minimize harm to investors across Canada depending on the registration categories for financial intermediaries and the province in which the services are provided. More specifically, in Québec the FISF will retain its power to compensate the victims of fraud, fraudulent tactics or embezzlement in connection with financial products or services provided, in particular, by mutual fund dealers and their representatives. However, the FISF will not cover victims of fraud who do business with an investment dealer or representative registered with the New SRO. As a result, for the purchase or sale of mutual funds, if the service is provided by a mutual fund dealer, Québec investors will have access to the FISF in a case of fraud, while if the same service is provided by an investment dealer, Québec investors will not have access to the FISF or to any similar fund. The same reasoning applies to the bankruptcy of an investment dealer, for which investors are covered, while the clients of a mutual fund dealer in Québec will have no similar protection.

It is also important to emphasize that if, as indicated in the consultation documents, the CSA decides to examine, in a future phase, the possibility of harmonizing the New IPF with the FISF, the harmonization must target an increase in the protection offered for all Canadian investors (protection against bankruptcy, fraud, abuse of trust, etc.) and not result in a loss of protection for some investors.[17]

[17] On the topic of a fund providing more extensive protection, see Martin Côté, *Les mécanismes d'indemnisation des consommateurs dans l'industrie des services financiers*, vol. 5, coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015.

Conclusion

Overall, we consider that the current reform and the creation of the New SRO contain several positive elements that will help increase investor protection and regulator effectiveness and efficiency. We hope that the suggestions for improvement outlined in this letter will help the CSA and AMF implement the reform in a way that supports the interests of consumers and therefore of industry stakeholders.

Please contact the undersigned for more details or further information as part of this consultation.

Sincerely,

The Groupe de recherche en droit des services financiers, by

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*The authors thank Benjamin Waterhouse for the translation of this letter into English.

Appendix A - Main GRDSF publications

Monographs and collective works

BRISSON, G., P. TACHÉ, H. ZIMMERMANN, C. MABIT et R. CRÊTE, *La réglementation des activités de conseil en placement. Le point de vue des professionnels*, vol. 3, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2010, 186 p.

CÔTÉ, M., *Les mécanismes d'indemnisation des consommateurs dans l'industrie des services financiers*, vol. 5, coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015, 273 p.

CRÊTE, R., et C. MORIN (dir.), *La protection juridique des personnes aînées contre l'exploitation financière*, *Revue générale de droit*, 2016, vol. 46, 529 p. (numéro hors série).

CRÊTE, R., I. TCHOTOURIAN et M. BEAULIEU (dir.), *L'exploitation financière des personnes aînées: prévention, résolution et sanction*, Cowansville, Éditions Yvon Blais, 2014, 542 p.

CRÊTE, R., M. LACOURSIÈRE, M. NACCARATO et G. BRISSON (dir.), *La confiance au cœur de l'industrie des services financiers*, Cowansville, Éditions Yvon Blais, 2009, 483 p.

CRÊTE, R., M. NACCARATO, M. LACOURSIÈRE et G. BRISSON (dir.), *Courtiers et conseillers financiers. Encadrement des services de placement*, vol. 1, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2011, 720 p.

DUCLOS, C., *La protection des épargnants dans 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, 637 p.

LÉTOURNEAU, A., *Le contrat de service, le mandat et le régime de l'administration du bien d'autrui : similitudes, incidences et différences dans le contexte des services d'investissement*, mémoire de maîtrise, sous la direction de Raymonde Crête, janvier 2013, 176 p.

MABIT, C., *Le régime de sanctions disciplinaires applicable aux courtiers en placement*, vol. 2, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2010, 177 p.

PARADIS, J., *La rémunération des acteurs de l'industrie de l'épargne collective au regard de la protection des épargnants*, vol. 4., coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015, 230 p.

Articles in journals and collective works

CÔTÉ, M., « Le « contrat de fonds distincts » : un produit d'assurance à l'ombre du droit des valeurs mobilières ? », (2019) 53 *RJTUM* 395-459.

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UNIVERSITÉ LAVAL
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Le 27 juin 2022

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Objet : Avis de consultation 25-304 et 25-305 des ACVM - Demande de reconnaissance du nouvel organisme d'autoréglementation et d'acceptation du nouveau fonds de garantie

Mesdames, Messieurs,

Le Groupe de recherche en droit des services financiers (« GRDSF ») présente ci-dessous ses commentaires sur les Avis de consultation 25-304 et 25-305 des Autorités canadiennes en valeurs mobilières (« ACVM ») portant respectivement sur la demande de reconnaissance du nouvel organisme d'autoréglementation (« Nouvel OAR ») et sur la demande d'acceptation du nouveau fonds de garantie (« Nouveau FG »). Nous commentons également le plan de transition des courtiers en épargne collective au Québec présenté par l'Autorité des marchés financiers (« Autorité ») de manière complémentaire à ces avis.

Introduction

En juin 2020, les ACVM ont publié le *Document de consultation 25-402 des ACVM - Consultation sur le cadre réglementaire des organismes d'autoréglementation* (*Document de consultation 25-402*) dans le but de recueillir des commentaires au regard des enjeux et de la révision du cadre réglementaire de deux organismes d'autoréglementation, soit l'Organisme canadien de réglementation du commerce des valeurs mobilières (« OCRCVM ») qui encadre les courtiers en placement, leurs dirigeants et leurs représentants, ainsi que l'Association canadienne des courtiers de fonds mutuels (« ACFM ») qui encadre les courtiers en épargne collective, leurs dirigeants et leurs représentants. À la suite de cette consultation, le 3 août 2021, elles ont publié l'*Énoncé de position 25-404 des ACVM – Nouveau cadre réglementaire des organismes d'autoréglementation* (« *Énoncé de position* ») qui présentait le projet de fusion de ces deux OAR menant à la création d'un nouvel OAR et le déploiement en deux phases de celui-ci. En mai 2022, les ACVM ont concrétisé davantage ce projet de réforme en publiant *l'Avis de consultation 25-304 portant respectivement sur la demande de reconnaissance du nouvel organisme d'autoréglementation* et *l'Avis de consultation 25-305 du personnel des ACVM - Demande d'acceptation du nouveau fonds de garantie*. De manière complémentaire, l'Autorité a déposé un plan de transition des courtiers en épargne collective au Québec.

Dans la présente lettre, les auteures soumettent leurs commentaires et leurs observations sur ces avis sur la base des mémoires qu'elles ont déjà soumis dans le cadre des consultations précédentes ainsi que sur les travaux de recherche réalisés par le GRDSF depuis 2007[1].

Dans l'ensemble, nous estimons que les changements proposés entourant cette réforme et la création du Nouvel OAR comportent plusieurs éléments positifs qui contribueront à accroître la protection des épargnants. Dans les commentaires qui suivent, nous ferons ressortir ces éléments positifs, 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.

Un encadrement intégré, simplifié, spécialisé et flexible

La création du Nouvel OAR constitue une avancée dans le but de répondre aux enjeux de l'encadrement actuel au regard notamment du risque de confusion des investisseurs, de la convergence des services d'investissement ainsi que de la fragmentation de l'encadrement des acteurs offrant ces services (incluant la multiplicité des autorités d'encadrement, le chevauchement de leurs fonctions et de la variabilité des régimes de protection des

[1] L'Annexe A présente les principales publications du GRDSF au cours des dernières années sur lesquelles reposent les commentaires et les observations présentés dans cette lettre.

investisseurs), qui ont été soulevés dans les recherches du GRDSF de même que par d'autres intervenants de cette industrie. Il en est ainsi puisque cette réforme permettra de simplifier et d'harmoniser davantage l'encadrement des acteurs du courtage en placement et du courtage en épargne collective au Canada (« intermédiaires financiers ») en le soumettant à la responsabilité d'un même OAR pancanadien. Il convient toutefois de mentionner que ces avantages seront moins marqués au Québec puisque les représentants de courtiers en épargne collective ne seront pas soumis directement à l'encadrement de ce nouvel organisme.

Plus spécifiquement, par la création du Nouvel OAR, cette réforme s'avérera bénéfique puisqu'elle propose un **encadrement intégré**, soit un encadrement conçu selon une approche holistique et cohérente axée, non pas sur les produits, mais plutôt sur les activités exercées par les intermédiaires en couvrant plusieurs acteurs offrant des services similaires d'investissement : les courtiers en placement, les courtiers en épargne collective, leurs dirigeants et leurs représentants. Cette approche contribuera à répondre aux attentes des investisseurs qui veulent avoir facilement accès, au moindre coût, à une vaste gamme de produits et de services d'investissement pour faire fructifier leurs économies, de même que pour bénéficier de protections juridiques cohérentes en vue d'assurer la sécurité de leurs avoirs. Dans cette optique, il serait opportun, comme évoqué dans les documents des consultations précédentes, que les ACVM envisagent éventuellement de soumettre d'autres catégories d'intermédiaires offrant des services de nature similaire à l'encadrement de ce Nouvel OAR (autres courtiers, conseillers, leurs dirigeants et leurs représentants respectifs, etc.) et de poursuivre la réflexion sur l'harmonisation de cette réglementation en valeurs mobilières avec l'encadrement des intermédiaires du secteur de l'assurance.

De plus, cette réforme favorise la prise en compte par ce Nouvel OAR des aspects tant individuels qu'organisationnels dans la prestation de services par les intermédiaires. En effet, sous réserve des acteurs du courtage en épargne collective au Québec, cet OAR va encadrer et surveiller la conduite professionnelle des trois groupes d'acteurs centraux à la prestation de ces services, soit les entreprises, leurs dirigeants (administrateurs, haute direction, personne désignée responsable, chef de la conformité, directeur de succursales, surveillant, etc.) et leurs représentants. Partant, en cas de manquements de la part d'un représentant d'un courtier en placement auprès d'un épargnant, cet organisme pourra évaluer, du même coup, si ces manquements font ressortir des failles dans la direction et la gestion de l'entreprise par les dirigeants ainsi que dans les mécanismes de surveillance et de conformité mis en place au sein de celle-ci. Dans ces circonstances, le Nouvel OAR pourra transmettre un message clair quant à la conduite professionnelle attendue envers les

épargnants à tous les acteurs impliqués dans cette prestation de service et les sanctionner de façon concomitante, si la situation le requiert[2].

La création du Nouvel OAR va également contribuer à la simplification de l'encadrement de l'industrie des services d'investissement dans l'ensemble du pays. Notons toutefois qu'au Québec, les gains seront moindres à cet égard, comme l'expliciterons plus loin. Un **encadrement simplifié** fait référence à un encadrement qui simplifie les structures et les contenus réglementaires afin d'éviter ou de minimiser les chevauchements, les redondances et les lourdeurs administratives et financières de même que les risques de confusion qui découlent de la multiplicité des autorités de contrôle, des catégories d'inscription des intermédiaires et des normes applicables à ces derniers. La simplification de l'encadrement favorise son efficience en s'assurant que les coûts de la mise en œuvre du cadre réglementaire ne dépassent pas les avantages anticipés, tout en facilitant la compréhension de celui-ci auprès des acteurs de l'industrie et du public et en minimisant les risques de confusion. Dans cette réforme, la fusion de deux OAR et celle des fonds de garantie vont permettre cette simplification en réduisant le nombre d'autorités d'encadrement et d'autres organismes responsables de la surveillance des intermédiaires financiers et de la protection des épargnants. La création du Nouvel OAR va aussi contribuer, à terme, à l'harmonisation des règles, des politiques, des processus de conformité et de mise en application de la réglementation auxquels sont soumis les acteurs du courtage en placement et en épargne collective au pays, à l'exception des représentants de courtiers en épargne collective québécois.

Au Québec, cette réforme va également permettre d'assujettir, à terme, un nouveau groupe d'acteurs à l'**encadrement spécialisé et flexible** d'un OAR, un encadrement complémentaire au cadre plus général déjà offert par l'Autorité. En effet, les courtiers en épargne collective québécois et de leurs dirigeants seront, à la suite de la période de transition, soumis à l'encadrement du Nouvel OAR. Nous accueillons favorablement l'assujettissement de ces acteurs à un OAR, puisque celui-ci va leur permettre de bénéficier d'une supervision et d'un contrôle spécifiques et adaptés par un organisme dédié à l'encadrement de leurs activités. De plus, ce changement permettra d'exercer, dans ce secteur, un contrôle direct et plus étendu sur les dirigeants œuvrant au sein de courtiers en épargne collective québécois. L'encadrement du Nouvel OAR ne se limitera pas au chef de la conformité et à la personne désignée responsable, comme prévu actuellement dans le *Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites*, mais s'étendra également aux administrateurs, à tous les hauts dirigeants, aux directeurs de succursale, aux directeurs de succursale suppléants, etc., à

[2] Voir une monographie dédiée à ce sujet : 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.

l'instar de l'encadrement actuel de ces acteurs par l'ACFM. Ainsi, tous les acteurs impliqués dans la prestation des services d'investissement et dans la protection des épargnants, dont les dirigeants, seront soumis à l'encadrement professionnalisé d'un OAR.

En somme, nous estimons que la réforme proposée favorise la mise en place d'un 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.

Le mandat d'intérêt public du nouvel OAR

Dans le *Projet de Règlement no 1 du nouvel OAR* (« Projet de règlement »), les ACVM confèrent une place importante à l'intérêt public en énonçant à cette fin un mandat clair pour cet organisme. Nous saluons le fait que ce « mandat d'intérêt public » constitue la pierre angulaire de la création du Nouvel OAR sur la base de laquelle s'articulent des objectifs centraux que sont la protection des épargnants, l'équité, l'efficience et l'intégrité des marchés financiers ainsi que le maintien de la confiance envers ceux-ci dans un environnement de plus en plus complexe et dynamique[3]. Sans définir de manière spécifique la notion d'intérêt public, le Projet de règlement énumère des fonctions du Nouvel OAR en la matière qui s'articulent autour de ces objectifs.

Pour mieux saisir la portée du mandat d'intérêt public au regard de l'objectif de protection des investisseurs, qui retient davantage notre attention dans cette lettre, il convient d'abord de définir cet objectif. Selon nos études, la protection des épargnants a pour but : (1) d'assurer la compétence, l'intégrité, la loyauté, la transparence et la diligence des courtiers membres, de leurs dirigeants et de leurs représentants afin qu'ils agissent au mieux des intérêts des épargnants[4] ; (2) de prévenir et de minimiser les risques de manquements professionnels et d'autres actes fautifs de ces intermédiaires financiers (entreprises, dirigeants et représentants) qui peuvent entraîner des pertes financières et d'autres dommages pour les épargnants; (3) de minimiser les préjudices subis par les épargnants à

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[3] Formulation inspirée d'une affirmation des ACVM, dans ACVM, « Les autorités en valeurs mobilières du Canada soulignent leurs principales réalisations découlant de leur Plan d'affaires 2019-2022 », communiqué de presse, 16 juin 2022, en ligne : https://www.autorites-valeurs-mobilieres.ca/nouvelles/les-autorites-en-valeurs-mobilieres-du-canada-soulignent-leurs-principales-realisations-decoulant-de-leur-plan-daffaires-2019-2022/ (consulté le 16 juin 2022).

[4] Pour plus de détails sur le devoir de loyauté et d'agir au mieux des intérêts du client, voir notamment Raymonde CRÊTE, Martin CÔTÉ et Cinthia DUCLOS, avec la collaboration de M-J. NORMAND-HEISLER, « Un devoir légal, uniforme et modulable d'agir au mieux des intérêts du client de détail », Mémoire préparé dans le cadre de la consultation 33-403 – *Normes de conduite des conseillers et des courtiers – Opportunité d'introduire dans l'activité de conseil un devoir légal d'agir au mieux des intérêts du client de détail*, Faculté de droit, Université Laval, 18 mars 2013, en ligne : https://www.grdsf.ulaval.ca/system/files/un_devoir_legal_uniforme_et_modulable_dagir_au_mieux_des_interets_du_client_de_detail.pdf (consulté le 16 juin 2022).

la suite de ces pratiques ou comportements, le cas échéant et (4) de maintenir la confiance du public pour assurer le bon fonctionnement du secteur financier.

Pour atteindre cet objectif de protection, les autorités régulatrices sont appelées à mettre en place un ensemble de mesures juridiques et organisationnelles de prévention, d'éducation, d'assistance, d'indemnisation et de sanction pour encadrer les différents intermédiaires financiers. Dans cette optique, il serait important que le mandat d'intérêt public envisagé dans cette réforme intègre cette approche holistique de protection des épargnants.

Dans la réforme en cours, le Projet de règlement reprend plusieurs de ces éléments de la protection des épargnants, en énonçant que le Nouvel OAR doit agir dans l'intérêt public notamment en protégeant les investisseurs contre les pratiques déloyales, abusives ou frauduleuses de ses membres, en stimulant la confiance du public dans les marchés des capitaux, en favorisant la sensibilisation des investisseurs, etc. Nous estimons toutefois qu'il serait souhaitable que d'autres fonctions en lien avec la protection des épargnants soient mentionnées explicitement, dont celle de protéger les investisseurs, non seulement contre la fraude et l'abus de confiance, mais aussi contre les comportements négligents et entachés d'incompétence des intermédiaires financiers. La prévention de ces comportements fait partie intégrante de la protection des épargnants puisqu'elle se rattache à la prudence, à la diligence et à la compétence des intermédiaires financiers ainsi qu'à la volonté de garantir la qualité des services offerts. Ces éléments sont au cœur de l'obligation d'agir comme un professionnel avisé qui incombe aux intermédiaires financiers en vue d'assurer la protection des épargnants, comme mentionné précédemment.

Cette énumération devrait aussi comprendre une fonction du Nouvel OAR visant à assurer la place prépondérante de l'intérêt des épargnants dans l'encadrement de la conduite des courtiers, de leurs dirigeants et de leurs représentants. Cette primauté des intérêts du client doit trouver écho dans les mesures de prévention, d'éducation et de sanction visant les intermédiaires financiers et qui seront adoptées par ce Nouvel OAR. En outre, il serait important d'établir, dans le mandat d'intérêt public de cet organisme, la nécessité d'énoncer clairement les devoirs généraux, pour les courtiers membres, leurs dirigeants et leurs représentants, d'agir non seulement avec équité, honnêteté et bonne foi, mais aussi, et surtout, avec loyauté et diligence au mieux des intérêts des clients.

Selon cette vision holistique de la protection des épargnants et de manière complémentaire à l'exercice de la compétence en matière disciplinaire du Nouvel OAR qui lui permet d'établir des normes déontologiques, de mener des enquêtes, de tenir des audiences et d'imposer des sanctions, il serait opportun que cet organisme puisse, en lien avec son mandat d'intérêt public, jouer également un rôle en matière d'indemnisation. En ce sens, nous réitérons notre proposition voulant que les personnes responsables du processus disciplinaire au sein du nouvel OAR puissent 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 recours de nature administrative ou criminelle[5]. Nous invitons les autorités à réfléchir et à évaluer la possibilité de reconnaitre ce pouvoir au Nouvel OAR de manière à favoriser et à faciliter l'indemnisation des consommateurs, un élément au cœur de la mission des ACVM et de l'Autorité.

Le maintien de pouvoirs décisionnels au Québec

Dans cette réforme, la centralisation des pouvoirs au sein du conseil du Nouvel OAR et la réduction des conseils régionaux à un rôle consultatif soulèvent, de prime abord, des craintes quant à l'exercice des fonctions décisionnelles par des personnes possédant l'expertise et l'expérience nécessaires pour tenir compte des différences et des spécificités propres au Québec, incluant les spécificités liées au système juridique de tradition civiliste et à la valorisation de la langue française qui caractérisent la société québécoise. Cependant, nous estimons que les exigences pour le Québec présentées dans la demande de reconnaissance ainsi que la décision de reconnaissance du Nouvel OAR par l'Autorité permettent de diminuer les inquiétudes en la matière.

Parmi les mesures prévues par l'Autorité, mentionnons qu'au sein du Nouvel OAR, le pouvoir de prendre des décisions liées à l'encadrement et à la supervision des activités des acteurs du courtage au Québec sera exercé principalement par des personnes qui résident au Québec. La section du Québec de ce Nouvel OAR aura en ce sens « des responsabilités clairement définies en matière de réglementation, d'adhésion, de conformité des ventes, de conformité financière »[6] et d'application des règles établies à l'égard des acteurs du courtage en placement et en épargne collective. Soulignons aussi le fait que « le plus haut dirigeant responsable de la section du Québec relève[ra] directement du chef de la direction »[7] du Nouvel OAR, une exigence que l'on ne semble pas retrouver pas au sein de la hiérarchie actuelle de l'OCRCVM.

Dans l'ensemble, au sein de ce Nouvel OAR, il apparait que la force décisionnelle et de représentation des membres du personnel québécois sera, à tout le moins, similaire à celle

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5 Voir 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. En matière criminelle, le tribunal peut, selon les circonstances, 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*.

6 ACVM, *Avis de consultation 25-304 du personnel des ACVM, Demande de reconnaissance du nouvel organisme d'autoréglementation, Annexe A – Demande de reconnaissance du nouvel OAR, Appendice 4 -Exigence pour le Québec*, art. 21 a), en ligne : https://www.autorites-valeurs-mobilieres.ca/wp-content/uploads/2022/05/10-Appendice-4-%E2%80%93-Exigences-pour-le-Quebec.pdf (consulté le 14 juin 2022).

7 *Ibid.*, art. 21 c).

présente actuellement à l'intérieur de l'OCRCVM. De cette manière, malgré la reconnaissance d'un OAR pancanadien, le fonctionnement de celui-ci au Québec permettra de maintenir les avantages de la régulation de proximité en intégrant, dans la prise de décision, des ressources humaines qui ont développé une expertise et une expérience pertinentes permettant de prendre en compte les spécificités de cette province.

Le maintien du mandat, du rôle et des responsabilités de la Chambre de la sécurité financière (« CSF »)

Le Nouvel OAR sera responsable, à terme, de l'encadrement déontologique et disciplinaire de tous les acteurs du courtage en placement et en épargne collective au Canada, à l'exception des représentants de courtier en épargne collective au Québec. Ces derniers demeureront soumis à l'encadrement de la CSF. Par ailleurs, les entreprises québécoises de courtage en épargne collective seront soumises, dans la prestation des services d'investissement, à l'encadrement du Nouvel OAR de manière concomitante à celui exercé par la CSF à l'égard de leurs représentants. Il convient de mentionner que, pendant la période de transition, cet encadrement des courtiers en épargne collective et de leurs dirigeants au Québec continuera d'être assumé par deux organismes, soit l'Autorité et le Tribunal administratif des marchés financiers (« TMF »).

Cette situation particulière au Québec permet à la CSF de maintenir sa mission, ses fonctions et ses pouvoirs à l'égard des représentants de courtier en épargne collective. Le maintien de cette compétence de la CSF présente certains avantages en raison de l'expertise et de l'expérience acquises par cet OAR au fil des ans dans le secteur de l'épargne collective au Québec ainsi que de sa compétence multidisciplinaire lui permettant 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.

Toutefois, l'encadrement concomitant assumé par deux OAR pour les acteurs du courtage en épargne collective au Québec constitue une brèche à l'encadrement intégré et simplifié ainsi qu'à ses apports importants en matière de protection des épargnants, discutés précédemment. À cet égard, mentionnons que nos études menées sous l'angle d'une approche systémique de la protection des épargnants suggèrent que la concentration des pouvoirs déontologique et disciplinaire à l'égard des entreprises, de leurs dirigeants et de leurs représentants au sein d'un même organisme contribue à réduire les risques de préjudice pour les épargnants en permettant l'adoption d'une vision holistique des normes de conduite applicables, des lacunes potentielles et réelles dans le comportement des acteurs de même que de la sanction de celles-ci au sein des entreprises[8]. En outre, cet encadrement concomitant par deux OAR pour les acteurs québécois de l'épargne collective

[8] Voir notamment C. DUCLOS, préc., note 2, p. 417 et suiv.

réduit de manière significative la portée de la réponse aux enjeux liés à la confusion des investisseurs, au chevauchement des pouvoirs des autorités d'encadrement et aux variations en matière de protection des investisseurs, soulevés précédemment.

La variation dans les exigences de formation continue des dirigeants constitue un exemple des problèmes causés de l'encadrement professionnel de nature bicéphale dans le secteur de l'épargne collective au Québec. Au sein du Nouvel OAR, on prévoit que les exigences en matière de formation continue établies dans les règles actuelles de l'OCRCVM et de l'ACFM continueront de s'appliquer aux courtiers, à leurs dirigeants et à leurs représentants au Canada dans l'attente de la mise en place de règles unifiées en la matière. Toutefois, selon les informations présentées dans la demande de reconnaissance du Nouvel OAR, les courtiers en épargne collective québécois continueront, pour leur part, « d'être dispensés des exigences de formation continue du nouvel OAR pour leurs activités au Québec, étant donné que la Chambre de la sécurité financière (CSF) est chargée de réglementer la formation continue des représentants de ces courtiers au Québec »[9].

En conséquence, en raison de cette dispense, les dirigeants de courtiers en épargne collective québécois (administrateurs, hauts dirigeants, directeur de succursale, surveillants, etc.) ne seront, à terme, assujettis à aucune norme en matière de formation continue[10]. Or, l'avantage que ces derniers soient soumis à l'encadrement dédié et spécialisé du Nouvel OAR réside, entre autres, dans l'application à ceux-ci des exigences actuelles de formation continue imposées aux dirigeants par l'ACFM[11]. Pour pallier cette lacune, il y aurait lieu de ne pas dispenser ces courtiers québécois des exigences de formation continue du Nouvel OAR applicables aux personnes (administrateurs, hauts dirigeants, directeur de succursale, surveillants, etc.), autres que les représentants, œuvrant au sein de ceux-ci.

Dans ce contexte, nous accueillons favorablement la volonté annoncée de mettre en place une entente de coopération entre les différentes autorités, dont l'AMF, le Nouvel OAR et la CSF, qui pourrait limiter les effets néfastes de cet encadrement concomitant assumé par

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9 ACVM, *Avis de consultation 25-304 du personnel des ACVM, Demande de reconnaissance du nouvel organisme d'autoréglementation, Annexe A – Demande de reconnaissance du nouvel OAR*, p. 12, en ligne : https://www.autorites-valeurs-mobilieres.ca/wp-content/uploads/2022/05/02-Annexe-A-Demande_de_reconnaissance_du_nouvel_OAR.pdf (consulté le 14 juin 2022).

10 Dans l'état actuel, les dirigeants de courtiers en épargne collective québécois ne sont assujettis à aucune norme en matière de formation continue. Il s'agit d'une des lacunes de leur encadrement mises en relief par une comparaison avec l'encadrement des dirigeants de courtiers en épargne collective ailleurs au pays.

11 Il s'agit des règles de formation continue applicables aux personnes autorisées autres que les représentants. Voir la Règle 900 des *Règles des courtiers en épargne collective* (ACVM, *Avis de consultation 25-304 du personnel des ACVM, Demande de reconnaissance du nouvel organisme d'autoréglementation, Annexe A – Demande de reconnaissance du nouvel OAR, Appendice 2, iii Règles des courtiers en épargne collective*, en ligne : https://www.autorites-valeurs-mobilieres.ca/wp-content/uploads/2022/05/06-Appendice-2.iii_.-Regles_courtiers_en-epargne_collective.pdf (consulté le 14 juin 2022). Voir aussi la Règle 1 de ces règles pour la définition de « personne autorisée ».

deux OAR pour les acteurs du courtage en épargne collective au Québec. Le projet actuel contient toutefois peu de renseignements sur la nature et la forme de la coordination entre ces autorités, leurs efforts et leurs actions dans l'élaboration et la mise en application des dispositions réglementaires touchant ce secteur. Nous pouvons ainsi difficilement évaluer le bénéfice réel de cette collaboration au regard des enjeux soulevés.

Outre la collaboration et l'harmonisation sur le plan réglementaire, il est essentiel que les autorités mettent en place un mécanisme rigoureux d'inspection et d'enquête qui soit réciproque et automatique. Le partage d'information et la synchronisation des activités de surveillance et de contrôle entre les deux OAR permettraient 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 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 du nouvel OAR 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. 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, comme soulevé précédemment.

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 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 responsables[12].

[12] 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 (consulté 14 juin 2022); 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

La création du comité consultatif des investisseurs

Nous saluons la création au sein du Nouvel OAR du Comité consultatif des investisseurs. Comme mentionné dans le Projet de cadre de référence pour ce comité, celui-ci aura un rôle de conseiller auprès du nouvel organisme « sur les questions d'ordre réglementaire ou d'intérêt public pour l'aider à accomplir efficacement son mandat d'intérêt public, et aussi de lui faire part des questions qui préoccupent les investisseurs »[13]. À cette fin, ce comité devra notamment « fournir des commentaires et des conseils sur les initiatives liées à la protection des investisseurs et à l'accès aux conseils »[14]. Il pourra aussi identifier des enjeux contemporains liés aux politiques réglementaires et aux normes que le Nouvel OAR mettra en place et lancer « des projets de recherche indépendants afin d'aider le nouvel OAR à accomplir son mandat d'intérêt public »[15]. Pour remplir ce mandat et ces fonctions, le cadre de référence portant sur ce comité prévoit que les membres de celui-ci devront posséder une expertise pertinente notamment au regard des services d'investissement, de leur cadre réglementaire ainsi que de la protection des épargnants.

À la lumière de son mandat, de ses fonctions et de sa composition, tels que présentés dans ce cadre de référence, nous estimons toutefois qu'il s'agit davantage d'un comité d'experts dans le domaine du courtage en placement et en épargne collective portant sur la protection des épargnants que d'un comité consultatif d'investisseurs. 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 comités ne sont pas les mêmes, tout comme les objectifs poursuivis. Nous invitons ainsi les ACVM à réfléchir quant au titre de ce comité et à envisager la possibilité de le reformuler afin que celui-ci soit en concordance avec la mission et les attentes envers ce dernier.

En outre, il importe de souligner que les règles entourant la sélection des membres de ce comité et le fonctionnement de celui-ci, tout en mentionnant que les membres seront choisis, en plus de leur expertise, en fonction notamment de la diversité, la situation

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 (consulté 14 juin 2022). Voir aussi C. DUCLOS, préc., note 2, p. 419 et suiv.

13 ACVM, *Avis de consultation 25-304 du personnel des ACVM, Demande de reconnaissance du nouvel organisme d'autoréglementation, Annexe A – Demande de reconnaissance du nouvel OAR, Appendice 3-Projet de cadre de référence du Comité consultatif des investisseurs du nouvel OAR*, art. 1 en ligne : https://www.autorites-valeurs-mobilieres.ca/wp-content/uploads/2022/05/09-Appendice-3-Projet_cadre_de_reference_du_Comite_consultatif_des_investisseurs_nouvel_OAR.pdf (consulté le 14 juin 2022).

14 *Ibid.*

15 *Ibid.*

géographique et une représentation large et diversifiée des points de vue des investisseurs, ne prévoient pas d'exigence ou n'émettent pas de souhait explicite quant à la tenue de ses activités dans les deux langues officielles. Pourtant, l'exigence ou la volonté de tendre vers le bilinguisme fonctionnel au sein de ce comité, en plus de prendre en compte un enjeu important et sensible pour les francophones à la grandeur du Canada, apparait essentiel afin que le Nouvel OAR bénéficie, dans le respect des principes d'équité et de diversité, des expertises de personnes dans ce secteur à l'échelle canadienne, comme annoncé dans le cadre de référence. De manière accessoire, soulignons que ces commentaires sont applicables, compte tenu des applications nécessaires, au conseil du Nouvel OAR, à ses comités et à sa haute direction.

Dans l'ensemble, une bonification en ce sens serait en adéquation avec les exigences imposées au Nouvel OAR par l'Autorité concernant l'usage du français dans le cadre de ses activités. Parmi ces exigences, mentionnons celles portant sur la publication de documents (règles, normes, documents informatifs, etc.) et l'offre de services auprès des intermédiaires financiers et des épargnants en français[16].

Le statu quo pour les fonds de protection au Québec

Les ACVM proposent de créer le Nouveau FG en fusionnant le Fonds canadien de protection des épargnants (« FCPE ») et la Corporation de protection des investisseurs de l'ACFM (« CPI de l'ACFM »). De cette façon, l'ensemble des clients des courtiers en placement et en épargne collective au pays, sous réserve des clients de courtiers en épargne collective québécois, bénéficieront d'une protection contre le risque d'insolvabilité au sein d'un même fonds. Pour leur part, les clients des courtiers en épargne collective québécois continueront plutôt de bénéficier de la protection offerte par le Fonds d'indemnisation des services financiers au Québec (« FISF ») dans les cas de fraude, de manœuvres dolosives ou de détournement de fonds pour des produits ou services financiers.

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[16] Mentionnons aussi les exigences de l'emploi du français dans le processus disciplinaire (audience) pour des intermédiaires qui le souhaitent et dans les communications avec l'Autorité à titre d'autorité responsable. Voir notamment *Demande de reconnaissance du nouvel organisme d'autoréglementation, Appendice 4 -Exigence pour le Québec*, préc., note 6, art. 21 d) et e); ACVM, *Avis de consultation 25-304 du personnel des ACVM, Demande de reconnaissance du nouvel organisme d'autoréglementation, Annexe B – Un projet de décision de reconnaissance du nouvel OAR par l'Autorité*, art. 15 et 21, en ligne : https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/0-avis-acvm-staff/2022/25-304/2022mai12-new-sro-decision-reconnaissance-fr.pdf (consulté le 16 juin 2022); ACVM, *Avis de consultation 25-304 du personnel des ACVM, Demande de reconnaissance du nouvel organisme d'autoréglementation, Annexe A – Demande de reconnaissance du nouvel OAR, Appendice 2, ii. Règles visant les courtiers en placement et règles partiellement consolidées de l'Organisation*, règle 8411, en ligne : https://www.autorites-valeurs-mobilieres.ca/wp-content/uploads/2022/05/05-Appendice-2.ii_.-Regles-visant-les-courtiers-en-placement-et-regles-partiellement-consolidees.pdf (consulté le 14 juin 2022). Voir aussi les exigences à cet effet dans le Projet de protocole d'entente entre les autorités de reconnaissance concernant la surveillance du nouvel OAR, Annexe C, art. 3 a) et 7 a).

Tout en saluant le maintien de l'application du FISF aux clients des courtiers en épargne collective québécois, il convient de souligner que cette situation perpétue des variations dans les éléments mis en place pour minimiser les préjudices subis par les investisseurs à l'échelle du pays selon les catégories d'inscription des intermédiaires financiers et la province dans laquelle les services sont offerts. Plus spécifiquement, au Québec, le FISF maintiendra son pouvoir d'indemniser les victimes de fraude, de manœuvres dolosives ou de détournement de fonds pour des produits ou services financiers fournis notamment par les courtiers en épargne collective et leurs représentants. Toutefois, le FISF ne couvre pas les victimes de fraude qui ont fait affaire avec un courtier en placement ou leurs représentants inscrits auprès du Nouvel OAR. Ainsi, pour l'achat et la vente de titres de fonds communs de placement ou d'organismes de placement collectif (« OPC »), si le service est offert par un courtier en épargne collective, l'investisseur québécois aura accès au FISF en cas de fraude, alors que, si le même service est offert par un courtier en placement, l'investisseur n'aura pas accès à ce fonds ou à un autre fonds de nature similaire. Le même raisonnement est applicable en cas de faillite d'un courtier en placement pour lequel une protection existe pour les épargnants, alors qu'une protection similaire n'existe pas pour les clients d'un courtier en épargne collective au Québec.

En outre, il convient de souligner que si, comme l'indiquent les documents de consultations précédentes, les ACVM souhaitent étudier, dans une prochaine phase, la possibilité d'harmoniser le Nouveau FG avec le FISF, cette harmonisation doit viser un accroissement de la protection offerte pour tous les épargnants canadiens (protection en cas de faillite, de fraude, d'abus de confiance, etc.) et non entraîner une perte de protection pour certains d'entre eux[17].

[17] Au sujet de la création d'un fonds offrant une protection plus englobante, voir Martin CÔTÉ, *Les mécanismes d'indemnisation des consommateurs dans l'industrie des services financiers*, vol. 5, coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015.

Conclusion

Dans l'ensemble, nous estimons que la réforme en cours et la création du Nouvel OAR présentent plusieurs éléments positifs qui contribueront à accroître la protection des épargnants ainsi que l'efficacité et l'efficience réglementaires. Nous souhaitons que les pistes de bonification soumises dans cette lettre puissent aider les ACVM et l'Autorité dans la mise en œuvre de cette réforme au mieux des intérêts des consommateurs et conséquemment des acteurs de l'industrie.

Nous vous invitons à communiquer avec les soussignées pour obtenir des précisions ou tout complément d'information relativement à cette consultation.

Veuillez recevoir, Mesdames, Messieurs, nos salutations distinguées.

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Annexe A - Les principales publications du GRDSF

Monographies et ouvrages collectifs

BRISSON, G., P. TACHÉ, H. ZIMMERMANN, C. MABIT et R. CRÊTE, *La réglementation des activités de conseil en placement. Le point de vue des professionnels*, vol. 3, coll. CÉDÉ, Cowansville, Éditions Yvon Blais, 2010, 186 p.

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CRÊTE, R., et C. MORIN (dir.), *La protection juridique des personnes aînées contre l'exploitation financière*, *Revue générale de droit*, 2016, vol. 46, 529 p. (numéro hors série).

CRÊTE, R., I. TCHOTOURIAN et M. BEAULIEU (dir.), *L'exploitation financière des personnes aînées: prévention, résolution et sanction*, Cowansville, Éditions Yvon Blais, 2014, 542 p.

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DUCLOS, C., *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, 637 p.

LÉTOURNEAU, A., *Le contrat de service, le mandat et le régime de l'administration du bien d'autrui : similitudes, incidences et différences dans le contexte des services d'investissement*, mémoire de maîtrise, sous la direction de Raymonde Crête, janvier 2013, 176 p.

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PARADIS, J., *La rémunération des acteurs de l'industrie de l'épargne collective au regard de la protection des épargnants*, vol. 4., coll. CÉDÉ, Montréal, Éditions Yvon Blais, 2015, 230 p.

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CÔTÉ, M., « Le « contrat de fonds distincts » : un produit d'assurance à l'ombre du droit des valeurs mobilières ? », (2019) 53 *RJTUM* 395-459.

CRÊTE, R., « Les manifestations du particularisme juridique des rapports de confiance dans les services de conseils financiers et de gestion de portefeuille », (2009) 39 *R.G.D.* 581-653.

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CRÊTE, R., C. DUCLOS et F. BLOUIN, « Les courtiers en épargne collective, leurs dirigeants et leurs représentants sont-ils à l'abri de sanctions disciplinaires au Québec? », (2012) 42 *R.G.D.* 267-446.

CRÊTE, R., et C. MORIN, « La protection juridique des personnes aînées contre l'exploitation financière », (2016) 46 *R.G.D.* 5-11.

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CRÊTE, R. et C. DUCLOS, *Brief submitted by the GRDSF for the CSA Consultation 25-402 on the Self-Regulatory Organization Framework*, Faculté de droit, Université Laval, Québec, 23 octobre 2020, 30 p.

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Desjardins

Le 27 juin 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs, Nouveau-Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registraire des valeurs mobilières, Territoires du Nord-Ouest
Registraire des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Nunavut

M[e] 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
consultation-en-cours@lautorite.qc.ca

The Secretary
Commission des valeurs mobilières de l'Ontario
20 Queen Street West
Toronto (Ontario) M5H 3S87
comments@osc.gov.on.ca

Objet : Énoncé 25-304 des ACVM - Demande de reconnaissance du nouvel organisme d'autoréglementation et Énoncé 25-305 : Demande d'acceptation du nouveau fonds de garantie

Mesdames,
Messieurs,

Le Mouvement Desjardins remercie les Autorités canadiennes en valeurs mobilières (ACVM) de consulter l'industrie sur l'avancement des travaux relatifs au cadre réglementaire des organismes d'autoréglementation en valeurs mobilières au Canada (OAR). La publication simultanée des énoncés 25-304, 25-305 et des modifications proposées au Règlement 31-103 fait suite au positionnement que les ACVM ont dévoilé en août 2021, qui proposait une consolidation des organismes d'autoréglementation canadiens des valeurs mobilières.

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Dans notre réponse à cette dernière consultation, nous saluions l'intention des ACVM de procéder à la création d'un nouvel OAR. C'était à notre avis une nouvelle étape cruciale pour l'encadrement des valeurs mobilières au Canada. Les plus récents documents publiés par les ACVM viennent préciser des aspects importants du nouvel OAR, notamment en ce qui a trait à sa gouvernance, sa tarification et l'harmonisation éventuelle de la réglementation. Malgré les avancées importantes réalisées dans la dernière phase des travaux, deux principaux enjeux demeurent, soit ceux liés à la situation réglementaire québécoise et aux coûts générés par celle-ci ainsi que par les fonds de protection des investisseurs. Nos commentaires toucheront les énoncés 25-304 et 25-305.

Une étape importante

Le Mouvement Desjardins compte différentes entités inscrites auprès de l'ACFM, de l'OCRCVM, de l'Autorité des marchés financiers (l'Autorité) ou d'autres commissions des valeurs mobilières ailleurs au Canada. En ce sens, nous appuyons, depuis ses débuts en 2020, la démarche des ACVM. L'évolution du marché et des préférences des consommateurs rendait de plus en plus inadéquate la structure des deux OAR au niveau canadien. C'est pourquoi nous nous sommes prononcés en faveur d'une consolidation de ceux-ci. Cette décision devait toutefois s'accompagner de la mise en place d'un « bureau fort au Québec pouvant garantir une expertise en français, conjugué à une représentativité significative sur son conseil d'administration et dans le processus décisionnel de celui-ci ». Le reflet de la diversité réglementaire canadienne à travers la gouvernance et la structure du nouvel OAR est en effet fondamentale, particulièrement lorsqu'on considère la situation qui prévaut au Québec.

Les exigences prévues spécifiquement pour le Québec dans la demande de reconnaissance viennent répondre à cette préoccupation. Les caractéristiques énoncées à l'Annexe 4 témoignent de la volonté des ACVM de trouver un équilibre entre le respect de la spécificité réglementaire du Québec et la nécessité de moderniser le cadre réglementaire canadien des valeurs mobilières. On pense notamment à la création d'une section Québec du nouvel OAR avec un budget et l'autonomie nécessaires pour mener à bien son mandat, supervisé par un dirigeant relevant directement du chef de la direction du nouvel OAR. Ces garanties sont indispensables, tout comme celles visant la prestation des services en français équivalente à celle offerte en anglais. Le premier dirigeant devrait être bilingue ou à tout le moins être en mesure de communiquer en français.

Dans le même ordre d'idées, nous avons également souligné l'enjeu causé par la présence de deux fonds d'indemnisation distincts, qui ne couvriront pas le même risque ; celui du nouvel OAR couvrira la faillite du courtier et celui de l'Autorité, la fraude. Les inscrits québécois seront aux prises avec des dédoublements des coûts, qui cotiseront aux deux fonds une fois la période de transition terminée. Nous encourageons les ACVM à tenir une consultation distincte relativement aux fonds de protection, à des fins d'équité pour les consommateurs et les courtiers en épargne collective du Québec.

La période pour fournir des commentaires, limitée à 45 jours, nous est apparue beaucoup trop courte étant donné la quantité de documents publiés par les ACVM. Bien que le statu quo réglementaire ait été privilégié pour la période de transition, nous aurions souhaité avoir plus de temps pour analyser les changements proposés par les ACVM. Nous espérons que les consultations subséquentes, que ce soit sur l'harmonisation des règles, la gouvernance ou les fonds de de protection, laisseront suffisamment de temps à toutes les parties concernées de fournir des commentaires utiles et éclairants aux ACVM.

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Un chantier toujours inachevé

La reconnaissance du nouvel OAR par l'Autorité était une étape indispensable pour la suite des travaux. Celle-ci n'est pas que symbolique ; elle a été accompagnée d'engagements clairs de la part des ACVM, comme nous l'avons souligné plus haut. Malgré ce jalon important, la question des dédoublements de coûts et de l'iniquité subie par les courtiers québécois demeure, car ils seront supervisés par trois entités au lieu d'une seule pour ceux du reste du Canada. Cette distinction ne comporte aucun bénéfice, que ce soit pour les inscrits, les consommateurs ou les autorités québécoises.

Dans nos commentaires à l'énoncé 25-404, nous affirmions qu'« il nous apparaît impossible de reconnaitre pleinement le nouvel OAR sans reconsidérer le rôle de la Chambre de la sécurité financière (CSF), à défaut de quoi les inscrits et investisseurs du Québec se retrouveront avec trois organismes réglementaires. Cette situation viendrait anéantir tous les bénéfices recherchés d'harmonisation et de simplification pour les inscrits et accroître la complexité et la confusion pour les investisseurs ». L'Autorité a fait preuve d'un leadership significatif à ce sujet lorsqu'elle a institué, en novembre 2021, un forum réunissant de hauts représentants de la Chambre de la sécurité financière, du bureau montréalais de l'OCRCVM et du Conseil des fonds d'investissement du Québec.

Le travail lié spécifiquement au rôle de la CSF dans la nouvelle dynamique réglementaire devra être une priorité au même titre que l'harmonisation des règles et l'achèvement de la structure de financement des fonds de protection. Tant et aussi longtemps que cet aspect ne sera pas réglé, les bénéfices escomptés du nouvel OAR, en matière d'offre de produits, de simplification de l'offre et d'harmonisation réglementaire et de surveillance, échapperont aux consommateurs et aux inscrits québécois.

Le Mouvement Desjardins tient à souligner le travail important des ACVM au cours des deux dernières années. Les progrès effectués témoignent d'un esprit de collaboration qui est essentiel dans un système fédératif comme le nôtre. Afin que tous ces efforts n'aient pas été déployés en vain pour le Québec, les autorités québécoises compétentes doivent s'assurer que les assujettis et consommateurs québécois ne fassent pas les frais d'une situation qui alourdira l'encadrement des valeurs mobilières dans la province, malgré la bonne volonté de toutes les parties impliquées. C'est avec plaisir que nous poursuivrons notre collaboration avec l'ensemble des intervenants gouvernementaux, les organismes d'autoréglementation et les autorités réglementaires sur cette question particulière et celles liées à l'évolution du cadre réglementaire canadien et québécois.

Nous vous invitons à communiquer avec le soussigné pour obtenir des précisions ou tout complément d'information relativement à cette consultation.

Veuillez recevoir, Mesdames, Messieurs, nos salutations distinguées.

Bernard Brun
Directeur principal
Relations gouvernementales et institutionnelles

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BMO Financial Group

June 27, 2022

Via Email

Canadian Securities Administrators
comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

Re: Request for Comment 25-304 - Application for Recognition of New Self-Regulatory Organization & CSA Staff Notice and Request for Comment 25-305 - Application for Approval of the New Investor Protection Fund

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BMO Financial Group is pleased to comment on the above-noted requests for comment on behalf of BMO Nesbitt Burns Inc. and BMO InvestorLine Inc., our IIROC members, and BMO Investments Inc., our MFDA member. Through these affiliates, we provide a range of products and services in support of our clients' diverse needs, goals, and expectations.

We support the CSA's objectives of establishing a new self-regulatory organization (the "New SRO") and consolidating the two current investor protection funds into a single, independently operated investor protection fund. However, we believe some aspects of the proposals fall short of the CSA's guiding principles for these initiatives and should be improved.

We refer you to the industry association letters from IFIC and IIAC that discuss the following shortcomings and suggest changes to the proposals:

- The proposal would require MFDA Approved Persons to upgrade their proficiency if their firm merges with an IIROC member even if they would continue to be restricted to mutual funds. If their firm does not merge, they would not be required to upgrade. This upgrade requirement creates a significant challenge to affiliate firms' efficient structuring without any investor protection justification, in that there would be no change to how Approved Persons interact with their clients. We submit that this upgrade requirement should be eliminated.

- The proposal requires an MFDA firm to adopt the IIROC interim rules if the MFDA firm introduces a significant portion of its business to an IIROC member. The proposal does not explain why firms should be constrained in realizing back-office efficiencies. Absent a clearly articulated benefit to investor protection, we think that this potential constraint should be removed.

- The proposal requires MFDA and IIROC dealers to undertake an extensive application and exemptive relief process to combine platforms even if there is no significant change in activity. Also, there is uncertainty about which set of interim rules would apply to the combined platform. Where there is no significant change in activity in dealing with clients, there is no reason for the burden of obtaining relief and this should be removed. In addition, the proposal should clarify which rules apply.

As we commented to the OSC's Capital Markets Modernization Taskforce in September 2020, we support initiatives that avoid regulatory duplication, achieve regulatory efficiency, support investor choice, protection and access to advice, lower operational complexities and costs, and harmonize requirements across regulatory platforms in a targeted manner that is appropriate to the nature of the activity being regulated.

The CSA's guiding principles for the New SRO, as set out in CSA Position Paper 25-404 - New Self-Regulatory Organization Framework, reflect a similar focus. We note the following principles from that position paper:

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

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; and

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[.]

We appreciate the opportunity to provide these comments and welcome the opportunity to discuss them with you in further detail. If you have any questions or require further information, please do not hesitate any of the undersigned.

Yours sincerely,

Bruce Ferman

Bruce Ferman
Chief Operations Officer,
Private Client Division,
BMO Nesbitt Burns Inc.

Silvio Stroescu

Silvio Stroescu
Ultimate Designated Person,
BMO InvestorLine Inc.

Steve Murphy

Steve Murphy
Ultimate Designated Person,
Mutual Fund Dealer Line of Business,
BMO Investments Inc.

CFIQ CONSEIL DES FONDS D'INVESTISSEMENT DU QUÉBEC
La voix au Québec de l'Institut des fonds d'investissement du Canada

IFIC.CA

ERIC HALLÉ
Chair of the Board of Governors

June 27, 2022

BY EMAIL

Mr. Philippe Lebel
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RE: CFIQ comments on the new self-regulatory organization

Dear Mr. Lebel:

The Conseil des fonds d'investissement du Québec (CFIQ) is grateful for the opportunity to submit comments as part of the consultations on the implementation of the new self-regulatory organization (New SRO) by the Autorité des marchés financiers (AMF), *Regulation to amend Regulation 31-103 respecting registration requirements, exemptions and ongoing registrant obligations – Amendments respecting the transition for Québec mutual fund dealers to the New SRO*, and the Canadian Securities Administrators (CSA), the CSA Staff Notice and Request for Comment 25-304 – *Application for Recognition of New Self-Regulatory Organization* and the CSA Staff Notice and Request for Comment 25-305 – *Application for Approval of the New Investor Protection Fund*.

CFIQ is the Québec voice of the Investment Funds Institute of Canada (IFIC), which is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations, to foster a strong, stable investment sector where investors can realize their financial goals.

CFIQ operates within a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the committees of CFIQ and IFIC and to the CFIQ board of governors. This process gives rise to a submission that reflects the input and perspectives of a wide range of industry members.

General comments

The CFIQ thanks the AMF for taking into account industry concerns and developing transitional measures to facilitate the transition of mutual fund dealers in Québec to the New SRO. In particular, we are grateful for the maintenance of the regulatory status quo, reduced membership fees, and the freeze on contributions to the New

SRO's investor protection fund (IPF). Maintaining the regulatory status quo during the transition period was one of the recommendations we made in our submission of October 4, 2021.[1]

To further improve the implementation of the New SRO in Québec both during the transition period and in the permanent phase, this letter raises several issues. It is crucial that the benefits that are expected for investors and the industry through the creation of the New SRO to be achieved in Québec the same way as elsewhere in Canada.

It is important to note that the 45-day consultation period was not sufficient for the scope of these consultations. We are aware that the CSA is planning to launch the New SRO on January 1, 2023. However, we encourage the AMF and the CSA to provide longer consultation periods in the future. The additional time would improve the analysis of the issues and the quality of the stakeholders' input. We were unfortunately unable to provide comments on some important aspects of this consultation due to a lack of time.

The comments below focus mainly on issues specific to Québec, along with certain aspects that are pan-Canadian in scope. Please refer to the IFIC submission for further comments from the investment funds industry.

Costs generated by the creation of the New SRO in Québec

Section 67 of Chapter I, Recognition of self-regulatory organizations, in the *Act respecting the regulation of the financial sector*, states:

> ***"67.*** *The recognition of a legal person, partnership or other entity is subject to the discretion of the Authority. The Authority shall exercise its discretion in the public interest. Recognition must, in particular, secure* ***effective supervision*** *of the financial industry in Québec, promote the development and soundness in the operation of the financial industry and foster the protection of the public."*

We would like to reiterate our concern about the effectiveness of adding a third organization to mutual fund oversight in Québec. As the New SRO has been recognized, we recommend robust cooperation agreements between the AMF, the New SRO and the Chambre de la sécurité financière (CSF) to avoid duplications. The industry would be happy to provide comments.

To ensure market efficiency and competition in the mutual fund industry in Québec, it is essential for the advent of the New SRO in Québec not to result in an increase in costs for the sector, which would result in increased costs for investors. As mentioned above, we are grateful that the AMF has considered the cost issue for the transitional measures. Nevertheless, we have concerns about the increase in costs during the transition period and especially during the permanent phase.

[1] CFIQ comments to the AMF on CSA Position Paper 25-404 on the New SRO Framework

Transition period

During the transition period, despite the reduced New SRO membership fees for mutual fund dealers in Québec, this cost will be added to current industry costs (annual AMF and CSF fees). In contrast, mutual fund dealers operating outside Québec will continue to pay membership fees equal to those they currently pay. We recommend that an equitable solution be implemented at least for the permanent phase that we outline below.

Permanent phase

For the permanent phase, we submit that the AMF should aim for a total cost formula that would ensure similar costs for mutual fund dealers in Québec and those of the same size outside Québec to ensure fair competition for Québec firms in relation to their counterparts in the other provinces. We are also concerned that there may be some overlap in the services offered by the New SRO and the CSF. In our opinion, mutual fund dealers working in Québec should not have to pay a financial price for the fact that the New SRO and the CSF will coexist.

To make things fair for Québec mutual fund dealers, to provide greater transparency in the fee system and to reduce the administrative burden on the industry, we recommend that the total fees for Québec mutual fund dealers be calculated and paid to the New SRO using the same formula that will apply to mutual fund dealers outside Québec. The New SRO would then share its revenue with the CSF to compensate it for the mutual fund services it provides in Québec. This would ensure that mutual fund dealers in Québec pay the same fees as their counterparts outside Québec. It would also allow Québec mutual fund dealers to manage one annual payment instead of two.

Protection fund

It appears that for the permanent phase, mutual fund dealers in Québec will have to contribute to two funds – the Fonds d'indemnisation des services financiers that already exists in Québec (and protects investors against fraud), and the New SRO's IPF (that protects investors against the insolvency of the dealer) – while mutual fund dealers outside Québec will only contribute to the latter fund. We agree with the principle that the financial system in Québec must provide adequate protection for investors. To this end, we recommend further consultation on the nature of the protection funds to analyze in more detail the risks investors should be protected from - fraud, insolvency or other - and set up a protection fund that meets the identified needs. We therefore recommend a freeze on contributions to the New SRO's IPF for mutual fund dealers in Québec until this consultation is held and its findings are implemented. Ultimately, it is essential for any permanent measure to be harmonized across Canada. Without a harmonized measure, Québec's mutual fund dealers should benefit from a permanent exemption from contributing to the New SRO's IPF.

Membership fees based on risk level

Another important component of the cost structure is the risk associated with the dealers' business model. Securities dealers offer a wider range of products than mutual fund dealers, increasing their risk level and, consequently, the level of supervision required from the New SRO. We therefore recommend that membership fees take this important aspect into account to ensure an adequate contribution from the members in relation to the level of service they will receive from the New SRO.

Complaint handling

In September 2021, the AMF published for consultation the *Regulation respecting complaint processing and dispute resolution in the financial sector*. In CFIQ's submission[2] for this consultation, we noted:

> *"While we note that the aim of the Regulation is to harmonize the processing of complaints between various financial sectors in Québec, the Regulation is inconsistent with national rules and the rules of self-regulatory organizations applicable to the same financial intermediaries in other Canadian jurisdictions."*

We submit that, with the impending implementation of the New SRO's new rules, it would be better for the AMF to exclude mutual fund dealers from the *Regulation respecting complaint processing*, because they will have to follow the New SRO's rules in this regard. We want to point out that regulatory harmonization is a key objective in the creation of the New SRO. Our recommendation aims to establish a single complaint process for all mutual fund dealers in Canada. This system would allow for better complaint management for the New SRO with regard to all mutual fund dealers and provide a better transition for the final implementation of the New SRO.

Inspections during the transition period

Currently, mutual fund dealers based in Québec that are also members of the Mutual Fund Dealers Association of Canada (MFDA) undergo joint inspections by the AMF (for activities in Québec) and the MFDA (for activities outside Québec). During the transition period, we understand that the AMF will continue to conduct mutual fund dealer inspections for activities in Québec, however, it is unclear how activities outside Québec will be handled. For example, will the inspections be conducted by the Québec Regional Council of the New SRO or by the staff from the New SRO headquarters? Will the Québec Regional Council have adequate expertise and resources to inspect mutual fund dealers during the transition period? This is an important issue, as there are current inspections that have not been finalized and the mutual fund dealers would like to ensure consistency in this regard. We also recommend that during the transition period, the AMF and the New SRO issue a single comment report, rather than two separate ones, to facilitate implementation by the dealers.

We would also appreciate understanding how consistent the comments of the inspections during the transition period will be compared to the comments in the permanent phase given that the former will be based on current rules and the latter on the new rules. Information would be appreciated about any steps being taken by the AMF, MFDA and the Investment Industry Regulatory Organization of Canada (IIROC) to ensure the consistency of their feedback during the transition period, especially since the industry will soon undergo targeted reviews on client focused reforms.

[2] https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=26846&lang=en_CA

Commission sharing and incorporation of representatives

The answer to question 10 in the Frequently Asked Questions (FAQ) published by IIROC and the MFDA states:

> *"We will continue to allow commission redirection by those individuals registered as "dealing representative, mutual fund dealer" within those jurisdictions that permit commission redirection and in accordance with Mutual Fund Dealer Rule 2.4.1(b)."*

This response refers to the MFDA rules, in other words, a practice that will be permitted for mutual fund dealers and representatives outside Québec. We would appreciate an explicit clarification that commissions can continue to be shared in Québec during the transition period and the permanent phase. Given that the role of the New SRO is to harmonize practices, it is important for the issue of shared commissions to be clear for all jurisdictions and sectors, namely, can full-service representatives also share their commissions?

The FAQ states that a person registered as a dealing representative, mutual fund dealer will continue to be allowed to redirect commissions within jurisdictions that permit commission redirection and in accordance with MFDA Rule 2.4.1(b). The FAQ states that an individual who is attached to a dual-registered firm and who changes to the category of "Registered Representative dealing in mutual funds only" can start or continue to redirect commissions. The New SRO's rules for mutual fund dealers apply only to dual-registered firms where there is no corresponding requirement in the new Investment Dealer and Partially Consolidated Rules. MFDA Rule 2.4.1(b) does not impose a "requirement." It is permissive. Consequently, the New SRO's Investment Dealer and Partially Consolidated Rules should be amended to allow for commission redirection by registered representatives dealing in mutual funds only in jurisdictions that allow commission redirection. We believe that if this amendment is not made and registered representatives dealing only in mutual funds cannot redirect commissions in the jurisdictions that allow commissions to be redirected, the outcome will be a significant barrier for mutual fund dealers to become dual-registered firms. This would be inconsistent with the policy rationales supporting dual registration.

We would also like to express our appreciation for the consultations of the CSA Directed Commissions Working Group. CSA Position Paper 25-404, issued in August 2021, provided a detailed analysis of the issue and proposed to explore possible solutions. We are of the opinion that the viable long-term solution is the incorporation of mutual fund representatives to avoid any tax doubt that currently exists in Québec and that may exist elsewhere in Canada. The AMF should play a key role in this issue, to explain to the political authorities its importance for the viability and growth of mutual funds in Québec. We would be happy to work with the CSA working group on this important issue at the appropriate time.

Name and logo of the New SRO

Dealers who are members of the New SRO will be required to include its name and logo in a significant number of documents. According to our members, such a change could take at least 18 months to implement, as system changes are planned at least one year in advance. As the name of the New SRO is not yet known, we recommend that the CSA put transitional measures in place to avoid having firms be non-compliant when the New SRO comes into effect and to avoid forcing the industry to change the name twice. We also recommend a transitional period of at least 18 months for the implementation of the name and logo of the New SRO.

Proficiency requirements

We believe that people who offer the same products and services, regardless of the registration category of the dealer they are associated with, should be required to meet the same training requirements. In other words, the substance of the products and services offered by the representative should govern the proficiency requirements, rather than the dealer's registration category. We believe it is inappropriate to require a person registered in the category of dealing representative, mutual fund dealer in a dual-registered firm to complete the Conduct and Practices Handbook Course (CPH), in the absence of a compelling policy rationale. The existing proficiency requirements for MFDA mutual fund dealer representatives should apply to mutual fund only representatives of mutual fund dealers and dual-registered dealers under the New SRO rules.

Furthermore, it would be very costly for dual-registered dealers to fund a significant number of representatives to complete the CPH. For large dealers, the 270-day limit does not allow enough time for all their representatives to complete the CPH. Unjustified differences in training requirements could encourage people to switch from a dual-registered firm to a mutual fund dealer (regulatory arbitrage).

More importantly, we see this proficiency proposal as a major barrier to mutual fund dealers becoming dual-registered firms. This barrier could result in the failure to meet some major regulatory objectives of the New SRO.

The CPH is intended for IIROC Approved Persons and not those registered in the category of dealing representative, mutual fund dealer in a dual-registered firm. The IFSE Canadian Investment Funds course is perfectly suited to the purposes of a mutual fund dealer representative in a dual-registered firm. This course covers the ethical responsibilities of registrants, conflicts of interest, Canadian regulators, legislation and regulations, compliance, know your client, suitability, know your product, registration requirements and relationships with vulnerable and elderly investors. Where appropriate, as an alternative to the CPH, a new course specifically for people registered in the category of dealing representative, mutual fund dealer with dual-platform dealers could be developed and provided for continuing education credits. Any additional proficiency requirement should allow one year for completion from the time the dealer becomes a dual-registered dealer.

Investor advisory panel

We agree that it is important to give investors a voice in a sector that serves them. We would appreciate receiving clarifications about how the New SRO advisory panel will complement the new CSA advisory panel.

Commencement of permanent phase

The AMF notice states the following with regard to the permanent phase:

> ***"Permanent phase:** This phase will begin on the later of:*
>
> *(i) the implementation date of the New SRO's harmonized rule book,*
> *(ii) the date that is one year after AMF approval of the New SRO's harmonized rule book*
>
> *or on any other date determined by the AMF, on a consultative basis (the Transition Phase Closing Date)."*

We submit that a one-year transitional period is too short for mutual fund dealers to adapt to a new rule book for the New SRO, especially with the other measures that are expected to be implemented in the near future, including those related to total cost reporting obligations, the transition to T+1, refinement of the implementation of client focused reforms based on targeted reviews, adaptation to the banning of purchase options with deferred sales charges and the implementation of Bill 96. We recommend a transition period commensurate with the regulatory changes that will be required, especially for mutual fund dealers in Québec that did not engage in activities supervised by an SRO. One possibility could be a phased-in approach based on the complexity of the rules. This would allow the less onerous rules to come into force more quickly than the more complex ones.

We also recommend that the CSA set a reasonable timeframe for the development of the New SRO's harmonized rule book so that the process does not drag on.

Loss of self-regulation

The industry is already consulted through advisory panels or public or private consultations. The structure put in place by the CSA for the New SRO distorts what would normally constitute an SRO. The industry's role is relegated to that of a consultant when instead it should play a central part in establishing self-regulation.

In particular, CFIQ does not agree with the revised CSA governance and oversight approaches, which limit the voice of the members – particularly in matters where the CSA will have a veto, including business plans and exemptions from the New SRO's rules. Furthermore, it is proposed that the role of the current IIROC District Councils be changed to an advisory role to provide regional perspectives on national issues. This would also result in a substantial reduction of the industry's self-regulatory role, as it would, for example, deprive these councils of their powers to approve new members of the New SRO and the acquisition of dealers by members, to impose conditions on Approved Persons, to suspend or revoke the approval of Approved Persons and to grant proficiency exemptions.

Overall, while we agree with many of the governance proposals to strengthen accountability, we believe that the preceding reductions in self-regulatory authority do not achieve the right balance of self-regulatory authority in the industry.

The FAQ states that the Regional Councils will have an advisory role and make policy recommendations to the staff of the New SRO and that the National Council will act as a forum for cooperation and consultation among the Regional Councils and provide recommendations on regulatory policy matters. It is unclear whether the Regional Councils and the National Council will make recommendations to the CSA on the same topics and, if so, if there is a conflict, whether the National Council's policy recommendations will take precedence over those of the Regional Councils. It is important for this ambiguity to be clarified in an amended FAQ or otherwise.

Automatic registration

We commend the CSA for implementing an automatic registration process for the New SRO for existing IIROC and MFDA members. This helps reduce the administrative burden on the industry during the implementation of the New SRO.

* * * * *

Should you require any additional information, please do not hesitate to contact Kia Rassekh, Regional Director, CFIQ, by email at krassekh@ific.ca or by telephone at 514-985-7025.

Yours truly,

Eric Hallé

Eric Hallé
Chair of the Board of Governors
CFIQ

June 27, 2022

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

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario
M5H 3S8

Raymond James Ltd. CSA Response – SRO Amalgamation

Raymond James Ltd. (NRD # 8240) ("RJL") would like to thank the Canadian Securities Administrators (CSA) for the opportunity to comment on the new, single self-regulatory organization (SRO) initiative designed to consolidate the functions of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) scheduled for January 1, 2023, pursuant to the *Request for Comment 25-305* published on May 12, 2022.

RJL supports the majority of the guiding principles, governance, and solutions outlined in the 2021 CSA Working Group's *Position Paper (25-404 – New Self-Regulatory Organization Framework)* (*e.g.* the harmonizing of directed commissions agreements and the solutions put forth by the Working Group). There remain, however, significant inherent challenges and concerns in advance of implementation.

The obligations required under the New SRO will result in the need for careful consideration of amalgamation issues related to operational impacts including, but not limited to, combining platforms and registration responsibilities, and the costs associated with translation and consolidation generally.

The chief priority for January 1, 2023 implementation should be the allotment of reasonable and defined timelines, both pre- and post-entry into force. In addition, member consultation and feedback with respect to cost and ongoing dialogue of same is important. Ancillary considerations, such as the New

SRO name, which will have downstream impact involving operational processes, client communications, corporate marketing, and associated firm-level projects, are also key.

Regarding the combination of platforms, dealers are registered through IIROC, MFDA, or both, making an additional application (or exemptive relief process, as required) that aims to combine operations within their registered dealers redundant due to lack of meaningful change in activity. The proposal of an additional category of a dual-registered firm contradicts the primary objectives of amalgamating the SROs with efficiency of harmonization in mind.

Registration and proficiency should also be a priority in advance of implementation, and while the CSA should maintain responsibility for registering individuals registered as "dealing representative, mutual fund dealer", the New SRO should register all individuals that it oversees.

In addition, the proposed CSA Oversight should be amended to provide bolstered authority and discretion for the New SRO to enact its mandate. As a result of the proposed enhancements to the governance structure of the New SRO (including the requirement for a majority of independent directors, a public interest mandate, and the creation of an investment advisory panel), the level of CSA oversight proposed will potentially have a negative effect on the New SRO's ability to function as a self-regulatory organization. This would be contradictory to the 2021 *CSA Position Paper*, which states that the New SRO "will continue to provide the industry with the inherent benefits of self-regulation by maintaining a self-regulatory model".

Lastly, RJL supports the recommendations put forth by the Investment Industry Association of Canada (IIAC) concerning additional considerations and challenges as part of this undertaking, including items related to the New SRO board composition, formal investor advocacy mechanisms, introducer/carrier broker arrangements, and the New Investor Protection Fund.

Yours sincerely,

Jamie Coulter

Chief Executive Officer

Raymond James Ltd.

Jason Enouy

Chief Compliance Officer

Raymond James Ltd.

LEEDE JONES GABLE

June 27, 2022
Delivered Via Email

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

Delivered to

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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames,

RE: CSA Staff Notice and Request for Comment 25-304, Application for Recognition of New Self-Regulatory Organization & CSA Staff Notice and Request for Comment 25-305, Application for Approval of New Investor Protection Fund

We are writing in response to CSA Staff Notice and Request for Comment 25-304, Application for Recognition of New Self-Regulatory Organization ("SRO") and CSA Staff Notice and Request for Comment 25-305, Application for Approval for New Investor Protection Fund ("IPF").

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

We support the CSA's efforts to establish the new SRO and new IPF in Canada. LJG would like to contribute the following comments.

Pointing to Appendix A – Application for recognition of the SRO from CSA Staff Notice and Request for Comment 25-304, *Application for Recognition of New Self-Regulatory Organization,* with relation to the section on Fees, we have noted that the fees imposed must be, "equitably allocated and proportionate to Members' activities." For most non-bank owned investment dealers, the main benefit should come from the synergies of running one regulator, with one board, management team, etc. resulting in cost savings to the member organizations. We suggest that a cross-section of dealers is involved in determining how the fees are allocated. This approach was employed in the past such as when the IIROC New Integrated Fee Model was introduced in 2009.

LEEDE JONES GABLE

From the Financial Viability section of the same document where it states, "the costs relating to the amalgamation of IIROC and the MFDA and start-up of the New SRO are being borne by IIROC and MFDA." The primary beneficiaries of the amalgamation are the entities (banks and large insurance companies) that operate dual platforms, for IIROC and MFDA business will be able to consolidate the two businesses on a single platform and realize significant internal savings. Therefore, the merger costs should be allocated to this group.

Similarly, in Appendix A for CSA Staff Notice and Request for Comment 25-305, *Application for Approval of New Investor Protection Fund* under point 5b(iii) and 5c(i), where it discusses the methodologies applied to fees and an equitable allocation among SRO Members, entities previously operating dual platforms will realize significant internal savings and should therefore bear the merger costs and any cost savings should be fairly distributed across the membership.

As we have stated in previous submissions, we are supportive of the single SRO as it which will provide a clearer, fuller picture of how the investment industry is adapting to changes in the industry and support timely consistent updates to regulation as needed.

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

Sincerely,
Leede Jones Gable Inc.

Jim Dale
Chief Executive Officer

SUITE 3415, 421 – 7TH AVENUE SW, CALGARY, ALBERTA T2P 4K9
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PEAK
GROUPE FINANCIER

Le 27 juin 2022

PAR COURRIEL

Maître Philippe Lebel
Secrétaire et directeur général des affaires juridiques
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Québec (Québec) G1V 5C1
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Objet : Commentaires du Groupe financier PEAK sur le nouvel organisme d'autoréglementation

Me Lebel,

Il nous fait plaisir de vous faire part de nos commentaires dans le cadre des avis de consultation suivants : l'avis de consultation 25-304 du personnel des ACVM: *Demande de reconnaissance du nouvel organisme d'autoréglementation*, l'Avis de consultation 25-305 du personnel des ACVM, *Demande d'acceptation du nouveau fonds de garantie* ainsi que *Règlement modifiant le Règlement 31-103 sur les obligations et dispenses d'inscription et les obligations continues des personnes inscrites – modifications concernant la transition pour les courtiers en épargne collective au Québec vers le Nouvel OAR*. Tous les avis ci-haut mentionnés ont été publiés le 12 mai 2022.

Depuis 30 ans, PEAK change réellement les choses dans la vie des Canadiens en améliorant leur qualité de vie grâce à une meilleure utilisation de leur argent. Avec plus de 13,5 milliards de dollars d'actifs sous administration, PEAK se positionne comme chef de file des courtiers multidisciplinaires totalement indépendants au Canada. Fondé en 1992, le Groupe financier PEAK jouit d'une réputation sans pareille dans l'industrie des services financiers et offre son expertise à un réseau de 1 500 conseillers indépendants et employés, qui sont bien établis dans les secteurs de la gestion de patrimoine, des fonds communs de placement, des valeurs mobilières et des assurances.

Le Groupe financier PEAK est composé de quatre sociétés membres : Services en placements PEAK, Services financiers PEAK, Valeurs mobilières PEAK et Services d'assurances PEAK. Grâce aux valeurs

communes d'intégrité, d'indépendance et d'innovation de l'entreprise, PEAK et son réseau de conseillers financiers indépendants ont gagné la confiance de 150 000 investisseurs d'un océan à l'autre depuis 30 ans.

Les conseillers PEAK sont notamment inscrits à travers le Canada auprès des autorités canadiennes en valeurs mobilières, soit Valeurs mobilières PEAK inc. (« VMP ») et Services en placements PEAK inc. (SPP »).

Dans les dernières semaines, nous avons assisté à plusieurs rencontres et comités de l'industrie et nous en venons à la conclusion que nos questions et commentaires sont similaires, quoiqu'ils puissent différer selon le contexte de l'entreprise.

Commentaires généraux sur la demande de commentaires et le délai de réponse

Nous sommes très heureux que les membres de l'industrie soient consultés dans ces nombreux changements qui affecteront le paysage réglementaire de l'investissement au Canada. Les avis ont tous été publiés pour commentaires le 12 mai dernier avec un délai de 45 jours, soit jusqu'au 27 juin 2022, pour faire parvenir à l'autorité en valeurs mobilières compétente nos commentaires.

Nous tenons à souligner que le délai imparti afin de fournir nos commentaires aux autorités est très court considérant le matériel publié le 12 mai dernier. En effet, le matériel publié contient environ 700 pages de documents pertinents qui doivent être analysés de façon diligente afin de répondre à la demande de commentaires. En tant que courtier inscrit en placement et en épargne collective dans plusieurs provinces canadiennes, ces changements auront un impact majeur sur notre structure d'inscription et de conformité et nous aurions aimé avoir plus de temps pour analyser les impacts de tous ces changements.

Nous comprenons que le nouvel organisme de réglementation doit être en place au 1er janvier 2023. Cependant, afin de créer un organisme qui représente adéquatement les membres de l'industrie, il faut nous donner le temps d'évaluer les nouveautés, changements et impacts sur nos opérations et collaborer pour trouver des solutions viables à long terme. À défaut, l'arrivée du nouvel organisme de réglementation risque d'être plus complexe que ce qui est prévu. Nous réitérons que nous sommes enchantés de participer aux discussions et de représenter les courtiers indépendants canadiens.

PEAK
GROUPE FINANCIER

1. Commentaire sur l'inscription des représentants après la création du nouvel OAR

i) Impact sur les représentants

Nous sommes d'accord avec la position de l'AMF à l'effet qu'un nouvel OAR, regroupant les activités de l'OCRCVM et de l'ACFM et ayant une gouvernance renforcée, est dans le meilleur intérêt des investisseurs et du secteur financier. Cependant, nous nous questionnons sur plusieurs aspects de ce nouvel organisme pour les courtiers souhaitant être inscrits comme courtier en placement et en épargne collective. Nous comprenons que, lorsqu'un courtier sera inscrit comme courtier en placement et comme courtier en épargne collective sous le mode inscription double, le représentant en épargne collective aura l'obligation de suivre le cours relatif au *Manuel sur les normes de conduite.*

Nous considérons que cette obligation nuit aux courtiers devant s'inscrire dans les deux catégories. Cela crée une obligation supplémentaire pour les courtiers inscrits sous le mode double alors que ceux qui ne s'inscrivent que dans l'une ou l'autre des catégories n'ont pas cette obligation. Pourquoi créer une obligation pour les représentants inscrits en épargne collective auprès d'un courtier à inscription double alors que leurs collègues inscrits dans une firme inscrite seulement en épargne collective n'auront pas cette obligation alors qu'ils feront les mêmes activités?

Il en est de même pour l'obligation d'un représentant inscrit en épargne collective qui se joindrait à une firme exclusivement inscrite comme courtier de plein exercice de suivre le cours sur les valeurs mobilières canadienne et le cours relatif au manuel sur les normes de conduite. Cette obligation ne crée aucune valeur ajoutée pour le client, le représentant, la firme et le nouvel organisme d'autoréglementation. Pourquoi un représentant en épargne collective est sujet à trois cheminements académiques différents selon l'inscription de son courtier alors que ses activités quotidiennes restent les mêmes?

L'incohérence créée par ses situations n'atteint pas les objectifs d'harmonisation, de simplification et d'efficacité des processus promis par le nouvel organisme de réglementation. Nous suggérons au nouvel organisme d'autoréglementation d'adopter une approche différente et de privilégier un rehaussement des obligations pour l'accès à la profession cohérent pour tous. Un client devrait bénéficier du même niveau de compétence de la part du représentant en épargne collective, peu importe le mode d'inscription de son courtier. Cela correspondrait à une approche qui mettrait de l'avant la protection et la confiance

du public. Évidemment, une clause grand-père ou un moratoire pour les individus déjà inscrits devra être mis en place afin de ne pas les pénaliser et de reconnaître leurs grandes connaissances en matière de valeurs mobilières.

ii) Pour les firmes

Nous notons aussi que le processus afin d'obtenir une double inscription pour un courtier n'est pas disponible à ce jour. En effet, lors des conférences de l'ACFM et de l'OCRCVM[1], ces derniers ont mentionné que les firmes voulant bénéficier d'une double inscription devront contacter le nouvel organisme d'autoréglementation et soumettre un plan.

Nous sommes d'avis que cette demande n'est pas assez précise. Nous ignorons quels sont les critères qui seront évalués par l'organisme d'autoréglementation et les délais pour faire une telle demande. Dans une optique de transparence et de collaboration, nous suggérons que les critères sur lesquelles le nouvel organisme de réglementation se basera soient disponible avant le 1er janvier 2023. Cela permettrait aux firmes de faire une évaluation approfondie de leurs opérations. Ne pas rendre publics les critères risque de créer des discordances entre les courtiers qui seront acceptés avec une double inscription et ceux qui ne le sont pas. La diffusion des critères permettrait une application objective et non subjective aux membres.

Il est aussi important que le processus pour la firme voulant bénéficier d'une double inscription ne soit pas plus imposant et plus onéreux qu'un courtier qui reste inscrit dans une seule catégorie. L'harmonisation est la clé.

iii) La situation particulière du Québec

a. La coexistence de plusieurs organismes réglementaires

L'arrivée du nouvel organisme de réglementation vise à simplifier les façons de faire dans le domaine des valeurs mobilières. Cependant, à l'heure actuelle, nous notons une complexification du processus pour la province de Québec. En effet, durant la période de transition, le nouvel organisme d'autoréglementation sera opérationnel au Québec, en plus du mandat de l'AMF qui, jusqu'à présent, représentait l'ACFM au

[1] Les conférences ont eu lieu le 9 et 10 juin 2022, respectivement.

Québec en matière d'épargne collective. Certaines tâches en matière d'éthique et déontologie sont déléguées à la *Chambre de la sécurité financière*. Les courtiers en placement seront sous la gouverne du nouvel organisme d'autoréglementation à partir du 1er janvier 2023.

Nous constatons que le dédoublement et le nombre d'organismes présent au Québec alourdissent le processus au lieu de le simplifier. Après avoir assisté à de nombreuses conférences des OAR actuels, nous craignons que le mode transitoire soit plus complexe que le statu quo pour une firme comme la nôtre. Nous craignons que la phase transitoire augmente les différences entre les courtiers inscrits au Québec. En effet, l'iniquité créée par l'inscription d'une firme au Québec seulement versus les firmes inscrites hors Québec et au Québec sera importante. L'une est soumise au statu quo tandis que l'autre se retrouve dans la phase transitoire avec des règles différentes qui ne sont pas encore harmonisées et avec le chevauchement de trois OAR avec des façons de faire différentes. Il serait judicieux de revoir la structure des organisations présentes au Québec afin d'éviter des impacts indésirables sur les firmes inscrites au Québec et hors Québec. Nous notons aussi que, puisque le nouvel organisme de réglementation sera présent au Québec, il est nécessaire de revoir les mandats de l'AMF et de la CSF en matière d'épargne collective. De façon générale, nous croyons que l'épargne collective doit être retirée de la CSF et rapatriée sous le nouvel organisme d'autoréglementation. Il s'agirait d'un grand pas en matière d'harmonisation avec les autres provinces canadiennes.

L'harmonisation devra également se refléter durant la période transitoire du nouvel organisme d'autoréglementation au Québec. En effet, les courtiers inscrits en épargne collective au Québec et hors Québec doivent, à l'heure actuelle, se soumettre à des inspections de l'ACFM et de l'AMF. En matière d'enquête, il peut y avoir des demandes de la CSF, de l'ACFM et de l'AMF. Nous considérons que cette organisation des inspections n'est pas viable sous le nouvel organisme. Nous souhaitons donc le regroupement des activités d'inspection en épargne collective sous un seul organisme ou que des ententes de partage d'information sous signées entre ces derniers afin d'éviter la multiplication des demandes de renseignements réglementaires. Ce processus serait plus efficace autant pour le régulateur que pour le courtier. Durant la période transitoire au Québec, les inspections devraient être conduites conjointement par le nouvel organisme et l'AMF.

Le dédoublement des organismes au Québec amène aussi des questions de coûts pour les firmes étant inscrites au Québec et dans le reste du Canada. Nous sommes très inquiets des coûts supplémentaires que les nombreux organismes présents au Québec pourraient faire payer à leurs membres. Une différence de traitement ne devrait pas exister entre un courtier inscrit au Québec seulement, un courtier inscrit hors Québec ou un courtier inscrit au Québec et hors Québec.

Nous notons aussi que la structure de coût est seulement basée sur le type d'inscription d'un courtier. Dans la dernière décennie, plusieurs types de produits ont été créés (crypto, fonds négociés en bourse, fonds alternatifs, etc.). Plusieurs produits amènent un risque supplémentaire pour la firme et ce ne sont pas toutes les firmes qui désirent s'exposer à ces risques. À titre de courtiers indépendants, nous soumettons qu'une structure de coûts basés sur le risque des produits pourrait être intéressante. Ce modèle correspond mieux au monde des valeurs mobilières et permettrait de suivre les tendances futures en matière de produits.

b. Partage de commission avec une société

Nous souhaitons aussi porter à l'attention des ACVM l'incohérence entre les règlements actuels de l'ACFM et de l'AMF au niveau du partage des commissions. En effet, le MFDA permet le partage de commission avec une société non inscrite, sous réserve des lois provinciales l'interdisant. Ce principe n'est pas applicable au Québec puisque l'AMF permet le partage de commission avec une société inscrite seulement. Il serait judicieux de prévoir des dispositions le plus rapidement possible sur ce point afin que les représentants inscrits en épargne collective au Québec bénéficient d'un traitement similaire à leur collègue dans le reste du Canada.

Considérant les buts d'harmonisation et d'efficacité du nouvel OAR, il serait judicieux de prévoir des dispositions similaires pour les représentants inscrits auprès d'un courtier en placement et un courtier en épargne collective. Il ne devrait pas y avoir de traitement différent sous le nouvel OAR. Tous les représentants inscrits devraient pouvoir bénéficier des avantages fiscaux disponibles dans le cadre de l'incorporation et du partage de commissions au même titre que les courtiers immobiliers, médecins, comptables et notaires.

c. Le traitement des plaintes

Actuellement, il y a trois règlements différents en lien avec le traitement des plaintes. L'ACFM, l'AMF et l'OCRCVM ont leur propre processus. En septembre 2021, l'AMF a publié pour commentaires un projet de règlement sur le traitement des plaintes. En janvier 2022, l'OCRCVM a proposé son propre projet de règlement concernant le traitement des plaintes pour commentaires des membres de l'industrie.

Nous espérons que le nouvel organisme de réglementation harmonisera le processus en matière de traitement des plaintes. Il n'est pas viable d'avoir trois façons de traiter une plainte au sein d'une même société. Nous soumettons aussi que le traitement des plaintes concernant un courtier en épargne collective au Québec devrait se faire par le nouvel organisme d'autoréglementation considérant les objectifs d'harmonisation et d'efficacité établies par les autorités en valeurs mobilières.

Nous vous remercions d'avoir pris le temps de solliciter les commentaires des courtiers de l'industrie. Il nous fera plaisir de répondre à vos questions. Vous pouvez contacter la soussignée aux coordonnées ci-dessous.

Myriam Blanchette | LL.B., M.Fisc.
Conseillère juridique principale | Senior Legal Advisor
Groupe financier PEAK
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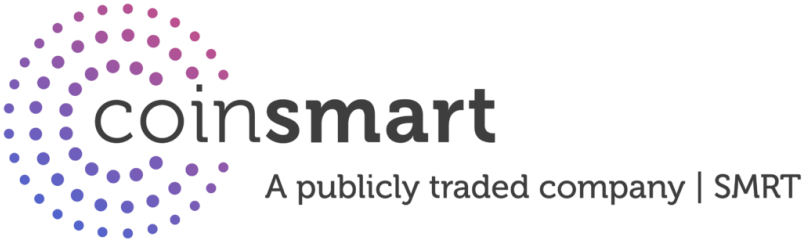

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June 27, 2022

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

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Dear Sirs/Mesdames:

Re: CSA Staff Notice and Request for Comment 25-305 - *Application for Approval of the New Investor Protection Fund*

CoinSmart Financial Inc. is pleased to provide comments to the Canadian Securities Administrators (CSA) on their application for approval of the New Investor Protection Fund. We support the CSA's efforts to amalgamate the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) into a single self-regulatory organization (the New SRO) and to amalgamate the Canadian Investor Protection Fund (CIPF) and the MFDA Investor Protection Corporation (MFDA IPC) into a single compensation / contingency fund (the New IPF).

CoinSmart is a leading Canadian-headquartered crypto asset trading platform dedicated to providing customers with an intuitive way for buying and selling digital assets, like Bitcoin and Ethereum. CoinSmart is one of the few crypto assets trading platforms in Canada to be registered as a securities dealer and marketplace with the Canadian Securities Administrators. CoinSmart further builds on its mission to make cryptocurrency accessible by providing educational resources tailored to every level of cryptocurrency knowledge and unparalleled 24/7 omni-channel customer support. Offering instant verification, industry leading cold wallet storage, advanced charting with order book functionality and over-the-counter premium services, CoinSmart ensures every client's needs are met with the highest level of quality and care.

Feedback on draft New IPF Coverage Policy

We strongly support providing the protection of the New IPF to clients of all participating organizations of the New SRO. We are committed to making investing more accessible, safer and less intimidating for Canadians.

This commitment extends to crypto investing and we are concerned both about the exclusion of crypto assets, crypto contracts and other crypto-related property (collectively Crypto Property) from the draft New IPF Coverage Policy and the way in which such a material amendment to the current CIPF and MFDA IPC coverage policies was introduced.

The New IPF Draft Coverage Policy states:

> *Property received, acquired or held by, or in the control of, a New SRO Member that consists of crypto assets, crypto contracts, or other crypto-related property is not eligible for New IPF coverage. For greater certainty, Property consisting of securities of a mutual fund or exchange traded fund that invests in or holds crypto assets, crypto contracts or other crypto-related property is, however, eligible for New IPF Coverage.*

While other changes within the draft New IPF Coverage Policy are largely housekeeping in nature and required to bring CIPF and MFDA IPC coverage into a single policy, this Crypto Property specific carve out is not found in either of the existing policies. Absent this carve out, Crypto Property that members of the New SRO are entitled to deal and hold on behalf of clients would be covered under the draft New IPF Coverage Policy as well as the current CIPF and the MFDA IPC coverage policies.

Why Crypto Property should be covered

In 2019, a large number of the 52 commenters that responded to Joint CSA-IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms* indicated that there should be member funded insurance such as CIPF or CDIC for Crypto Trading Platforms (CTPs), noting that they would expect CTPs that became IIROC registered platforms to be CIPF members. In 2021, in response to these comments the CSA confirmed that CTPs would be CIPF members and that coverage would be offered by CIPF on a case by case basis. Generally, we support this approach, and believe that member funded insurance for Crypto Property would offer very real investor protection to Canadians that use regulated CTPs.

The language in the draft New IPF Coverage Policy instead includes a blanket exclusion for all Crypto Property, an approach which contradicts these previous statements, fails to address the large number of comments received and offers no investor protection.

In addition, the exclusion raises a number of points that are not addressed in the notice including the following:

- New SRO members dealing only in Crypto Property would effectively be exempt from their regulatory requirement to participate in a compensation fund.
- This does not square with the approach taken at the time the MFDA IPC was created where, in response to commenters suggesting that there was no need for an investor protection fund given the low risk of mutual funds, the commissions confirmed that having no fund at all would not be acceptable.
- Client disclosures will be difficult and confusing. For New SRO Members that only offer Crypto Property, they will be members but not actually be participating in the New IPF. New SRO Members that offer both Crypto Property and non-Crypto Property will have to differentiate coverage, possibly within the same account, between different types of investments a single client holds.
- In the event of a bankruptcy, clients of New SRO Members that deal in both Crypto Property and non-Crypto Property will have to deal with the New IPF for their non-Crypto Property claims and then participate in the bankruptcy proceedings personally for their Crypto Property. This would effectively unwind the simplification and cost-savings that IPFs provide to investors and to participants in the bankruptcy proceedings.
- No rationale or analysis for the exclusion of Crypto Products has been provided for comment or consideration (see below for further details).

Overall, the language in the draft New IPF Coverage Policy runs contrary to previous statements of the CSA and public comments they received, it will weaken investor protection and confidence in New SRO Members while creating confusion.

Such a material amendment deserves significant consultation

We support the CSA's ongoing efforts to strengthen the oversight of crypto asset trading platforms and believe that there is a need for broad and transparent consultation among policymakers and regulators to achieve the appropriate balance to regulating crypto asset platforms that protects investors and promotes responsible innovation.

If CIPF were to amend their coverage policy today to add the above Crypto Property carve out, or if the New IPF were to do so after being established, such an amendment would be classified as a public comment amendment under either fund's respective Memorandum of Understanding. To carry out a public comment amendment the relevant IPF has to take certain steps to support the amendment and engage the public. These steps include proving the following:

- a letter to the CSA outlining how it has taken the public interest into account in developing the amendment and why the amendment is in the public interest;
- a notice for public comment including:
    - written analysis detailing the nature, purpose and effect of the amendment;

- the possible effects of the amendment on investors, issuers, registrants, other market participants, the SRO and the capital markets generally;
- Context and relevant issues considered and any alternative approaches considered; and
- a request for public comment.

Following this, the CSA would normally consider if it was in the public interest and if the relevant IPF had provided sufficient analysis to support the amendment.

The above amendment process provides transparency and sufficient information to engage in meaningful consultation. We are concerned that this amendment is being proposed without comprehensive analysis of its nature, purpose and effect or the benefit of consultation on these points.

We hope that our comments will be considered positively by the CSA and helpful in establishing the New Investor Protection Fund. We welcome the opportunity to discuss our comments with you.

Yours very truly,

(s) "Pierre Soulard"

Pierre Soulard
Chief Legal Officer

cc: Justin Hartzman, CoinSmart
Jeremy Koven, Coinsmart